

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Angel Samuel Seda and others**

**v.**

**Republic of Colombia**

**(ICSID Case No. ARB/19/6)**

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**PROCEDURAL ORDER NO. 14**

***Members of the Tribunal***

Prof. Dr. Klaus Sachs, President of the Tribunal

Prof. Hugo Perezcano Díaz, Arbitrator

Dr. Charles Poncet, Arbitrator

***Secretary of the Tribunal***

Ms. Sara Marzal

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12 April 2023

**I. INTRODUCTION**

1. Following the hearing on new evidence and oral closing submissions held in Paris on 3 and 4 October 2022, the Parties simultaneously filed submissions on (i) [REDACTED] and (ii) the U.S. treaty practice on essential security interest exceptions on 21 December 2022 (“**Post-Closing Submissions**”).
2. On 19 January 2023, the Tribunal issued Procedural Order No. 13 (“**PO 13**”), deciding *inter alia* to hold a one-day virtual hearing in which each Party would have a chance to make oral submissions on the other Party’s Post-Closing Submission (the “**Third Hearing**”). The Tribunal stressed that the one-day virtual hearing will be limited to hearing oral arguments on the issues addressed in the Post-Closing Submissions and that no new evidence or witness testimony would be admitted.
3. On 14 February 2023, the Tribunal scheduled the Third Hearing for 26 April 2023 at 3 p.m. CET / 9 a.m. ET.
4. On 13 March 2023, following the Parties’ agreement, the Tribunal decided to admit seven new documents into the record which refer to new facts that took place after the hearing held on 3 and 4 October 2022.
5. On 15 March 2023, the Tribunal circulated a draft procedural order, addressing procedural, administrative and logistical matters in preparation for the Third Hearing and invited the Parties to jointly advise the Tribunal by 23 March 2023 of any agreements reached on the open items of the draft procedural order, as well as their respective positions where no agreement was reached.
6. On 23 March 2023, the Parties submitted their joint statement and indicated that they had reached agreement on all the open items of the draft procedural order except for the (i) hearing time allotted to each Party and (ii) the hearing agenda.
7. On 6 April 2023, the Tribunal circulated an updated draft of the procedural order, incorporating the Parties’ agreements and the Tribunal’s decision on the two items in which the Parties disagreed. Having resolved the only two pending organizational items, the Tribunal proposed to cancel the pre-hearing conference (which had been originally scheduled for 12 April 2023), unless the Parties had any further observations to the draft text or any other matter regarding the organization of the Third Hearing that they would like to discuss.
8. On 7 April 2023, each Party informed the Tribunal of its agreement to cancel the pre-hearing organizational meeting.

9. Having thus considered the Parties' positions, this Order sets out the procedural rules that the Parties have agreed upon and/or the Tribunal has determined will govern the conduct of the Third Hearing.

## **II. ORGANIZATION OF THE THIRD HEARING**

### **A. Date and Venue**

10. The Third Hearing is scheduled to take place by video conference through Zoom on 26 April 2023, beginning at 3 p.m. CET / 9 a.m. ET.
11. The video conference will be hosted by Sparq and will follow the Virtual Hearing Arrangements detailed in **Annex B**.

### **B. Scope of the Parties' submissions**

12. The Parties' oral arguments shall be restricted to (i) the issues addressed in the Post-Closing Submissions (ii) the new facts to which the exhibits admitted into the record following the filing of the Post-Closing Submissions refer; and (iii) the Tribunal's questions.

### **C. Order of Proceedings and Schedule**

13. The order of proceedings and structure of the Third Hearing will be as indicated in the agenda incorporated as **Annex A** (the "**Hearing Agenda**").
14. The Tribunal shall submit any questions it wishes the Parties to address in their opening submissions by 17 April 2023.
15. The Tribunal will enforce, with a degree of flexibility, the said agenda and, following consultation with the Parties, the Tribunal may adjust it to account for unexpected disruptions. The Tribunal will, at all times, take into account the fact that some of the Tribunal members and counsel for the Respondent is based in Europe. Accordingly, the Third Hearing shall not extend beyond 10 p.m. CET.

### **D. Time Allocation**

16. The Parties will have a total of 4 hours of hearing time.
17. The time allotted to the Parties does not include breaks and Tribunal time.
18. Each Party shall have a total of 2 hours.
19. Subject to the provisions in paragraph 15, both Parties reserve the right to request additional time from the Tribunal in the event that extra time is required.

