

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
(ICSID Case No. ARB(AF)/12/1)**

(1) APOTEX HOLDINGS INC.

(2) APOTEX INC.

Claimants

v.

THE UNITED STATES OF AMERICA

Respondent

**PROCEDURAL ORDER ON THE SCHEDULE REGARDING
THE PARTIES' RESPECTIVE PRIVILEGE LOGS,
FURTHER SUBMISSIONS AND CERTIFICATIONS**

The Tribunal:

J. William Rowley, Arbitrator;
John R. Crook, Arbitrator; and
V.V. Veeder, President.

The Secretary to the Tribunal:

Eloïse M. Obadia

Introduction

1. Pursuant to Paragraph 14.2.7(v) of the First Procedural Order, the Claimants and the Respondent submitted to the Tribunal on 15 March 2013 disputes under their respective Schedules for document production for decision by the Tribunal, such decision to be issued on 29 March 2013 in accordance with the procedural timetable fixed by Paragraph 14.2.7(vi) of the First Procedural Order.
2. On 29 March 2013, the Tribunal issued its Procedural Order with regard to the Parties' respective requests for document production in these arbitration proceedings (the "Order").
3. It decided that as regards the privilege or privileges invoked or to be invoked by the Claimants and the Respondent respectively, each Party should prepare a privilege log identifying, by reference to any ordered document or (if not an identified document) any narrow and specific category of documentation, the particular privilege invoked by the Party concerned barring such production in these proceedings and the particular reasons for such bar in relation to such document or documentation (*see* paragraphs L and N of the Order).
4. The Tribunal specified that the opposing Party should have an opportunity to respond in writing to such privilege log, with the requesting Party being afforded a brief opportunity to reply to such response, also in writing (*see* paragraphs L and N of the Order).
5. The Tribunal further requested the Parties to consult amongst themselves with a view to agreeing on a timetable for the exchange of these privilege logs, further submissions and certifications as soon as possible, but no later than 19 April 2013; or, if no such agreement could be reached, the Parties would have to make their separate proposals to the Tribunal no later than 22 April 2013 (*see* paragraph Q of the Order).
6. On 19 April 2013, the Parties informed the Tribunal that pursuant to the Order, they had produced on that day certain responsive documents to each other. In addition, the Parties indicated that they remained actively engaged in discussions regarding these issues and in resolving delays to the completion of document production which had arisen. The Parties stated that they would keep the Tribunal informed of the result of their consultations.

7. On 26 April 2013, the Parties informed the Tribunal that they had agreed on an approach to complete document production, as well as on a timetable for the exchange of privilege logs, further submissions, and certifications. Specifically, in order to complete the document production in an efficient and orderly manner, the United States agreed to continue to produce responsive documents on a rolling basis, including responsive documents containing information in connection with third parties from a review set mutually agreed by the Parties.
8. The Parties further agreed upon a schedule that they proposed to the Tribunal with dates remaining to be fixed. They noted, however, that the remainder of the schedule (including the hearing dates), as outlined in paragraph 14.2.7 of the First Procedural Order would remain unchanged.
9. On 30 April 2013, the Tribunal accepted the Parties' proposal of 26 April 2013, notwithstanding the tight deadline foreseen for the Tribunal's decisions. The Tribunal invited the Parties to work out the specific dates by 4 May 2013, and indicated that absent any agreement by the Parties by that day, it would fix these dates.
10. On 2 May 2013, the United States indicated that it continued to work diligently to ensure that it would be in a position to indicate by 10 May 2013 the date for the completion of the document production and accordingly fix the remaining dates of the schedule agreed upon by the Parties. The Claimants did not object. Therefore, based on this consensus, on 3 May 2013, the Tribunal indicated that it could wait until 10 May 2013 to receive the agreed upon dates remaining to be fixed.
11. On 10 May 2013, the Parties informed the Tribunal of the agreed upon dates and jointly requested the Tribunal to reflect the agreed schedule in a procedural order.
12. On 13 May 2013, the Tribunal consented to formalize the agreed timetable in the form of a procedural order, and hereby does so.

Order

13. Further to the Parties' agreement, the Tribunal orders the following schedule:

- a. 24 May 2013 – Claimants will file their Reply on the Merits and Counter-Memorial on Jurisdiction (as currently scheduled), addressing all documents produced on or before 19 April 2013;
- b. On the same date – 24 May 2013 – The United States will complete its document production;
- c. 28 May 2013 – 24 May + 4 calendar days – The Parties will simultaneously exchange privilege logs (for fully withheld documents, in Vaughn Index format). At the same time, the Parties will exchange certifications (with copies to the Tribunal) that the tests for relevance and materiality under Articles 3(3)(b) and 9(2)(a) of the IBA Rules have been applied to documents not produced;
- d. 4 June 2013 – 24 May + 11 calendar days – The Parties will simultaneously exchange their objections to privilege logs and redactions, as generally contemplated by paragraphs L and N of the Order;
- e. 11 June 2013 – 24 May + 18 calendar days – The Parties will simultaneously exchange their replies to objections to privilege logs, and provide such logs to the Tribunal;
- f. 18 June 2013 (tentative) – Submission of the logs + 7 days – The Tribunal will endeavor to issue an order on the Parties' privilege logs (objections and replies);
- g. 21 June 2013 (tentative) – Tribunal's decision + 3 calendar days – To the extent the Tribunal overrules a Party's assertion of privilege and orders production of documents, the Parties shall produce such documents;
- h. 5 July 2013 (tentative) – Tribunal's decision + 17 calendar days – The Claimants will have the opportunity, if they wish, to supplement their 24 May Reply in order to comment on any documents produced by the United States after 19 April 2013;
- i. 20 September 2013 – The United States will file its Rejoinder on the Merits and Reply on Jurisdiction (as currently scheduled) if the Claimants do not file a supplement to their 24 May Reply; OR

27 September 2013 – The United States will file its Rejoinder on the Merits and Reply on Jurisdiction (one week later than originally scheduled) if the Claimants do file a supplement to their 24 May Reply; and

- j. 11 October 2013 – the Claimants will file their Rejoinder on Jurisdiction (as currently scheduled) if they do not file a supplement to their 24 May Reply; OR

18 October 2013 – the Claimants will file their Rejoinder on Jurisdiction (one week later than originally scheduled) if they do file a supplement to their 24 May Reply.

14. The remainder of the schedule (including the hearing dates), as outlined in paragraph 14.2.7 of the First Procedural Order, remains unchanged. It is reproduced below for ease of reference:

- a. The Claimants and Respondent shall provide notification of any witnesses and experts to be cross-examined at the hearing by 25 October 2013;
- b. A pre-hearing telephone conference shall be held on 31 October 2013 at a time to be determined by the Tribunal; and
- c. The hearing shall be held from 18 to 26 November 2013, including if necessary on Saturday 23 November 2013.

Dated 14 May 2013

Signed for the Tribunal:

[Signed]

V.V. Veeder (President of the Tribunal)