

**PCA CASE Nº 2019-46**

**IN THE MATTER OF AN ARBITRATION  
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE  
TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PERÚ AND THE  
UNITED STATES OF AMERICA**

- and -

**THE UNCITRAL ARBITRATION RULES 2013**

-between-

**THE RENCO GROUP, INC.**

-and-

**THE REPUBLIC OF PERÚ**

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**PROCEDURAL ORDER NO. 1**

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**The Arbitral Tribunal**

Judge Bruno Simma (Presiding Arbitrator)  
Prof. Horacio Grigera Naón  
Mr. J. Christopher Thomas QC

**3 February 2020**

## **1 Continuation in Force of Prior Orders**

- 1.1 The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.
- 1.2 Procedural orders made by the Tribunal shall remain in force unless expressly amended or terminated.

## **2 Place of Arbitration**

- 2.1 The legal place (or “seat”) of the arbitration shall be Paris. Subject to clause 6.2 of the Terms of Appointment, the location of the hearings shall be Washington, DC, or such other location as agreed by the Parties or established by the Tribunal following comments by the Parties.

## **3 Language**

- 3.1 The languages of the arbitration shall be English and Spanish, further to the rules set forth below.
- 3.2 The Tribunal’s awards, decisions, and procedural orders shall be issued in English with a translation into Spanish. In the case of awards, the translation shall be accompanied by a certification of the accuracy of the translation issued by the PCA or a certified translator.
- 3.3 Routine, administrative, or procedural communications between the Tribunal, the PCA, and the Parties shall be in English.
- 3.4 The Parties shall make their written submissions and related translations as set forth in Section 4 below.
- 3.5 Oral argument before the Tribunal shall be made in either English or Spanish, with simultaneous interpretation provided from one language into the other. Transcripts shall be taken in both languages.
- 3.6 Documents produced in response to requests or orders for production may be produced in their original language. If a Party submits any such document as an exhibit, the provisions of this section shall apply.
- 3.7 Deadlines for reply submissions shall begin to run upon submission of the document to which they respond, and not from the date translations are filed.
- 3.8 Informal translations will be accepted as accurate unless contested by the other Party, in which case, the Parties shall attempt to reach agreement on the translation (including, if necessary, through the introduction of certified translations). If no agreement is reached, the Tribunal shall take the appropriate decision, and may for this purpose appoint a certified translator to have the document(s) in question translated.

## **4 Procedural Calendar**

- 4.1 The procedural calendar for the arbitration is enclosed as **Annex 1** to this Procedural Order.
- 4.2 On or before the date of the deadline for any written submission, the Party in question shall send the submission to the Tribunal, PCA, and opposing counsel, by e-mail or secure file-sharing

platform, in accordance with the Terms of Appointment, further to the rules and definitions set forth below:

- (a) On the relevant filing date (the “**Filing Date**”), a Party shall submit by electronic mail (pursuant to the routing mechanism established in the Terms of Appointment) an electronic version of the pleadings, witness statements, and expert reports (collectively, the “**Main Documents**”).
  - (b) 10 calendar days after the Filing Date (the “**Supplemental Filing Date**”), a Party shall submit electronic versions of all Main Documents, together with all exhibits, legal authorities, annexes, and cumulative indices of exhibits and legal authorities (collectively, the “**Supporting Documents**”) on a USB drive or upload the same to a file sharing platform.
  - (c) The language of the filings shall follow the additional rules set forth below:
    - (i) The Main Documents shall be submitted in both procedural languages: one language on the Filing Date, the translation on the Supplemental Filing Date.
    - (ii) The Supporting Documents may be submitted in any language. For the convenience of the Tribunal, any Supporting Document provided in a language other than English shall be translated into English with respect to the specific and relevant part thereof. The Tribunal may require a fuller or more complete translation at the request of any Party or on its own initiative, in accordance with Section 3.8 above.
    - (iii) The governing language of documents (including witness statements, expert reports, and Supporting Documents) shall be the original language of the document, provided that, for the convenience of the Tribunal, the governing language of the pleadings shall be English.
- 4.3 All written submissions, including witness statements and expert reports, shall be provided as text-searchable PDF files with a hyper-linked table of contents.
- 4.4 The Parties shall also send hard copies of written submissions if so requested by any member of the Tribunal or the PCA.
- 4.5 For any simultaneous submissions, each side shall submit all documents only to the PCA. The PCA will then distribute copies to the Tribunal and opposing counsel once both submissions have been received.
- 4.6 Unless otherwise provided, all time limits shall refer to midnight on the day of the deadline at the place where counsel for the respective Party is located.
- 4.7 Extensions may be agreed between the Parties or granted by the Tribunal for justifiable reasons, provided that such extensions do not affect the dates fixed for any hearing or other meeting and that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline.