20. Time spent on housekeeping matters or responding to Tribunal questions shall not be counted toward either Party's time allocation unless the Tribunal decides, in particular circumstances, to count a reply to the responding Party's allotted time.
21. If a Party objects or otherwise intervenes during the other Party's speaking time, that time will be counted as part of the objecting Party's time.
22. The Secretary of the Tribunal will keep record of the time using the chess-clock method, and report the time used and remaining to the Parties and the Tribunal whenever so requested. Any disagreement between the Parties concerning hearing time shall be raised with the Tribunal and settled immediately by the Tribunal.

**E. Documents for Use at the Third Hearing**

23. Demonstrative exhibits shall be used in accordance with Section 16.8 of PO1 reproduced below, except that hard copies will not be required:

Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in electronic and hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing. Each Party shall ensure that the opposing Party and each Tribunal Member have both electronic and hard copies of demonstrative exhibits prior to commencing its oral arguments or the examination in which they will be used.

24. The Parties shall produce electronic copies of all demonstrative exhibits used in the Third Hearing at least 24 hours before the commencement of the Third Hearing. However, PowerPoint presentations in support of a Party's oral argument are not considered to be demonstrative exhibits and shall be shared with the opposing counsel, each Tribunal Member, the Secretary of the Tribunal, the court reporters, and interpreters at the start of each Party's oral argument in electronic format only.
25. In addition, promptly after the conclusion of the Third Hearing, each Party shall upload each Demonstrative exhibit and its Power Point presentations (in PDF format) to the case folder in the electronic file sharing system ("BOX"), with the required CD-\_\_ or RD-\_\_ number.

## **F. Interpretation**

26. The Third Hearing shall be conducted in Spanish and English with simultaneous interpretation into the other procedural language. Transcripts shall be taken in both languages.

## **G. Sound Recordings and Transcripts**

27. According to Section 21 of PO1:

*“21.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the parties and the Tribunal Members.*

*21.2. Verbatim transcripts in the procedural languages shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using LiveNote or similar software and electronic transcripts shall be provided to the parties and the Tribunal on a same-day basis.*

*21.3. The parties shall agree on any corrections to the transcripts within 30 calendar days of the later of the dates of the receipt of the sound recordings and transcripts. The agreed corrections may be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts. The Secretariat shall provide the Parties and the Tribunal Members the final version of the transcripts once the revised transcripts have been approved by the Tribunal.”*

28. A video recording of the Third Hearing with the language spoken by the hearing participants will be made. An audio recording of the interpretation into the language not spoken by the hearing participants will also be made available to the Parties.

## **H. Transparency**

29. Given the sensitive nature of the matters to be heard, the Third Hearing will be held in camera and the Tribunal shall, in consultation with the disputing Parties, establish the arrangements to ensure public access pursuant to Article 10.21.2 of the United States - Colombia Trade Promotion Agreement (“US – Colombia TPA”), as well as the protection of information designated by the disputing Parties as protected information.

30. In this regard, and consistent with the prior hearings in this case, the following logistical arrangements will be made:
- i. The Third Hearing will be made publicly accessible by posting a video recording of the sections of the Third Hearing agreed upon by the Parties on the ICSID website as soon as possible after the Third Hearing.
  - ii. Before posting the video recording on the ICSID website and in order to avoid public disclosure of protected information, the video recording of the Third Hearing will be edited.
  - iii. After the Third Hearing, either Party may request that a specific section of the Third Hearing be considered protected and therefore excluded from the recording (“ex-post requests”). The Party making the ex-post request shall be responsible for providing to the Tribunal, the Secretary of the Tribunal and the opposing Party the exact period of time which it seeks to be removed from the recording. If the opposing Party has an objection to such request, the Tribunal shall decide after hearing both Parties.
  - iv. ICSID will edit the recording and the transcripts accordingly. The Parties will send ICSID a list of agreed edits (including the end and start timestamps of the video recording that should be excluded from publication). The Tribunal will decide if there are any pending disagreements.
31. ICSID will announce the Third Hearing on the Centre’s website before the hearing. Below is a draft of the public announcement:

*“A third hearing on jurisdiction and the merits in the above case is scheduled to take place by video conference on 26 April 2023.*

*Pursuant to Article 10.21 of the United States - Colombia Trade Promotion Agreement, and mindful of the confidential information the disclosure of which may cause irreversible harm to the Parties, the hearing will be made accessible to the public by publishing a video recording of the hearing on ICSID’s website as soon as possible after the hearing.*

*Please continue to monitor our website for further announcements.”*

32. In accordance with Article 10.20.2. of the US – Colombia TPA, the US attended and made oral submissions to the Tribunal regarding the interpretation of the Treaty during the first hearing on jurisdiction and the merits held in May 2022 at the seat of the Centre in Washington, D.C. The US also attended the hearing on new evidence and oral closing submissions held in Paris on 3 and 4 October 2022. On 22 March 2023 the US informed the Tribunal and the Parties that it wished to attend the Third Hearing and that it may wish to make a further short oral submission to the Tribunal on issues of interpretation of the

US – Colombia TPA. To accommodate this request, appropriate arrangements will be made for the US government officials to attend virtually<sup>1</sup> and make a short oral presentation.

