

March 31, 1998

Decision by the Tribunal
on a request of the Claimant
concerning the filing of the Respondent's
Counter-Memorial and its annexes
in
ICSID Case ARB(AF)/97/1

1. The Tribunal has received from the Claimant a letter dated February 20, 1998 (subsequently supplemented by a later dated February 23, 1998) complaining of failure of the Respondent to file with its Memorial on the due date translations into English of all pertinent documents. The Claimant requested that "the Respondent's counter-memorial should be declared late, incomplete and not accepted" and "[a]t the very least, all of the annexes (other than Annex One, which is contained in both the English and Spanish versions of the first volume of the counter-memorial), should be disregarded since they have not been fully and timely filed." The Claimant invokes Article 33 of the Arbitration (Additional Facility) Rules ("the Arbitration Rules").

2. The Respondent, by a letter to the Tribunal dated February 26, 1998, acknowledged that "certain Spanish to English translations [were] outstanding and the four expert reports have not been translated from English to Spanish," but submitted that its filing should be deemed complete as filed on February 17, 1998. The Respondent filed the remaining Spanish to English translation on

February 27, 1998. At that date the only documents still untranslated were a number of documents originally in English that had not been translated into Spanish. The Respondent invokes Article 49 of the Arbitration Rules.

3. The Tribunal has considered the views of the parties as expressed in letters to the Tribunal from the Claimant dated February 20, 23 and 27 and March 6, 1998 and from the Respondent dated February 26 and March 13, 1998.

4. The members of the Tribunal have consulted together. The Tribunal is of the view that the sanction of non-acceptance of the Counter-Memorial would in the circumstances be excessive. Moreover, the Tribunal considers that it is not appropriate to exclude documents from consideration in the case solely on the ground that they have been filed no more than 10 days late. The Tribunal has been unable to identify significant, if any, harm suffered by the Claimant by reason of the delay in the filing of the translations.

5. The Tribunal wishes to emphasize that although procedural considerations are important in proceedings such as these, an excessively technical approach to such matters is not appropriate.

6. The Tribunal consequently rejects the request made by the Claimant in its letter of February 20, 1998.

7. The Tribunal must, therefore, now determine whether a Reply and a Rejoinder should be filed by the Claimant and the Respondent respectively. To this end, the Tribunal now requests the observations of the Claimant on this matter, including, if a Reply is sought, an indication of the period required by the Claimant for preparing this pleading. Those observations should be filed by c.o.b. on Monday, April 6, 1998. They will immediately be communicated to the Respondent, whose observations thereon are requested by c.o.b. on Thursday, April 9, 1998.