## **5 Document Production**

- 5.1 Each Party may request the production of documents from the other Party in accordance with the procedural calendar for the arbitration. Requests for the production of documents shall be in

writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the applicable time limit.

- 5.2 If the requested Party objects to production, the following procedure shall apply:
- (a) The requested Party shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection.
  - (b) The requesting Party shall respond to the other Party's objection, indicating, with reasons, whether it disputes the objection.
  - (c) The Parties shall submit all outstanding requests, objections, and responses to objections to the Tribunal for decision in tabular form pursuant to the model appended to this Procedural Order as **Annex 2** (modified Redfern schedule). The Parties shall use the same format throughout their exchange of requests, objections, and responses.
  - (d) The Tribunal shall rule on any outstanding requests, and may for this purpose refer to the *IBA Rules on the Taking of Evidence in International Arbitration 2010*. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
- 5.3 Pursuant to the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.
- 5.4 The Parties shall not copy the Tribunal or the PCA on their correspondence or exchanges of documents in the course of the document production phase. Documents produced by the Parties in response to document production requests shall only form part of the evidentiary record if a Party subsequently submits them as exhibits to its written submissions or upon authorization of the Tribunal after the exchange of submissions.
- 5.5 Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal may draw the inferences it deems appropriate in relation to the documents not produced.

## **6 Evidence and Legal Authorities**

- 6.1 In addition to the relevant provisions of the UNCITRAL Rules and the provisions on document production above, the Tribunal may use the *IBA Rules on the Taking of Evidence in International Arbitration 2010* as an additional guideline when considering matters of evidence.
- 6.2 The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, exhibits, legal authorities and all other evidence and authorities in whatever form.
- 6.3 In the subsequent written submissions, such evidence shall only be submitted in support of the factual or legal arguments advanced in rebuttal to the other side's prior written submission or in relation to new evidence arising from document production or new facts that have arisen.
- 6.4 Apart from the written submissions set forth in the procedural calendar, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave on the basis of a reasoned request justifying why such

documents were not submitted earlier together with the Parties' written submissions or showing other exceptional circumstances. Should such leave be granted to one side, the other side shall have an opportunity to submit counter-evidence. A Party attempting to submit such additional documents may not annex the documents when it makes its request to show good cause, and the other Party shall be afforded an opportunity to comment on any such request. If the Tribunal grants such an application for submission of an additional or responsive document, the adverse Party's due process rights shall be respected.

- 6.5 After the filing of its last written submission before the hearing, a Party may not present new evidence. However, if the Tribunal determines that exceptional circumstances exist, it may admit new evidence or allow a witness or expert to submit an additional witness statement or expert report before the hearing. If the Tribunal admits new evidence or additional witness statement or expert report into the record, it shall ensure that the other Party is afforded sufficient opportunity to make its observations concerning such new evidence and to submit evidence or witness or expert statements in rebuttal.
- 6.6 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimant shall begin with a letter "C" followed by the applicable number (*i.e.*, C-1, C-2, etc.). Each exhibit submitted by the Respondent shall begin with a letter "R" followed by the applicable number (*i.e.*, R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings. Translations of exhibits shall be appended to the original exhibit.
- 6.7 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters "CLA" followed by the applicable number (*i.e.*, CLA-1, CLA-2, etc.). Each legal authority submitted by the Respondent shall begin with the letters "RLA" followed by the applicable number (*i.e.*, RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 6.8 The Parties shall identify each witness statement and expert report submitted to the Tribunal with a distinct number. Each witness statement submitted by the Claimant shall begin with the letters "CWS" followed by the applicable number and name (*i.e.*, CWS-1 [Smith], CWS-2 [Jones], etc.). Each expert report submitted by the Claimant shall begin with the letters "CER" followed by the applicable number (*i.e.*, CER-1 [Smith], CER-2 [Jones], etc.). Each witness statement submitted by the Respondent shall begin with the letters "RWS" followed by the applicable number (*i.e.*, RWS-1 [Smith], RWS-2 [Jones], etc.). Each expert report submitted by the Respondent shall begin with the letters "RER" followed by the applicable number (*i.e.*, RER-1 [Smith], RER-2 [Jones], etc.). The Parties shall use sequential numbering throughout the proceedings.
- 6.9 Excel spreadsheets or other calculations performed by experts shall be provided in their native electronic format (*i.e.*, in Excel format rather than PDF).
- 6.10 All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete.
- 6.11 The Parties and the Tribunal shall be free to make reference to the record of the proceedings in *The Renco Group, Inc. and Doe Run Resources Corp. v. Republic of Peru and Activos Mineros S.A.C.*, PCA Case No. 2019-47 (the "Contract Case" or "Renco III").

