

# DEWEY & LEBOEUF

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March 18, 2011

By e-mail

Members of the Tribunal  
Mr. V.V. Veeder, Esq.  
Professor Dr. Guido Santiago Tawil  
Professor Brigitte Stern

c/o Mr. Marco Tulio Montañés-Rumayor  
Secretary of the Tribunal  
ICSID  
1818 H Street, N.W.  
MSN U3-301  
Washington, D.C. 20433

Re: Pac Rim Cayman LLC v. Republic of El Salvador (ICSID Case No. ARB/09/12)

Dear Members of the Tribunal:

We write at the invitation of the Tribunal regarding the application by eight non-governmental organizations for the Tribunal to accept and consider a joint *amicus curiae* submission and to allow them the opportunity to address the Tribunal during the hearing on jurisdiction regarding the contents of their written submission.

El Salvador is mindful that, unlike the corresponding provision regarding *amicus curiae* submissions in ICSID Arbitration Rule 37(2), CAFTA Article 10.20.3 grants the Tribunal the sole authority to decide whether to admit *amicus curiae* submissions, without the need to consult the parties.<sup>1</sup> El Salvador, therefore, appreciates the opportunity to comment on the application currently being considered by the Tribunal.

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<sup>1</sup> CAFTA Article 10.20.3 states that "[t]he tribunal shall have the authority to accept and consider *amicus curiae* submissions from a person or entity that is not a disputing party."

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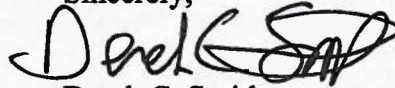
Page 2

The non-governmental organizations that submitted the *amicus curiae* application include a significant segment of civil society that lives in the vicinity of the proposed mine and other exploration areas that are the subject matter at the core of this arbitration, in addition to organizations devoted to the protection of the environment. Thus, these non-governmental organizations have genuine and unique concerns that the parties to the dispute are not in a position to convey to the Tribunal. The *amicus curiae* submission not only articulates these concerns in terms of the current jurisdictional phase, but also provides background information about the dispute that is substantially different from what the parties have provided to the Tribunal. For example, while Claimant has made abundant references to its activities in the areas of exploration and proposed exploitation, El Salvador has chosen to refrain from referring to the controversy generated by Claimant's activities in those areas. El Salvador's choice not to refer to these issues should not deprive civil society of the opportunity to voice its relevant views and concerns to the Tribunal. Therefore, the proposed submission would not be repetitive. On the contrary, the proposed submission would be helpful for providing the Tribunal with a more complete background about the dispute. The submission would thus serve the purpose behind the inclusion of CAFTA Article 10.20.3 in the Treaty.

With regard to the request by these non-governmental organizations for an opportunity to make an oral submission during the hearing on jurisdiction, El Salvador notes that CAFTA Article 10.20.3 does not make any distinction between written and oral submissions, using the general term of "submissions." Therefore, El Salvador interprets that the Tribunal has the authority under CAFTA Article 10.20.3 to accept and consider both written and oral submissions.

In conclusion, El Salvador believes it would be appropriate for the Tribunal to accept and consider the proposed *amicus curiae* submission.

Sincerely,

A handwritten signature in black ink, appearing to read "Derek C. Smith", with a stylized flourish at the end.

Derek C. Smith