

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. 14
Regarding Admission of Expert Evidence and Legal Authorities

20 January 2015

Arbitral Tribunal

Professor Karl-Heinz Böckstiegel (President)

Professor Gabrielle Kaufmann-Kohler

Professor Donald M. McRae

Registry

Permanent Court of Arbitration

WHEREAS, by letter dated 16 January 2015, the Respondent contended that the Claimant had submitted with its Rejoinder, for the first time, expert evidence on Australian law, in the form of a legal opinion by Justice Ian Callinan (“Callinan Report”); whereas the Respondent asserted that the Callinan Report was not submitted, as required, in rebuttal of the Respondent’s Reply; and whereas the Respondent requested that the Tribunal therefore exclude the Callinan Report from the record, considering the proximity to the hearing on preliminary objections (“Hearing”);

WHEREAS, by letter dated 19 January 2015, the Claimant objected to the Respondent’s request to exclude the Callinan Report; and whereas the Claimant argued that the Respondent had significantly expanded the scope of its argument and expert evidence in respect of the “Non-Admission Objection” in its Reply, which in turn necessitated a broader rebuttal by the Claimant in respect of this preliminary objection in the Rejoinder; whereas the Claimant set out several points of Australian law that, in its view, were addressed by the Respondent for the first time in its Reply; and whereas the Claimant concluded that it should be permitted, as a matter of procedural fairness, to file the Callinan Report;

WHEREAS, by separate letter dated 19 January 2015, the Claimant sought leave from the Tribunal to introduce into the record a recent award in the arbitration *Renée Rose Levy and Gremcitel S.A. v. Republic of Peru* (“Gremcitel Award”), noting that that Award had been made public subsequently to the filing of the Claimant’s Rejoinder; whereas the Claimant considered the Gremcitel Award to be relevant to the Respondent’s “Temporal Objection”, to be addressed at the upcoming Hearing; and whereas the Claimant proposed that, in the event that the Tribunal were to admit the Gremcitel Award, each Party should be allowed to comment on it within one week;

WHEREAS the Tribunal has carefully reviewed the Parties’ arguments presented in the above-mentioned correspondence; and whereas, in view of the desirability of clarifying the status of the Callinan Report and the Gremcitel Award without delay, the Tribunal refrains from restating the Parties’ arguments in detail in the present Order;

NOW, THEREFORE, THE TRIBUNAL DECIDES:

1. In Respect of the Callinan Report

- 1.1 The Respondent’s request to exclude the Callinan Report from the record is denied.
- 1.2 The Tribunal notes that the Callinan Report addresses questions of Australian law (rather than new points of fact), on which the Respondent will be free to comment at the Hearing and possibly in its post-hearing brief, in the event that such briefs are authorized after consultation with the Parties at the end of the Hearing.

2. In Respect of the Gremcitel Award

- 2.1 The Claimant shall be permitted to introduce the Gremcitel Award into the record.
- 2.2 The Tribunal’s decision in this regard is without prejudice to the relevance of the Award for the present arbitration.
- 2.3 The Claimant is invited to introduce the Gremcitel Award by **22 January 2015**, accompanied by commentary not exceeding five pages to explain the perceived significance of this Award. The Respondent is invited to provide any comments that it may have by **25 January 2015**.

- 2.4 The Tribunal notes that the Gremcitel Award is intended to be submitted as legal authority. Hence, the Parties will be free to address the Award in further detail in their oral presentations at the Hearing and, as the case may be, in their post-hearing briefs.
- 2.5 The Tribunal issues its decision in respect of the Gremcitel Award without having invited comments from the Respondent. It does so in the interest of ensuring that the file is complete before the Parties are required to submit their notifications of witnesses and experts on 26 January 2015. The approach in the present Order provides the Respondent with an opportunity to comment on the Gremcitel Award before that date.

Dated: 20 January 2015

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

On behalf of the Tribunal

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