## **7 Witnesses**

- 7.1 Any person may present evidence as a witness, including a Party or a Party's officer, employee, or other representative.
- 7.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and, if the Tribunal grants such leave, in accordance with its directions.
- 7.3 Each witness statement shall contain at least the following:
- (a) the name, date of birth, and present address of the witness;
  - (b) a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
  - (c) a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;
  - (d) a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and
  - (e) the signature of the witness.
- 7.4 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare for examination at a hearing.
- 7.5 Any issues relating to the testimony of witnesses at an oral hearing shall be addressed by the Tribunal in a subsequent pre-hearing procedural order, after consultation with the Parties, further to the rules and definitions set forth below:
- (a) Each witness and expert shall be available for examination at hearings, subject to the provisions of this Procedural Order.
  - (b) Six (6) weeks before a hearing, provided that each Party has had a reasonable time since the last prior written submission, each Party shall provide the opposing Party, with a copy to the Tribunal and to the Tribunal Secretary, the names of any witnesses and experts whose witness statement (if applicable) or expert report (if applicable) has been submitted by the opposing Party, with the request that they be available for cross-examination at a hearing. The Tribunal will rule on any outstanding issue in connection with the appearance of witnesses or experts shortly thereafter. Witnesses and experts who are not called for cross-examination shall not testify at a hearing, but if a Party calls fewer than two of the other Party's experts or fewer than two of the other Party's witnesses, then the other Party may designate, respectively, up to two (2) witnesses and/or up to two (2) experts to testify.
  - (c) Shortly after the Parties' notifications, the Tribunal will indicate the witnesses or experts not called by the Parties whom it wishes to question, if any.
  - (d) The procedure for examining witnesses at a hearing shall be the following:

- (i) The witness statement of each witness and the expert report of each expert shall stand in lieu of the examination by the Party producing the witness and expert (the “**direct examination**”), subject to the provisions below.
  - (ii) The examination shall be limited to matters raised in the pleadings, witness statements, documents that have been produced (including those by order of the Tribunal), and/or oral evidence of the other party’s witnesses, to the extent the witness is competent to testify on these statements and materials.
  - (iii) Without leave of the Tribunal, direct examination of fact witnesses shall not exceed 15 minutes and shall be limited to the scope of prior testimony.
  - (iv) The direct examination of witnesses is followed by examination by the other Party (the “**cross-examination**”), and subsequently by the Party producing the witness (the “**redirect examination**”).
  - (v) The redirect examination shall be limited to matters raised in cross-examination.
  - (vi) The Tribunal may pose questions during or after the examination of any witness or expert.
- (e) The Parties shall organize their allotted time at the Hearing including with respect to witnesses, subject to the rules set forth herein. The Tribunal may, of its own initiative or at the request of a Party, direct that a witness be recalled for further examination at any time or summon any other witness to appear.
  - (f) Witnesses of fact shall not be allowed in the hearing room before giving their oral evidence, except for opening statements, which all witnesses of fact are entitled to attend. In the event that a witness of fact is also a Party representative, that witness may designate another individual to serve as Party representative until that witness has testified. Experts shall be allowed in the hearing room at any time, and during the examination of other experts.
  - (g) If a witness who has submitted a witness statement or an expert who has submitted an expert report does not appear without a valid reason at the Hearing, the Tribunal shall disregard that witness statement or expert report unless, in exceptional circumstances, the Tribunal determines otherwise. In this latter case, the Tribunal shall take into account that such testimony has not been subject to cross-examination.
  - (h) A Party that does not call a witness proffered by the other Party for cross-examination shall not be deemed to have agreed to the correctness of the content of the witness statement.

