ICC Case No. 16848/JRF/CA (C-16848/JRF/CA)

PHILLIPS PETROLEUM COMPANY VENEZUELA LIMITED AND CONOCOPHILLIPS PETROZUATA B.V. V. PETROLEOS DE VENEZUELA, S.A.

FINAL AWARD

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17 September 2012

Tribunal:
Pierre D. Tercier (President)
Horacio A. Grigera Naón (Appointed by the claimant)
Ahmed Sadek El-Kosheri (Appointed by the respondent)

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Final Award

TABLE OF ABBREVIATIONS

BPD	Barrels Per Day
Conoco	Conoco Inc.
CPZ	CONOCOPHILLIPS PETROZUATA B.V., Claimant 2
CVP	CORPORACION VENEZOLANA DE PETROLEO
HOP	Heavy Oil Project(s)
OPEC	Organization of Petroleum Exporting Countries
PDVSA	PETRÓLEOS DE VENEZUELA, S.A., Respondent
Phillips	Phillips Petroleum Company
Phillips Venezuela	PHILLIPS PETROLEUM COMPANY VENEZUELA LTD., Claimant 1
Syncrude	Synthetic upgraded crude oil
VHOP	Very Heavy Oil Project(s)

TABLE OF SUBMISSIONS REFERRED TO

Petrozuata RfA	Conoco Phillips Petrozuata B.v.'s Request for Arbitration of 30 December 2009
Hamaca RfA	Phillips Petroleum Company Venezuela Limited's Request for Arbitration of 30 December 2009
RSP Petrozuata Answer	Respondent's 'Answer to the Request for Arbitration' of 15 April 2010 in the ICC Case No. 16848/JRF
RSP Hamaca Answer	Respondent's 'Answer to the Request for Arbitration' of 15 April 2010 in the ICC Case No. 16849/JRF
CL SoC	Claimants' 'Statement of Claim' of 10 December 2010

RSP SoD	Respondent's 'Statement of Defense' of 10 May 2011
CL Reply	Claimants' 'Reply' of 10 August 2011
RSP Rejoinder	Respondent's 'Rejoinder on Counterclaims' dated 10 November 2011
CL Opening Statement	Hand out produced by Claimants during the Hearing of 10- 13 January 2012 in support of their Opening Statements
RSP Opening Statement	Hand out produced by Respondent during the Hearing of 10-13 January 2012 in support of its Opening Statement
CL Closing Statement	Hand out produced by Claimants during the Hearing of 10-13 January 2012 in support of their Closing Statement
Transcript p. [...] 1. [...]	Transcripts of the Hearing of 10-13 January 2012
-PO No. [...]	Procedural Order No.
-Exh. C	Claimants' factual Exhibits
- Exh. R-[...]	Respondent's factual Exhibits
- Exh. CL- [...]	Claimants' legal Exhibits
- Exh. RL-[...]	Respondent's legal Exhibits

I. SUMMARY OF FACTS

1. The following presentation is summary in nature and is not meant to be a comprehensive overview of the facts of the dispute, and only lays forth the main facts the Arbitral Tribunal considered relevant for its decision. Where necessary, further issues of fact may be discussed in more detail in the next section "The Law" (II).

A. PARTIES

1. Parties to the Arbitration Proceedings

2. Claimant 1, **PHILLIPS PETROLEUM COMPANY VENEZUELA LIMITED,** is a company incorporated under the laws of Bermuda with its present address at: c/o ConocoPhillips Company, 600 North Dairy Ashford, Houston, TX 77079, USA (hereafter "Claimant 1" or "Phillips Venezuela"). It is a wholly owned subsidiary of CONOCOPHILLIPS COMPANY, which resulted from the merger on 30

August 2002 of CONOCO INC. ("Conoco") and PHILLIPS PETROLEUM COMPANY ("Phillips").

3. Claimant 2, **CONOCOPHILLIPS PETROZU AT A B.V.,** is a company incorporated under the laws of the Kingdom of the Netherlands with its registered office at: Zurich Tower (15th Floor), Muzenstraat 89, 2511 WB Den Haag, The Netherlands ("Claimant 2" or "CPZ"). It is a wholly owned subsidiary of CONOCOPHILLIPS COMPANY, which resulted from the merger of Conoco and Phillips.