**I. Post-Hearing Submissions and Statements on Costs**

33. According to Section 22 of the PO1:

*22.1. All matters concerning post-hearing memorials and statements of costs shall be discussed at the close of the oral hearing. In any event, such submissions, if any, shall not contain new evidence, documents, sources, witness statements or expert reports or opinions, except in exceptional circumstances, as determined by the Tribunal upon consultation with the Parties.*

*22.2. Each party will submit its Statement of Costs within 4 weeks after the hearing or the final exchange of Post-Hearing Memorials (if any).*

**J. List of Participants**

34. Each Party will provide by 12 April 2023 its respective List of Participants for the Third Hearing (“**List of Participants**”) using the format provided in **Annex C**.

On behalf of the Tribunal,

[signed]

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Prof. Dr. Klaus Sachs  
President of the Tribunal  
Date: 12 April 2023

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<sup>1</sup> However, in accordance with Article 10.21.4, the USA’s government officials will not have access to those portions of the Third Hearing in which protected information is discussed.

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Procedural Order No. 14 – Annex A

**ANNEX A**  
**HEARING AGENDA**<sup>2</sup>

**Wednesday 26 April 2023**

<b>Time</b>	<b>Procedural Step</b>
3:00 p.m. CET – 3:15 p.m. CET	Housekeeping
3:15 p.m. CET – 3:45 p.m. CET	U.S. Submission
3:45 p.m. CET – 4:00 p.m. CET	Break
4:00 p.m. CET – 5:30 p.m. CET	Claimants' Opening Presentation
5:30 p.m. CET – 5:45 p.m. CET	Break
5:45 p.m. CET – 7:15 p.m. CET	Respondent's Opening Presentation
7:15 p.m. CET – 7:30 p.m. CET	Break
7:30 p.m. CET – 8:00 p.m. CET	Claimants' Rebuttal
8:00 p.m. CET – 8:15 p.m. CET	Break
8:15 p.m. CET – 8:45 p.m. CET	Respondent's Rebuttal
8:45 p.m. CET – 9:30 p.m. CET	Tribunal's Questions

<sup>2</sup> The times denoted in this Hearing Agenda are good faith estimates but are subject to change as necessary during the course of the Third Hearing and at the Tribunal's discretion, within the time allocated to each Party.



**ANNEX B**  
**VIRTUAL HEARING ARRANGEMENTS**

**I. LOGISTICAL ARRANGEMENTS**

**1. Video Conference Platform and Streamed Transcript**

1. The virtual platform shall be managed by Sparq (“**Operator**”).
2. Real-time court reporting shall be made available to the Participants via an online link connection to be provided by the court reporters prior to the start of the Third Hearing. The Participants will be able to access the streamed transcripts from their own devices.
3. The connectivity details (links and instructions) for Participants to join the video conference session, and to connect to the streamed real-time transcripts in both procedural languages will be shared by ICSID prior to the start of the Third Hearing.

**2. Participants**

4. As provided *supra*, each Party will provide its respective List of Participants for the Third Hearing (“**List of Participants**”), using the format provided in **Annex C**. In that List of Participants, each Party will designate those Participants that will have an active speaking role (“**Active Participants**”), and those who will be passive attendees (“**Passive Participants**”).
5. For ease of identification, Participants shall join the video conference using the naming convention indicated in the format in **Annex C**.
6. Access to the video conference session shall be restricted to those identified in the List of Participants.
7. Participants shall join the video conference 30 minutes in advance of the start of the Hearing to facilitate the identification and to address any technical contingencies.

### **3. Technical Testing of Virtual**

8. The Operator will organize a technical test with the Participants in advance of the Third Hearing, to test connectivity to the virtual platform and to the online real-time transcriptions. For the efficient conduct of such test, Participants are advised to replicate the technical conditions in which they will connect to the Hearing (location and equipment).

