

April 6, 2008

By E-mail & Federal Express

President Fali S. Nariman
Prof. S. James Anaya
Mr. John R. Crook
c/o Claudia Frutos-Peterson
Secretary of the Tribunal
ICSID, 1818 H Street, NW
Washington, DC 20433

Re: Grand River Enterprises et al. v. United States of America

Dear Members of the Tribunal:

By letter dated March 28, 2008, Respondent advised that it is belatedly producing certain reports prepared by the Pricewaterhouse Coopers accounting firm (“PwC Reports”) and the Brattle Group (“Brattle Group Report”) (collectively the “Reports”). These reports are the central source of information concerning the economic operation of the Master Settlement Agreement. They are also precisely among the key documents that Claimants have long asked be produced in this arbitration. Respondent’s strategic decision to withhold the production of these essential documents until less than 45 days prior to the deadline for the filing of Claimants’ memorial on the merits and expert reports is grossly prejudicial to Claimants. Accordingly, Claimants respectfully request that the Tribunal extend the deadlines set out in its letter of February 4, 2008, by 60 days from the date that full and complete copies of the Reports are provided, so that Claimants’ counsel and experts can evaluate and incorporate the voluminous data contained therein into Claimants’ merits memorial and associated expert reports.

PwC is the Independent Auditor under the MSA, and its Reports set forth in detail the payments, costs and effects of the MSA measures at issue in this arbitration. The PwC Reports produced by Respondent comprise nearly 1,000 pages of economic data. The Brattle Group Report was prepared in connection with an arbitration conducted under the MSA to determine whether the major manufacturers were competitively disadvantaged as a result of the MSA. It consists of over 150 pages of highly complex economic data. However, a large amount of economic data has been redacted in the version of the Brattle Group Report produced by Respondent.

In its letter of production, Respondent states that it decided to produce these Reports “out of an abundance of caution,” allegedly because: (1) NAAG is supplementing a document production in a Louisiana litigation, and (2) Claimants already have certain of the documents in their possession. Neither of these excuses for Respondent’s belated production is credible.

As to the timing of Respondent's production, some of the PwC Reports were first produced to one of the Claimants (Grand River) by the States in pending New York litigation in July 2007. The Brattle Group Report was first produced in April 2007. Thus, NAAG's supplementing of its production in Louisiana, more than one year after Grand River first received some of the reports, is plainly beside the point. The Reports could and should have been produced much earlier. Respondent's second excuse must be viewed as equally disingenuous and irrelevant to its recent decision to disclose the Reports, as there are at least another 28,000 pages of documents that have been produced to Grand River in the New York litigation, but which Respondent has not yet seen fit to produce in this arbitration.

The fact of the matter is that Respondent's decision to produce the Reports at this late date is nothing more than the result of a strategic calculation, made as Respondent prepares its own case, for which it apparently believes the Reports have some relevance. Be that as it may, the timing of Respondent's decision is significantly prejudicial to Claimants' preparation of their merits memorial and associated expert reports. The Reports contain precisely the data Claimants have repeatedly been asking to be produced in this arbitration (*e.g.*, in Mr. Violi's letter dated January 29, 2008), because of the data's central importance to many of the key issues in dispute between the parties. Respondent, however, has thus far refused to produce this data.

Moreover, notwithstanding the fact that one Claimant has had some of the data in its possession as an outcome of production in another proceeding, none of the Claimants have been able to use or rely on this data in this proceeding. The materials in Grand River's possession are held pursuant to the terms of a stipulation of confidentiality that has precluded their use without Respondents' consent. Such consent has not been forthcoming from Respondent. Accordingly, Claimants' counsel has had to proceed on the basis that it would not be possible to rely on the Reports. As such, Claimants' experts have been put into the difficult position of not being able to rely upon the Reports, despite their obvious and crucial relevance to the disputed issues in this arbitration. Now that the Reports have been made available by Respondent, it is imperative that Claimants' experts and counsel be given sufficient time to digest the voluminous data contained therein, in order to be able to incorporate the relevant information into the economic and damages models that will be presented in Claimants' memorial.

Claimants have confirmed with their economists that the large amount of economic information redacted from the version of the Brattle Group Report produced by Respondent is material to the outcome of their analyses. As Respondent itself acknowledges, this report was produced pursuant to a negotiated Confidentiality Agreement. Accordingly, there is no basis for redaction. Claimants therefore respectfully request that Respondent be compelled to produce a complete, unredacted copy of the Brattle Group Report without further delay.

In view of all of the foregoing, Claimants respectfully request that they be granted a 60-day extension to file their merits memorial, witness statements, expert reports and documentary evidence, with such 60-day period to run from the date of Respondent's production of a full and complete copy of the Brattle Group Report.

President Fali S. Nariman
Prof. S. James Anaya
Mr. John R. Crook
April 6, 2008
Page 3

Sincerely,

A handwritten signature in blue ink, appearing to read 'Arif H. Ali', with a large, stylized initial 'A' and a long, sweeping horizontal stroke extending to the right.

Arif H. Ali

cc: Mark E. Feldman, Esq.
Leonard Violi, Esq.
Chantell MacInnes Muntor, Esq.
Todd Grierson Weiler, Esq.
Robert Luddy, Esq.