4. Claimant 1 and Claimant 2 are hereinafter collectively referred to as *the "Claimants",*

5. Respondent, **PETRÓLEOS DE VENEZUELA, S.A.,** is a company organized under the laws of Venezuela with its registered office at: Avenida Libertador, Edificio Petróleos de Venezuela, Torre Este, Piso 10, Oficina 10-43, 1050 Caracas, Venezuela ("Respondent" or "PDVSA"). It is the national oil company of the Bolivarian Republic of Venezuela ("Venezuela").

6. Claimants and Respondent are hereinafter collectively referred to as *the "Parties".*

2. Other Relevant Entities

7. The following entities have at some point played a role in the present dispute in connection with either Claimants, Respondents or the relevant projects themselves:

(a) Entities Connected to Claimants

8. **CONOCO ORINOCO INC.** ("Conoco Orinoco") is a company organized under the laws of the State of Delaware (USA). It was, back in 1995, indirectly, i.e. through an affiliate, wholly owned by E.I. du Pont de Nemours and Company, also a Delaware corporation.[1]

   Conoco Orinoco is the original signatory to the Petrozuata Association Agreement, which constitutes the first basis for Claimants' claims under this proceeding (see below para 43).

9. **CONOVEN HOLDING LTD.** ("Conoven") is a company wholly-owned by Conoco Orinoco and incorporated under the laws of the British Virgin Islands.

10. **CONOCO VENEZUELA HOLDINGC. A.** ("Conoco Venezuela") is a company wholly-owned by Conoven and incorporated under the laws of Venezuela.[2]

    Originally, Conoco Orinoco's 51% share in the Petrozuata Project was held by Conoco Venezuela. In July/August 2005, Conoco Orinoco transferred its interests in Conoven to CPZ,[3] and Conoven transferred its interests in Conoco Venezuela to CPZ. Thereby, CPZ became the direct owner of the 51% share in the Petrozuata Project.[4]

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[1] Petrozuata RfA Exh. C-3.

[2] Petrozuata RfA Exh. C-5 to 6.

[3] Petrozuata RfA Exh. C-4.

(b) Entities Connected to Respondent

11. Through 1997, PDVSA had four operating wholly-owned subsidairies:

12. The first is **MARAVEN, S.A.** ("Maraven"), a *sociedad anónima* organized under the laws of the Republic of Venezuela.

    Maraven is the original signatory to the Petrozuata Association Agreement, which constitutes the first basis for Claimants' claims under this proceeding (see below para 43).

13. The second is **LAGOVEN S.A.** ("Lagoven"), a *sociedad anónima* organized under the laws of the Republic of Venezuela. While Lagoven does not play a direct role in the present proceeding, it was involved in similar projects (see below paras 20 *et seq.).*

14. The third is **CORPOVEN** S.A.("Corpoven"),a *sociedad anónima* organized under the laws of the Republic of Venezuela, which resulted from the merger of Maraven and Lagoven (see below para 16).

15. **CORPOGUANIPA S.A.** ("Corpoguanipa"), a wholly-owned subsidiary of Corpoven and a *sociedad anónima* organized under the laws of the Republic of Venezuela.

    Corpoguanipa is the original signatory to the Hamaca Association Agreement, which constitutes the second basis for Claimants' claims under this proceeding (see below para 65).

16. The fourth is **CORPORACION VENEZOLANA DE PETROLEO** ("CVP"), who was originally the national oil company of Venezuela and who, following the creation of PDVSA, became a subsidiary of PDVSA. In 2006, CVP was playing an active oversight role in the Orinoco Belt, and in particular after 26 June 2007, when it assumed Claimant 2's interests in the Hamaca Project after the expiry of the transition period fixed by the Nationalization Decree 5,200 (see below para 91). [5]

17. On 1 January 1998, Maraven and Lagoven were merged into Corpoven, which was renamed **PDVSA Petróleo** y **Gas S.A.,** which was in turn later on renamed into **PDVSA Petróleo S.A.** [6]

(c) Third Parties

18. **TEXACO ORINOCO RESOURCES COMPANY** ("Texaco") is a corporation organized under the law of Turks and Caicos, with a branch domiciled in Venezuela. Texaco is/was a wholly-owned subsidiary of CHEVRONTEXACO INC., which resulted from the merger in October 2001 of TEXACO INC. and CHEVRON CORP.

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[4] Petrozuata RfA Exh. C-6 & 7; CL Closing Statements, slide 5.

[5] CL SoC para 63 footnote 96; RSP Rejoinder para 135.