### **4. Connectivity**

9. The Parties shall ensure that each of their representatives planning to attend the Third Hearing will connect to the video conference through a stable internet connection offering sufficient bandwidth and using a camera and microphone/headset of adequate quality.
10. If available, Participants are advised to use a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times.
11. The virtual platform will also offer a dial-in telephone audio connection as a backup option should a Participant experience a temporary technical difficulty with a computer online connection.

### **5. Equipment and Set Up for Participants**

12. For optimum sound quality, especially important for the audio recording, the transcription and the interpretation, Participants that are also Active Participants are encouraged to use a headset which incorporates a microphone.
13. While not indispensable, Participants are also encouraged to have at least two screens, and preferably three (it can be one device with multiple screens or a combination of

devices including tablets) to facilitate simultaneous viewing of: (i) the video connection; (ii) the online real time transcripts; and (iii) documents.

#### **6. Electronic Document Display**

14. During their interventions at the Third Hearing, each Party shall have the ability to electronically display documents (*e.g.*, PowerPoints presentations, demonstrative exhibits, exhibits and authorities) through the screen-sharing function of the video conference platform, and the displayed document will be visible to the Participants. Each Party will designate a person(s) in its own team (“**Party Document Manager**”) to manage the document display during the respective Party’s interventions at the Third Hearing.

#### **7. Video Conference Etiquette for Participants**

15. For optimum operation of the video conference platform, the Parties are advised to keep the number of Participants with video connection to a minimum. Participants that are Passive Participants should preferably join the meeting through their computer but turning their video off.
16. Participants shall use the “mute microphone” function when not speaking to reduce background noise and to avoid interference with the audio recording. The Operator serving as host of the video conference shall have the ability to mute Participants if needed to avoid background noise, under the Tribunal’s control.
17. Participants are advised to join the Third Hearing from a location without background noise and with adequate lighting. Participants joining via video shall avoid sitting with a window or source of light behind them.

#### **8. Technical Issues**

18. The Tribunal may temporarily or permanently suspend the Third Hearing if it deems the functioning of the video conference system to be inadequate or likely to prejudice the

due process rights of either of the Parties or the integrity of the proceeding. Full recordings and real-time streamed transcripts will also be available to mitigate any prejudice arising from the temporary failure of a given Participant to be able to follow the entire Third Hearing on the video conference platform.

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Procedural Order No. 14 – Annex C

**ANNEX C**  
**[TEMPLATE] LIST OF PARTICIPANTS**

TRIBUNAL				
Break Out Room	Name	Type <sup>3</sup>	Affiliation	Place of Connection
T	[T] – Prof. Dr. Klaus Sachs <a href="mailto:klaus.sachs@cms-hs.com">klaus.sachs@cms-hs.com</a>	A	President	
T	[T] – Prof. Hugo Perezcano Díaz <a href="mailto:hugo.perezcano@iiuris.com">hugo.perezcano@iiuris.com</a>	A	Arbitrator	
T	[T] – Dr. Charles Poncet <a href="mailto:charles@poncet.law">charles@poncet.law</a>	A	Arbitrator	
T	[T] – Mr. Marcus Weiler <a href="mailto:marcus.weiler@cms-hs.com">marcus.weiler@cms-hs.com</a>	P	Tribunal Assistant	

ICSID				
Break Out Room	Name	Type	Affiliation	Place of Connection
T	[T] – Sara Marzal Yetano <a href="mailto:smarzal@worldbank.org">smarzal@worldbank.org</a>	A	Secretary of the Tribunal	

CLAIMANTS				
Break Out Room	Name	Type	Affiliation	Place of Connection
	<i>Counsel:</i>			
C	[C] –			
C				
	<i>Party Representatives:</i>			
C	[C] –			
C	[C] –			

<sup>3</sup> “A” (Active Participant) / “P” (Passive Participant).

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RESPONDENT				
Break Out Room	Name	Type	Affiliation	Place of Connection
	<i>Counsel:</i>			
R	[R] –			
R				
	<i>Party Representatives:</i>			
R	[R] –			
R	[R] – C			

COURT REPORTERS				
Break Out Room	Name	Type	Affiliation	Place of Connection
N/A	[CR]	P		
N/A	[CR]	P		
N/A	[CR]	P		

INTERPRETERS				
Break Out Room	Name	Type	Affiliation	Place of Connection
N/A	[INT]	P	ENG-SPA interpreter	
N/A	[INT]	P	ENG-SPA interpreter	
N/A	[INT]	P	ENG-SPA interpreter	