

**International Centre for
Settlement of Investment Disputes**

GEA GROUP AKTIENGESELLSCHAFT

Claimant

v.

UKRAINE

Respondent

ICSID Case No. ARB/08/16

Procedural Order No. 2

Rendered by an Arbitral Tribunal composed of:

Professor Albert Jan van den Berg, President

Toby Landau QC, Arbitrator

Professor Brigitte Stern, Arbitrator

Ms. Aïssatou Diop, Secretary of the Arbitral Tribunal

CONSIDERING:

- (A) Procedural Order No. 1 regarding the production of documents;
- (B) Claimant's letter of 23 February 2010, seeking a clarification of the Tribunal's decisions on Respondent's Requests Nos. 14, 15 and 16 as to whether the Tribunal intended both to grant GEA's conditional request that Respondent produce corresponding documents prepared by the entities mentioned in the Requests as well as the requests originally stated by Respondent, or whether the Tribunal intended to only to grant the requests stated by Respondent;
- (C) Respondent's letter of 24 February 2010, requesting that Claimant's request for clarification should be dismissed;
- (D) Article 9(2)(g) of the IBA Rules, on which Claimant relies, providing: "The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude evidence or the production of any document . . . for any of the following reasons: . . . (g) considerations of fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling."
- (E) That Claimant interprets Article 9(2)(g) of the IBA Rules as providing for the principle of equality of arms, on which basis Claimant was willing to produce certain documents if Respondent were to produce certain corresponding documents;
- (F) That a conditional request for production of documents on the basis of Article 9(2)(g) of the IBA Rules may be acceptable in highly exceptional circumstances;
- (G) That Claimant has not convincingly shown that such circumstances exist with respect to Respondent's Requests Nos. 14, 15 and 16;

THE ARBITRAL TRIBUNAL HEREBY DECIDES AS FOLLOWS:

1. When deciding on Respondent's Requests Nos. 14, 15 and 16 in Annex B to Procedural Order No. 1, the Tribunal intended to only grant the requests stated by Respondent.

Date: 24 February 2010

On behalf of the Arbitral Tribunal

[signed]

Albert Jan van den Berg,
President