[6] See Petrozuata RfA, footnote no. 1; CL Opening Statements, slide

Texaco is one of the signatories to the Hamaca Association Agreement, together with Claimant 1, Corpoguanipa and Arco (see below para 19). The Hamaca Association Agreement constitutes the second basis for Claimants' claims under this proceeding (see below para 65).

19. **ARCO ORINOCO DEVELOPMENT INC.** ("Arco") is a corporation organized under the laws of the State of Delaware, United States of America, with a branch domiciled in Venezuela. Arco is/was a wholly-owned subsidiary of ATLANTIC RICHFIELD COMPANY, a corporation organized under the laws of the State of Delaware (USA).

    Arco is one of the signatories to the Hamaca Association Agreement together with Claimant 1, Corpoguanipa and Texaco. The Hamaca Association Agreement constitutes the second basis for Claimants' claims under this proceeding (see below para 65).

20. The Petrozuata and the Hamaca Projects were two of a total of four projects entered into by subsidiaries of PDVSA with international oil companies concerning the production and upgrading of extra-heavy crude oil in the Orinoco Belt (see below para 24).The other two projects, known as the 'Sincor' and the 'Cerro Negro' projects, involved the following entities:

21. The Cerro Negro project involved *(i)* subsidiaries of the **MOBIL CORPORATION,**[7] which was later on merged into EXXON MOBIL CORPORATION, *(ii)* subsidiaries of VEBA OEL A.G.,[8] which was later on acquired by BRITISH PETROLEUM, and *(iii)* **LAGOVEN CERRO NEGRO, S.A.,** a subsidiary of Lagoven.

22. The Sincor project involved *(i)* subsidiaries of STATOIL, subsidiaries of TOTAL, and (iii) PDVSA SINCOR, a subsidiary of Respondent.

B. BACKGROUND OF THE DISPUTE

23. In 1975, Venezuela enacted the 'Organic Law that Reserves to the State the Industry and Trade of Hydrocarbons' *('Ley Orgánica que Reserva al Estado la Industria y el Comercio de los Hidrocarburos"),* which came into effect on 1 January 1976 ("Nationalization Law 1975").[9] This law had as effect to reserve all activities related to the exploitation, manufacture, refining, transportation or management of oil, asphalt and other hydrocarbons to the Venezuelan State exclusively.[10]

    However, Article 5 of the 1975 Nationalization Law provided for a notable exception entitling

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[7] Though no exhibits were provided by either Party, the successorship of PDVSA Petróleo, S.A., has not been contested by Respondent. 7 In particular (i) three U.S. (Delaware) companies, MOBIL CORPORATION, MOBIL CERRO NEGRO HOLDING LTD., and MOBIL VENEZOLANA DE PETROLEÓS, INC., (ii) two Bahamian companies, namely MOBIL CERRO NEGRO, LTD., and MOBIL VENEZOLANA DE PETROLEÓS, INC., and (iii) one Dutch company, VENEZUELA HOLDINGS B.V. (see Decision on Jurisdiction in the ICSID Case No. ARB /07/27 and the Award of 23 December 2011 in the ICC Case No. 15416/JRF/CA).

[8] In particular the German company Veba Oel Venezuela Orinoco, GmbH (see Award of 23 December 2011 in the ICC Case No. 15416/JRF/CA).

[9] Exh. RL-3.

[10] See Article 1 of the 1975 Nationalization Law, Exh. RL-3.

private parties to participate in projects in the petroleum industry:

Original Spanish Version [11]	Claimants' Translation	Respondent's Translation [12]
El Estado ejercerá las actividades señaladas en el artículo 1° de la presente Ley directamente por el Ejecutivo Nacional o por medio de entes de su propiedad, pudiendo celebrar los convenios operativos necesarios para la mejor realización de sus funciones, sin que en ningún caso estas gestiones afecten la esencia misma de la actividades atribuidas. En casos especiales y cuando así convenga al interés público, el Ejecutivo Nacional o los referidos entes podrán, en el ejercicio de cualquiera de las señaladas actividades, celebrar convenios de asociación con entes privados, con una participación tal que garantice el control por parte del Estado y con una duración determinada. Para la celebración de tales convenios se requerirá la previa autorización de las Cámaras en sesión conjunta,	[No independent translation provided]	The State shall carry out the activities indicated in Article 1 of this Law directly through the National Executive or through state-owned entities, being able to enter into operating agreements necessary for the better performance of its functions, but in no case shall such transactions affect the essence of the reserved activities. In special cases and if convenient for the public interest, the National Executive or such entities may, in the exercise of any of the indicated activities, enter into association agreements with private entities, with a participation that guarantees control on the part of the State and with a specified duration. The execution of such agreements shall require the prior authorization of the [Congressional] Chambers in joint session, within the conditions
dentro de la condiciones que fijen, una vez que hayan sido debidamente informadas por el Ejecutivo Nacional de todas la circunstancias pertinentes.		that they establish, once they have been duly informed by the National Executive of all the pertinent circumstances.

