

**INTERNATIONAL CENTRE FOR SETTLEMENT  
OF INVESTMENT DISPUTES**

**ADEL A HAMADI AL TAMIMI V. SULTANATE OF OMAN  
(ICSID CASE No. ARB/11/33)**

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**PROCEDURAL ORDER No. 12**

Professor David A. R. Williams QC, President of the Tribunal  
Judge Charles N. Brower, Arbitrator  
Mr. J. Christopher Thomas QC, Arbitrator

*Secretary of the Tribunal*  
Mr. Monty Taylor

Procedural Order No. 12

**1. INTRODUCTION**

- 1.1. By letter dated 22 September 2014, the United States of America, a non-disputing party, filed a submission on two issues of treaty interpretation (“**the Submission**”) as was its right under Article 10.19.2 of the US–Oman Free Trade Agreement (“**the FTA**”).<sup>1</sup>
- 1.2. By letter dated 24 September 2014, the Claimant objected to the Submission on the grounds that (a) it was out of time; and/or (b) it exceeded the US’ permitted scope of participation under the FTA. Claimant sought leave to respond to the Submission.
- 1.3. By letter dated 26 September 2014, the Respondent expressed its view that no response was needed given that (a) allowing the Submission would cause no prejudice to the Claimant; and (b) the Submission was directed to issues of treaty interpretation only.
- 1.4. By letter dated 29 September 2014, the US argued that its Submission was neither untimely nor outside the scope of Article 10.19.2.
- 1.5. The Tribunal has conferred on the issues raised by the Submission and directs as follows.

**2. LATENESS OF SUBMISSION**

- 2.1. Whilst Article 10.19.2 of the FTA imposes no restriction on the timing of submissions made pursuant to that Article, the Tribunal considers that it has a discretion under Rule 25 of the ICSID Rules to apply, if called for in the circumstances, a time limit on the making of submissions by non-disputing parties.<sup>2</sup> In that connection, the Tribunal further considers that only submissions filed within a reasonable time period after the hearing should be accepted for consideration. The Tribunal needs to have regard to all relevant factors in determining whether a submission is not made within a reasonable time.
- 2.2. In this case, the Tribunal considers the Submission was made within a reasonable time. Any delay was due to the Respondent’s failure to deliver the relevant materials to the US promptly after the hearing.
- 2.3. Therefore, the Submission is to form part of the Record in this case and the Tribunal accepts the Submission for consideration in this arbitration.

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<sup>1</sup> Article 10.19.2, FTA: “The non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.”

<sup>2</sup> Rule 25(1), ICSID Rules: “Where required, time limits shall be fixed by the Tribunal by assigning dates for the completion of various steps in the proceeding.”

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**3. TRIBUNAL'S RULING: COMMENTS ON THE SUBMISSION**

- 3.1. For the reasons given above, the Tribunal directs that the Submission be received as part of the Record.
- 3.2. On **Monday, 27 October 2014** at 5pm local time, the Parties shall exchange memoranda not greater than ten (10) pages in length discussing (a) whether the Submission falls within the scope of Article 10.19.2; and (b) the substance of the Submission and its relevance, if any, to this case.
- 3.3. Thereafter the Tribunal will, as part of its deliberations, decide what weight, if any, is to be given to the Submission.

[Signed]

On behalf of the Tribunal  
Professor David A. R. Williams QC  
*President of the Tribunal*  
Date: 14 October 2014