

PCA Case No. 2012-12

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE AGREEMENT
BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF
AUSTRALIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS,
SIGNED ON 15 SEPTEMBER 1993 (THE “TREATY”)**

-and-

**THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW RULES OF
ARBITRATION AS REVISED IN 2010 (“UNCITRAL RULES”)**

-between-

PHILIP MORRIS ASIA LIMITED

(“Claimant”)

-and-

THE COMMONWEALTH OF AUSTRALIA

(“Respondent”, and together with the Claimant, the “Parties”)

PROCEDURAL ORDER NO. 10
Regarding the Timetable for the Exchange of Privilege Logs

26 August 2014

Arbitral Tribunal

Professor Karl-Heinz Böckstiegel (President)
Professor Gabrielle Kaufmann-Kohler
Professor Donald M. McRae

Registry

Permanent Court of Arbitration

WHEREAS, on 14 April 2014, the Tribunal issued Procedural Order No. 8 in the present arbitration, which addressed the manner in which the Respondent's preliminary objections would be heard, in a preliminary phase of the proceedings or joined to the merits;

WHEREAS, on 11 May 2014, the Parties proposed an agreed timetable for the Tribunal's consideration and approval ("Timetable"); and whereas on 16 May 2014 the Tribunal adopted that Timetable, with certain modification, in the form of Procedural Order No. 9;

WHEREAS, on 15 August 2014, the Respondent informed the Tribunal that the Parties had agreed to exchange privilege logs listing any documents that a Party wished to withhold on grounds of legal impediment or privilege or special political or institutional sensitivity; whereas the Respondent informed the Tribunal that the Parties had failed to reach agreement on a timetable for the exchange of such privilege logs; and whereas the Respondent proposed a timetable for the Tribunal's consideration;

WHEREAS, on 20 August 2014, the Claimant responded to the Respondent's letter by noting that the Respondent's proposed timetable was unworkable in view of the breadth of the Respondent's document requests; and whereas the Claimant proposed an alternative timetable for the Tribunal's consideration;

WHEREAS, on 22 August 2014, the Respondent conveyed to the Tribunal that it was prepared to narrow its document requests; and whereas the Respondent confirmed that, while the Claimant's proposed timetable potentially left little time to incorporate certain documents into the Respondent's Reply, the Respondent was prepared to agree to the Claimant's timetable in order to avoid extended argument;

HAVING REGARD TO THE PARTIES' CORRESPONDENCE, THE TRIBUNAL NOW DECIDES:

The Tribunal notes, with pleasure, that the Parties have been able to agree on the adapted timetable as proposed in the Claimant's letter of 20 August 2014, which makes provision for the exchange of privilege logs. The Tribunal approves the result of this agreement.

In particular, the Tribunal recalls that, during the Hearing on Bifurcation, the Respondent indicated that document disclosure regarding its preliminary objections could be expected to be very limited.

Therefore, the Tribunal appreciates that the Parties have now confirmed their intention to review their disclosure requests again with a view to narrowing them further. The Tribunal invites the Parties to limit the requests that they will submit in their Redfern Schedules to those documents that are absolutely necessary for the limited purpose of dealing with the preliminary objections to be addressed at the Hearing on Preliminary Objections in February 2015.

For greater clarity, a consolidated Timetable up to the Hearing on Preliminary Objections is hereby set as follows:

1. By 8 September 2014 the Parties may submit to the Tribunal, either jointly or separately, in the form of a Redfern Schedule, summaries of the Requests to Produce on which they cannot agree.
2. By 29 September 2014 the Tribunal shall decide on such applications and the Parties shall produce the documents that are responsive to requests to which they have raised no objection. By the same date, the Parties shall exchange privilege logs listing any associated documents that a Party wishes to withhold on grounds of legal impediment or privilege or special political or institutional sensitivity. Such privilege logs shall (i) identify the author, recipient, document type and document date; (ii) contain the title, subject line and a brief description of the subject matter, without disclosing any possible privileged content; and (iii) provide a brief explanation as to why the document is believed to be privileged or otherwise not subject to production.
3. By 20 October 2014 the Parties shall produce documents as ordered by the Tribunal. By the same date, the Parties shall exchange privilege logs listing any associated documents that a Party wishes to withhold on grounds of legal impediment or privilege or special political or institutional sensitivity. Such privilege logs shall take the same form as the privilege logs described in Paragraph 2.
4. By 27 October 2014, the Parties shall exchange any objections that they may wish to raise in respect of the other Party's privilege claims, without copying the Tribunal.
5. By 31 October 2014, the Parties shall have an opportunity to respond to the other Party's objections, without copying the Tribunal.
6. By 5 November 2014, the Parties shall submit any unresolved objections to privilege claims to the Tribunal for a decision.
7. By 14 November 2014, the Tribunal shall rule on such unresolved privilege claims.

8. By 19 November 2014, the Parties shall produce any documents over which privilege was asserted as ordered by the Tribunal.
9. On 1 December 2014 the Respondent shall file its Reply on Preliminary Objections together with any further evidence (documents, witness statements, expert reports) upon which it wishes to rely, provided such arguments and evidence do not exceed the scope of the preliminary objections that the Respondent set forth in its Statement of Defence and that the Tribunal deemed suitable for resolution in the bifurcated proceedings.
10. On 12 January 2015 the Claimant shall file its Rejoinder on Preliminary Objections together with any further evidence (documents, witness statements, expert reports) upon which it wishes to rely, but only in rebuttal of the Respondent's Reply on Preliminary Objections.
11. At this stage, the Tribunal may send to the Parties a preliminary draft of the Procedural Order regarding details of the Hearing and invite them for comments within a week.
12. By 26 January 2015 the Parties shall submit notifications of the witnesses and experts, presented by themselves or by the other Party, whom they wish to examine at the Hearing on Preliminary Objections, and a chronological list of all exhibits with indications where the respective documents can be found in the file.
13. By 2 February 2015, the Parties may submit any changes to their above notifications of witnesses and experts that they may wish to make after having seen the notification of the other side.
14. On 9 February 2015 a Pre-Hearing Conference between the Parties and the Tribunal may be held if considered necessary by the Tribunal, either in person or by telephone, at a time set by the Tribunal after consultation with the Parties.
15. As soon as possible, the Tribunal shall issue a Procedural Order regarding details of the Hearing on Preliminary Objections.
16. The Hearing on Preliminary Objections shall be held in Singapore starting on 16 February 2015 for three business days (and two additional days in reserve) or until the Tribunal determines it should conclude.
17. At the end of the Hearing on Preliminary Objections, the Tribunal will consult with the Parties as to whether the Parties shall submit post-hearing briefs and claims for arbitration costs, and by which dates.

18. The Tribunal points out that, particularly in early 2015 immediately before the Hearing, the schedule is very tight. Therefore, the Parties should be aware that there will be no option to allow any extensions during that period.

Dated: 26 August 2014

A handwritten signature in blue ink, appearing to read 'Böckstiegel', is enclosed in a thin black rectangular border.

On behalf of the Tribunal

**Professor Karl-Heinz Böckstiegel
President of the Tribunal**