24. In the 1990s, in view of difficulties to unlock the potential of the Orinoco Belt, Venezuela initiated a process known as the ***Apertura Petroleraand*** aiming at attracting financial investments, resources and know-how from foreign oil companies in order to exploit the heavy crude oil resources located in the Orinoco Belt. It is within this context that various associations started to develop between Venezuelan and international oil companies regarding the development and exploitation of extra-heavy crude oil resources in Venezuela's Orinoco Belt. There were in total four projects relating to the extraction, production and upgrading of extra-heavy crude oil in the Orinoco Belt: (i) the 'Petrozuata Project' in the Zuata area, (ii) the 'Hamaca Project' in the Hamaca area, (iii) the 'Cerro Negro Project' in the Cerro Negro area of the Belt, and (iv) the 'Sincor project'. Each of these projects

[11] Exh. RL-3.
[12] Exh. RL-3.

were concluded between subsidiaries of Respondent and foreign oil companies (see above paras 8-22).

25. The present dispute arises out of the two association agreements concluded between Claimants and subsidiaries of Respondent in 1995 and 1997 with regard to the Petrozuata Project and the Hamaca Project. Claimants raise claims based on these agreements and in relation to subsequent production and/or export curtailments allegedly imposed by the Venezuelan government in relation to the latter's commitments as an OPEC member state.

C. GENERAL CHRONOLOGY OF THE FACTS

1. Negotiation, Approval and Conclusion of the Petrozuata Association Agreement and thereto related Documents

26. In September 1990, Conoco submitted to PDVSA a **letter of interest** to conduct feasibility studies for extra-heavy oil projects in the Orinoco Belt.[13] The following year, Conoco Inc. and PDVSA engaged in further discussions about such a project, which resulted in the signing on 17 November 1991 of letters of intent for a joint study agreement that would set the framework of a feasibility study.[14]

27. On 1 January 1992, Conoco and Maraven, a subsidiary of PDVSA (see above para 12) concluded a **'Joint Study Agreement',** the objective of which was to set out the scope, object and process for a Feasibility Study regarding the heavy oil exploration and production development plans for the Orinoco Belt.[15]

28. In August 1992, Conoco and Maraven jointly issued a '**Feasibility Study',** in which the 'Joint Study Team'[16] provided the following recommendation:[17]

> *"The Joint Study Team recommends that the Steering Committee* [[18]] *carry the proposed Joint Venture forward to their respective managements for approval to proceed with project development according to the following path forward:*
>
> *PATH FORWARD*
>
> *"1. Negotiate a frame agreement for the proposed* [Joint] *Venture that can be used to approach the Venezuelan government for approval. [...]*

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[13] Exh. C-18.

[14] Exh C-19.

[15] Exh. C-20.

[16] Consisting of various representatives of Conoco Inc. and Maraven including in particular Raphael Strauss for Maraven and David Griffith for Conoco Inc. See Exh. C-22, p. 13.

[17] Exh. C-22, pp. 96-99.

[18] Consisting of: (i) Jorge Zemella, President, Strategic Association Unit, PDVSA; (ii) Eduardo Lopez Quevedo, Vice-President, Maraven; (iii) Paul Lashbrooke, Vice President, Refining, Research & Engineering, Conoco Inc.; (iv) E.L. Oslo, Vice President, International Exploration & Production, Conoco Inc. See Exh. C-22, p. 13.

2. Pursue other companies who might be interested in developing parallel projects which can share assets with the [Joint] *Venture.* [...]

3. Following completion of item 1 and management approval in principal, draft and submit application to the Venezuelan legislature.

