

# DEWEY & LEBOEUF

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August 24, 2009

Ms. Eloïse M. Obadia  
Senior Counsel  
International Centre for  
Settlement of Investment Disputes  
1818 H Street, N.W.  
Washington, D.C. 20433

Re: Commerce Group Corp. and San Sebastian Gold Mines, Inc. v. Republic of El Salvador

Dear Ms. Obadia:

The letter submitted by Commerce Group Corp. and San Sebastian Gold Mines, Inc. on August 19, 2009 did not address the issue raised by the Attorney General of El Salvador in his letter to the Secretary-General dated August 14, 2009, regarding claimants' failure to comply with the requirements of CAFTA-DR article 10.18.2. As a result of claimants choice to move forward with the registration process without addressing the implications that their failure to comply with CAFTA-DR article 10.18.2 will have on their claims, unless claimants request the discontinuance of the claim before the arbitral tribunal is constituted, the Republic of El Salvador will be forced to spend hundreds of thousands of dollars to obtain a decision to dismiss all claims related to the measures subject of claimants' defective waivers.

Claimants have been made fully aware during the registration process, through the letter of the Attorney General to the Secretary-General together with claimants' knowledge about the nature of the pending legal proceedings claimants filed in El Salvador, that they did not comply with the jurisdictional requirements under CAFTA-DR article 10.18.2. This is not a novel jurisdictional issue, having been already subject of decisions and awards in arbitrations under CAFTA-DR and NAFTA.

Having been made fully aware of the jurisdictional deficiency in their case, claimants still have a choice to request discontinuance of the arbitration in accordance with ICSID Arbitration Rule 44. I am writing to inform you that El Salvador would not object to such request for discontinuance if it is made prior to the constitution of the arbitral tribunal. However,

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if claimants decide not to request discontinuance of the arbitration before the arbitral tribunal is constituted, El Salvador hereby serves notice that it will request the award of arbitration costs, legal costs, and interest, in connection with the unnecessary jurisdictional proceeding El Salvador would be forced to begin under CAFTA-DR article 10.20.5.

Sincerely yours,



Derek C. Smith