## **8 Experts**

- 8.1 Each Party may retain and submit the evidence of one or more experts to the Tribunal.
- 8.2 For each expert, a written and signed expert report shall be submitted to the Tribunal.
- 8.3 Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties’ written submissions, in which case the reference to the number of the exhibit shall suffice.

- 8.4 It shall not be improper for counsel to meet with experts and potential experts to discuss the expert reports and examination at a hearing.
- 8.5 Any issues relating to the testimony of experts at an oral hearing shall be addressed by the Tribunal in a subsequent pre-hearing procedural order, after consultation with the Parties.
- 8.6 The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.
- 8.7 The procedure for examining experts at a hearing shall be the same as the provisions set out above at Section 7.5 except that, without leave of the Tribunal, direct examination of experts shall not exceed 45 minutes and shall be limited to the scope of prior testimony.

## **9 Hearings**

- 9.1 After consultation with the Parties, including based on a pre-hearing organization conference call, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects, further to the rules set forth below.
  - (a) Hearings shall be scheduled as shall be set forth in the Procedural Schedule.
  - (b) The sequence of a hearing will be as follows:
    - (i) Claimant's opening statement;
    - (ii) Respondent's opening statement;
    - (iii) Direct examination, cross-examination, and redirect examination of Claimant's witnesses, followed by direct examination, cross-examination, and redirect examination of Respondent's witnesses, followed by direct examination, cross-examination, and redirect examination of Claimant's experts, followed by direct examination, cross-examination, and redirect examination of Respondent's experts. The examination of the Parties' experts shall be arranged by topic.
    - (iv) Claimant's closing statement; and
    - (v) Respondent's closing statement.
  - (c) Time shall be divided equally between the Parties, who may decide how to allocate the use of such time.
  - (d) The Parties will notify the Tribunal, as soon as practicable, which witnesses or experts require interpretation. The costs of the interpreter(s) will be paid from the deposit made by the Parties without prejudice to the decision of the Tribunal as to the allocation of costs.
  - (e) Demonstrative exhibits (such as PowerPoint slides, charts, tabulations, etc.) may be used during opening and closing arguments and expert direct testimony at any hearing, provided they contain no new evidence. Subject to leave of the Tribunal, demonstrative exhibits may be used during fact witness direct testimony. 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 hard copy to the other Party, the Tribunal Members, the Tribunal Secretary, the Assistant to the Tribunal, the court reporter(s), and interpreter(s) at any hearing (and in any event not prior to any hearing). No new evidence or testimony shall be admissible, except in accordance with Section 6.4 hereof.

9.2 The PCA shall arrange for simultaneous interpretation and live transcription of oral argument and testimony where necessary, further to the rules set forth below:

- (a) Sound recordings shall be made of all hearings and sessions.
- (b) The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- (c) Verbatim transcript(s) in English and Spanish 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.
- (d) The Parties shall attempt to agree on any corrections to the transcripts within 20 calendar days after receipt of the transcripts after the closing of the hearing. The agreed corrections may be entered by the Parties in the transcripts (the “**revised transcripts**”). In case of disagreement between the Parties, the Tribunal shall decide upon such disagreement and any correction adopted by the Tribunal shall be entered by the Parties in the revised transcripts.

9.3 Post-hearing briefs, statements of costs, closure of hearings and drafting of rulings shall be treated further to the rules set forth below:

- (a) At the conclusion of any hearing, the Tribunal shall decide whether the Parties will file post-hearing briefs. In any event, any such submissions shall not contain new evidence, documents, sources, declarations, or expert reports.
- (b) The Tribunal shall also consider when the Parties shall file submissions regarding costs.
- (c) The Tribunal shall endeavour to draft the required rulings within a reasonable period of time after the latest step taken in relation to the matter concerned, such as a hearing or submission. The Tribunal will send regular updates to the Parties regarding the status of the drafting of a ruling (*i.e.*, every one to three months, as relevant).

## **10 Transparency and Confidentiality**

10.1 Subject to the provisions of Article 10.21 of the Treaty, the arbitration shall be conducted in accordance with the *UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration* (the “**UNCITRAL Transparency Rules**”), with the PCA assuming the role of the “repository” foreseen under the *UNCITRAL Transparency Rules* with respect to this arbitration.