This application must include requests for any guarantees that might be necessary to secure financing. Of particular value will be exclusion from OPEC production quotas, a sliding scale for royalty payments and a guaranteed fiscal export tax schedule, [emphasis added]

This activity is expected to entail negotiations with government representatives and, possible, adjustments to the frame agreement (with attendant inter company discussions). Hence, the timing is difficult to forecast. A minimum of three months must be anticipated.

4. [...] *undertake detailed engineering sufficient to develop a definitive*[...] *capital estimate.* [...]

5. Concurrent with item 4, begin work on environmental permitting. [...]

6. Develop the operating agreements called for in the frame agreement. [...]

7. Begin developing financing. [...]

8. Following management review and acceptance of the definitive cost estimates, sign the Frame Agreement and proceed with establishing the Venure as an operating company. [...] *"*

29. In the following months, negotiations took place between Conoco Orinoco and Maraven regarding the specific conditions for the Congressional Authorization required for the Petrozuata Project.

30. On 4 September 1992, Mr. Rafael Strauss, a Director of Maraven, sent to Mr. David Griffith, Team Leader of the Conoco Petrozuata Development Team of Conoco, a letter attaching what he referred to as "a *draft paper (in Spanish) outlining certain broad/preliminary guidelines for the structuring of prospective strategic Joint Ventures between PDVSA and International Oil Companies".* It appears that these 'guidelines' were the first draft of the proposed 'Conditions' to be later submitted to the Congressional Authorization for the Petrozuata Project.[19]

The part thereof, which was to become the Fifteenth Condition, provided as follows:

Original Spanish Version[20]	Claimants' Translation[21]	Respondent's Translation[22]
22. Las Partes reconocen que para la celebración del Convenio de Asociación y ejecución de las	22. The Parties acknowledge that, for the signing of the Association Agreement and the execution of the	[No independent translation

[19] Exh. R-4.
[20] Exh. R-4.
[21] CL Reply, para 23.
[22] Exh. R-4.

actividades en él contempladas, deberán atenerse a lo establecido por la legislación venezolana vigente, en sus distintos aspectos, y en consecuencia, no podrán condicionar su participación o permanencia como parte en el Convenio de Asociación a la modificación de dicha legislación. No obstante, podrán ejercer sus mejores esfuerzos para procurarse aquellas seguridades que razonablemente fueren convenientes o apropiadas.	activities contemplated therein, they shall be subject to what is established in Venezuelan law in effect, in its various aspects; as a result, they may not condition their participation or their status as a party to the Association Agreement on amendments to said [Venezuelan] law. Notwithstanding, the Parties may exercise their best efforts to obtain any safeguards that may reasonably be beneficial or appropriate.	provided]

The part thereof, which was to become the Sixteenth Condition, provided as follows:

Original Spanish Version [23]	Claimants' Translation	Respondent's Translation [24]
16. En el Convenio de Asociación a ser suscrito serán incluidas previsiones que permitan a la Filial compensar, en términos equitativos, a los accionistas extranjeros por las consecuencias patrimoniales significativas y adversas derivadas directamente de la adopción de decisiones de autoridades administrativas nacionales, estatales o municipales o de cambios en la legislación que, por su contenido y propósito, determinasen un trato discriminatorio a la Empresa o a dichos accionistas, siempre entendidos en su condición de tales y como partes en el Convenio de Asociación.	[No independent translation provided]	16. In the Association Agreement to be entered into, provisions shall be included that permit the Subsidiary to compensate, in equitable terms, foreign investors for significant and adverse economic consequences directly derived from the adoption of decisions by national, state or municipal administrative authorities or from changes in legislation that, in their content and purpose, cause discriminatory treatment to the Company or to said investors, understood always in their capacity as such and as parties to the Association Agreement.

31. On 17 September 1992, Mr. David Griffith of Conoco responded to this letter and regarding the draft of the Sixteenth Condition stated as follows: [25]

"Condition 16: We would like full compensation, based on market value, for any discriminatory law, rule or regulation. The discrimination addressed should not be limited to discriminatory treatment of the joint venture entity or its shareholders but also to any discriminatory treatment of the hydrocarbon sector in the economy if it affects the JVA.

[23] Exh. R-4.
[24] Exh. R-4.
[25] Exh. C-23.

We would also like an economic stability clause because this will go a long way to satisfy some of the concerns of the lending institutions. The more their concerns are satisfied, the cheaper and the more available their money will be. The project also requires positive tax legislation.

Finally, we will need to specifically address precisely how the assets and interest of Conoco will be valued and reimbursed in the event of nationalization."

