

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH
THE FREE TRADE AGREEMENT BETWEEN THE REPUBLIC OF KOREA AND THE
UNITED STATES OF AMERICA, DATED 30 JUNE 2007**

- and -

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW, 1976**

PCA CASE N° 2018-55

- between -

- 1. MASON CAPITAL L.P. (U.S.A.)**
- 2. MASON MANAGEMENT LLC (U.S.A.)**
(the “Claimants”)

- and -

REPUBLIC OF KOREA
(the “Respondent,” and together with the Claimants, the “Parties”)

PROCEDURAL ORDER NO. 2

The Arbitral Tribunal

Professor Dr. Klaus Sachs (Presiding Arbitrator)

The Rt. Hon. Dame Elizabeth Gloster

Professor Pierre Mayer

Registry

Permanent Court of Arbitration

5 March 2019

WHEREAS in its Memorial on Preliminary Objections of 25 January 2019, Respondent raised preliminary objections in accordance with Articles 11.20.6 and 11.20.7 of the Free Trade Agreement between the Republic of Korea and the United States of America, dated 30 June 2007 (the “FTA”),

WHEREAS during the First Procedural Hearing on 19 February 2019, the Parties and the Tribunal agreed on a tentative schedule for the determination of Respondent’s preliminary objections subject to confirmation by the Parties;

WHEREAS Claimants confirmed their agreement with the tentative schedule by letter of 28 February 2019 and Respondent confirmed its agreement by letter of 4 March 2019;

WHEREAS during the First Procedural Hearing, the Parties and the Tribunal discussed a proposal to join any further objections that may be raised by Respondent to the merits phase of the proceedings;

WHEREAS in their letter of 28 February 2019, Claimants requested the Tribunal to endorse this proposal;

WHEREAS in its letter of 4 March 2019, Respondent reserved its right to request a further separate jurisdictional phase and requested the Tribunal to reserve any decision on the possibility of a further jurisdictional phase until such request may be made.

THE TRIBUNAL HEREBY ORDERS:

1. Procedural Calendar for the determination of Respondent’s preliminary objections

As agreed by the Parties and in deviation from the time limits set forth in Article 11.20.7 of the FTA, the following Procedural Calendar shall apply to the determination of the preliminary objections raised by Respondent in its Memorial on Preliminary Objections of 25 January 2019:

Claimants’ Counter-Memorial on Preliminary Objections	Friday, 19 April 2019
Respondent’s Reply on Preliminary Objections	Friday, 28 June 2019
Claimants’ Rejoinder on Preliminary Objections	Friday, 6 September 2019
Hearing on Preliminary Objections (New York)	Wednesday until Friday, 2-4 October 2019

2. Decision on a further separate jurisdictional phase

The Tribunal will rule on the admissibility of another separate jurisdictional phase if and when a request for such phase is made.

REASONS:

Neither the FTA nor the 1976 UNCITRAL Arbitration Rules appears to entitle the Tribunal to declare further jurisdictional phases inadmissible before an actual request for such phase is made. Whether a request for an additional jurisdictional phase is admissible pursuant to the terms of the FTA and/or the 1976 UNCITRAL Arbitration Rules should only be decided by the Tribunal after consideration of the particular circumstances of the request, including the legal nature and scope of the objections to be discussed in such phase.

Place of arbitration (legal seat): Singapore



Professor Dr. Klaus Sachs
(Presiding Arbitrator)

On behalf of the Tribunal