10.2 The information and documents regarding the arbitration that the PCA shall make available to the public shall consist of the following, except as otherwise decided by the Tribunal taking into account relevant factors and comments of the Parties: (a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and

any written submissions submitted pursuant to Articles 10.20.2, 10.20.3 and 10.25; (d) minutes or transcripts of hearings of the tribunal, where available; and (e) orders, awards, and decisions of the Tribunal.

- 10.3 The PCA shall arrange for a public webcast of any hearing, except as otherwise decided by the Tribunal.
- 10.4 Any Party may request to designate information, at the time it is submitted to the Tribunal, as confidential or protected information in accordance with the UNCITRAL Transparency Rules and Article 10.21 of the Treaty by submitting, in addition to the original version of the document, a redacted version of the document excluding the confidential or protected information. The request is subject to Party comments and a decision by the Tribunal.
- 10.5 Any Party may designate information contained in the Tribunal's awards, decisions, and procedural orders as confidential or protected information in accordance with the UNCITRAL Transparency Rules and Article 10.21 of the Treaty by submitting a redacted version of the award, decision, or procedural order excluding the confidential or protected information within 15 calendar days of the issuance of the award, decision, or procedural order. If more than one Party submits a redacted version of the award, decision, or procedural order, the Parties shall attempt to agree and submit a joint redacted version within 21 calendar days of the issuance of the award, decision, or procedural order.
- 10.6 The Tribunal shall decide any objection regarding the designation of information as confidential or protected information.
- 10.7 Confidential or protected information shall be kept confidential from all persons other than the Parties, their representatives, witnesses, experts, the Tribunal, the PCA, and the Assistant to the Tribunal, except as otherwise decided by the Tribunal.

## **11 Non-Disputing Party Submissions and *Amicus Curiae***

- 11.1 In accordance with Article 10.20.2, a Non-Disputing Party to the Treaty may make oral and written submissions regarding the interpretation of the Treaty. The Parties may comment on any Non-Disputing Party submissions in subsequent pleadings.
- 11.2 In accordance with Article 10.20.3 of the Treaty, the Tribunal shall have the authority to accept and consider *amicus curiae* submissions.
- 11.3 The procedure with respect to *amicus curiae* shall be as follows:
  - (a) A petition to make an *amicus curiae* submission shall be submitted in electronic format to the Tribunal Secretary and distributed to the Tribunal and the Parties.
  - (b) A petition shall meet the following requirements:
    - (i) be no more than 5 pages;
    - (ii) be presented in English and Spanish;
    - (iii) disclose any affiliation with the Parties;
    - (iv) specify the interest the applicant has in the arbitration;

- (v) identify the issues of fact or law to be addressed in a written submission and why the applicant can bring perspective or insight distinct from the Parties;
  - (vi) attach the written submission; and
  - (vii) identify any prior writings related to this arbitration, any of the Parties, or entities related to the Parties, the La Oroya Metallurgical Complex, the Treaty, or any material dealings prior to this proceeding with the Parties or their counsel.
- (c) The written submission shall be in English and Spanish and no more than 30 pages (including exhibits). The written submission shall identify the author and any person or entity that has provided, or will provide, any financial or other assistance in preparing the submission.
- (d) After providing the Parties an opportunity to comment on any *amicus curiae* petition, the Tribunal shall rule on its admissibility.
- (e) The Parties may comment on any *amicus curiae* submissions in subsequent pleadings. The Tribunal may consider such *amicus curiae* submissions, but is not required to do so.

## 12 Communications

- 12.1 The Parties and their representatives shall abstain from conduct that may result in the aggravation of the dispute.

**So ordered by the Tribunal.**



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Judge Bruno Simma  
(Presiding Arbitrator)

On behalf of the Tribunal

**Annex 1: Procedural Calendar**

<b><u>Event</u></b>	<b><u>Date</u></b>
Respondent's Memorial on Article 10.20.5 Objections	Friday, 20 December 2019
First Procedural Meeting	Tuesday, 14 January 2020
Claimant's Counter-Memorial on Article 10.20.5 Objections	Friday, 21 February 2020
Non-Disputing State Party Submission	Friday, 6 March 2020
Parties' Comments on Non-Disputing State Party Submission	Friday, 20 March 2020
Hearing on Article 10.20.5 Objections (Washington DC)	Wednesday, 1 April 2020
The Tribunal shall confer with the Parties at the conclusion of the hearing with respect to the need for further submissions, if any.	

**Annex 2: Model Redfern Schedule for Document Requests**

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			