32. In April 1993, Maraven submitted a report (the **"April 1993 Report")** on the proposed Petrozuata Project to the Venezuelan Senate describing the technical, economic and legal terms of the Project and attaching the proposed 'Conditions' for the Congressional Authorization.[26]

In the section on 'Legal Aspects' *("Aspectos Legales"),* the April 1993 Report provided as follows regarding guarantee issues:

Original Spanish Version[27]	Claimants' Translation[28]	Respondent's Translation[29]
7. GARANTIAS. En caso de que alguno o todos los socios potenciales, para suscribir los convenios de asociación o para la constitución y participación en las sociedades mercantiles que los personifiquen, actúen a través de filiales cuyas condiciones (técnicas, operacionales, financieras, etc.)no fuesen satisfactorias para garantizar el cumplimiento del objeto societario, entonces otorgarán caución amplia y suficiente para garantizar todas las obligaciones adquiridas o que se deriven para dichas filiales del respectivo convenio de asociación y del contrato social correspondiente, y el modo de cumplimiento de las mismas.	7. GUARANTEES. In the event that any or all of the potential shareholders, in executing the association agreements or forming and holding interests in the commercial companies that will perform them, act through subsidiaries whose qualifications (technical, operational, financial, etc.) are not satisfactory to guarantee the achievement of the corporate purpose, then they will provide a guarantee ample and sufficient to secure all of the obligations assumed by, or imposed on, such subsidiaries by the applicable association agreement and the related articles of incorporation and bylaws, and the method of compliance therewith.	[No independent translation provided]

Regarding the Sixteenth Condition, the April 1993 Report provided the following:

Original Spanish Version[30]	Claimants' Translation	Respondent's Translation[31]

[26] Exh. R-5/C-16.

[27] Exh. R-5, 'Aspectos Legales', p. 15. (Exh. C-16, contains this page 15 as part of the Annex 'Aspectos Técnicos', the wording of provision 7 is however the same).

[28] Exh. C-16, 'Aspectos Técnicos', p. 15.

[29] Exh. R-5.

[30] Exh. R-5.

DECIMA SEXTA : En el Conveniode Asociación serán incluidas previsiones que permitan a Maraven compensar, en términos equitativos, a las otras partes, por las consecuencias económicas significativas y adversas derivadas directamente de la adopción de decisiones de autoridades administrativas nacionales, estatales o municipales o de cambios en la legislación que, por su contenido y propósito, determinen un trato discriminatorio a la Empresa o a dichas otras partes, siempre entendidas en su condición de tales y como partes en el convenio de Asociación.	[No independent translation provided]	SIXTEENTH : The Association Agreement shall include provisions that allow Maraven to compensate the other parties, under equitable terms, for the significant and adverse economic consequences directly derived from the adoption of decisions by the national, state or municipal administrative authorities, or from changes in legislation that, due to their content and purpose, cause an unfair discriminatory treatment to the Company or to such other parties, always in their capacity as such and as parties to the Association Agreement.

33. On 12 August 1993, the Bicameral Commission of the Venezuelan Congress sent a letter to the Venezuelan Senate, attaching (i) a report reviewing the terms and conditions of the Petrozuata Project and (ii) the proposed 'Conditions'. The Bicameral Commission informed the Senate that the Bicameral Commission had by majority vote of its members approved these Conditions and therefore suggested to the Senate to authorize the Petrozuata Association Agreement. [32]

In its report, the Bicameral Commission concluded as follows:

Original Spanish Version [33]	Claimants' Translation [34]	Respondent's Translation
CONCLUSION La Comisión Bicameral designada por el congreso de la República para examinar los proyectos Maraven-Conoco y [...], estudiados y analizados todos los recaudos informativos generados por el Ejecutivo Nacional, oída la opinión de expertos oportunamente consultados, y celebradas sesiones de trabajo con sus miembros, acuerda, con el voto calificado de sus integrantes, proponer al Congreso de la República que se autoricen las asociaciones estratégicas entre Maraven y Conoco, y [...], que	CONCLUSION The Bicameral Committee designated by the Congress of the Republic to examine the Maraven - Conoco and the [...] projects, having analyzed and studied all the reports generated by the National Executive, having heard the opinion of consulted experts, and having celebrated the work sessions with its members, agrees, with the majority vote of its members, to suggest to the Congress of the Republic to authorize the strategic associations between Maraven and	[No independent translation provided]

[31] Exh. R-5, pp. 3-4 of the Translation.

[32] Exh. R-6.

[33] Exh. R-6 / C-28, p. 41.

[34] Exh. C-28, p. 72.

Conoco and [...]

llevarán a cabo la producción, transporte y mejoramiento de crudo extrapesado Zuata de la Faja del Orinoco, en el estado Anzoátegui, en áreas que están determinadas y especificadas por el Ministerio de Energía y Minas; para diseñar, construir y operar las instalaciones de producción, en Zuata, el oleoducto Zuata-Jose, y el módulo de mejoramiento en Jose. Esta autorización la proponemos dentro de las "condiciones" expresadas taxativamente en este informe, las cuales garantizan plenamente el cumplimiento cabal de la condiciones de legitimidad, oportunidad y conveniencia, expresadas en el aparte único del artículo 5to. de la Ley Orgánica que Reserva al Estado la Industria y el Comercio de los Hidrocarburos. [...]	for the realization of the "Maraven -Conoco" [...] projects, that will carry out the production, transport and upgrade of extra heavy crude oil Zuata of the Orinoco Belt, in the state of Auzoategui, in areas that are determined and specified by the Ministry of Energy and Mining; to design, construct and operate the production installations in Zuata, the Zuata - Jose pipeline, and the improvement complex in Jose.This authorization is suggested under the "conditions" expressly stated in this report, which fully guarantee the compliance of the conditions of legitimacy, opportunity and convenience, expressed in the sole point of the 5th article of the Organic Law that Reserves to the State the Industry and Commerce of the Hydrocarbons. [...]

34. On 9 September 1993, the **'Congressional Authorization'** for the Petrozuata Project was published in the Official Gazette, after its approval by Congress on 10 August 1993. [35]

The relevant parts of this Congressional Authorization provides as follows:

Original Spanish Version [36]	Claimants' Translation	Respondent's Translation [37]
EL CONGRESO DE LA REPUBLICAAUTORIZA: El siguiente, **CONVENIO DE ASOCIACION ENTRE LAS EMPRESASMARAVEN, S.A. Y CONOCO, INC.** Después de estudiar y discutir en sesión conjunta de las Cámaras Legislativas el Informe presentado por la Comisión Bicameral para las Asociaciones Estratégicas, acordó con el voto favorable de la mayoría de sus integrantes, autorizar formalmente la Asociación Estratégica entre las Empresas MARAVEN S.A., y CONOCO Inc., para llevar a cabo la explotación y	[No independent translation provided. [38]]	**THE CONGRESS OF THE REPUBLIC OF VENEZUELA AUTHORIZES:** the following, **ASSOCIATION AGREEMENTBETWEEN THE COMPANIES MARAVEN, S.A. AND CONOCO, INC.** After studying and discussing in joint session of the Legislative Chambers the Report submitted by the Bicameral Commission for the Strategic Associations, agreed with the favorable votes of the majority of its members, to formally authorize the Strategic Association between the

[35] Exh. R-7.

[36] Exh. R-7.

[37] Exh. R-7, English translation pp. 1 and 4.

mejoramiento de petróleos extrapesados de la Faja Petrolífera del Orinoco. Esta autorización deberá usarse dentro del marco legal de las "condiciones" expresadas taxativamente en dicho Informe, las cuales garantizan plenamente el cumplimento cabal de las condiciones de legalidad, legitimidad, oportunidad y conveniencia expresadas en el aparte único del artículo 5o de la Ley Orgánica que Reserva al Estado la Industria y el Comercio de los Hidrocarburos. [...] Condiciones para el Convenio de Asociación: [...] **DECIMA QUINTA:** Las Partes reconocen que para la celebración del Convenio de Asociación y ejecución de las actividades en el contempladas, deberán sujetarse a lo establecido por la legislación venezolana vigente en sus distintos aspectos; en consecuencia, no podrán condicionar su participación o permanencia como parte en el Convenio de Asociación a la modificación de dicha legislación. No obstante, podrán ejercer sus mejores esfuerzos para lograr aquéllas seguridades que razonablemente les fueren conveniente o apropiadas. **DECIMA SEXTA:** En el Convenio de Asociación serán incluidas previsiones que permitan a Maraven compensar, en términos equitativos, a las otras partes, por las consecuencias económicas significativas y adversas derivadas directamente de la adopción de decisiones de autoridades administrativas nacionales, estatales o municipales o de cambios en la legislación que, por su contenido y propósito, determinen un injusto trato discriminatorio a la Empresa o a dichas otras partes, siempre entendidas en sus condiciones de tales y como partes en el Convenio de Asociación, todo ello, sin menoscabo del derecho soberano a legislar, inherente a la existencia misma de los poderes legislativos nacionales, estadales y municipales. **DECIMA SEPTA:** Si

Companies MARAVEN S.A. and CONOCO Inc., to carry out the exploitation and upgrading of extra heavy oil from the Orinoco Oil Belt. This authorization must be used within the legal framework of the "conditions" expressly enumerated in said Report, which fully guarantee total compliance with the conditions of legality, legitimacy, timeliness and appropriateness expressed in the sole section of Article 5 of the Organic Law that Reserves for the State the Industry and Trade of Hydrocarbons. [...] Conditions for the Association Agreement: [...] **FIFTEENTH:** The Parties acknowledge that, for the signing of the Association Agreement and the execution of the activities contemplated therein, they shall be subject to what is established in Venezuelan law in effect, in its various aspects; as a result, they may not condition their participation or their status as a party to the Association Agreement on amendments to said [Venezuelan] law. Notwithstanding, the Parties may exercise their best efforts to obtain any safeguards that may reasonably be beneficial or appropriate. **SIXTEENTH:** The Association Agreement shall include provisions that allow Maraven to compensate the other parties, under equitable terms, for the significant and adverse economic consequences directly derived from the adoption of decisions by the national, state or municipal administrative authorities, or from changes in legislation that, due to their content and purpose, cause an unfair discriminatory treatment to the Company or to such other parties, always in their capacity as such and as parties to the Association Agreement, all without diminishing in any way the sovereign power to legislate, inherent in the very existence of the national, state and municipal legislative powers. **SEVENTEENTH:** If the participating organizations, regarded as parent

[38] Claimants rely on Respondent's translation, see CL Reply, paras 30-31 and 109-11.

las organizaciones participantes, consideradas en su carácter de empresas matrices, para suscribir el Convenio de Asociación a ser acordado con fundamento en las presentes Condiciones, o para la constitución y participación en la Empresa a ser creada conforme a la Condición Segunda, actúan a través de filiales cuyas condiciones técnicas, operacionales,

companies, that will sign the Association Agreement to be agreed upon on the basis of these Conditions or for the incorporation and participation in the Company to be created under the Second Condition, act through subsidiaries whose technical, operational,

financieras o cualquiera otra relevante, no fueren satisfactorias para la ejecución del objeto social de la Empresa, entonces otorgarán caución amplia y suficiente para garantizar todas las obligaciones adquiridas y las responsabilidades de dichas filiales bajo el Convenio de Asociación, y bajo el contrato social correspondiente y su ejecución. En cualquier caso, las garantías serán otorgadas bajo las leyes de la República de Venezuela.

financial or any other relevant conditions are not satisfactory for carrying out the corporate purpose of the Company, they shall confer ample and sufficient guarantee to ensure all of the assumed obligations and the responsibilities of said subsidiaries under the Association Agreement and under the corresponding by-laws and execution thereof. In any event, the guarantees shall be granted under the laws of the Republic of Venezuela.

35. On 16 September 1993, Mr. Henry J. van Wageningen, a member of Conoco's legal department and one of the key members of Conoco's negotiation team, sent *a* letter to Mr. Tomas Carrillo, legal advisor of Maraven, attaching *"Conoco's comments to the draft Association Agreement which Maraven provided for Conoco's review".*

As part of these comments, Conoco Inc. proposed the addition of a new Section 13.04(c) to the Petrozuata Association Agreement: [39]

"168. Furthermore, a new Section 13.04 (c) should provide for a Maraven Guarantee as follows: "(c) MARAVEN Guarantee. As set forth in the MARAVEN Guarantee Agreement attached hereto as Exhibit "J", MARAVEN unconditionally and irrevocably guarantees to the Company: (i) that in the event that MARAVEN is required to cut back on its crude oil production rates for any reason, that it shall fulfill such requirements out of its own production, and that the Heavy and Extra Heavy Crude Oil production rates of the HOP [i.e. the Petrozuata Project] shall remain unaffected by, and completely independent of any such cut-backs; (ii) that MARAVEN shall during the Term of this Agreement procure for the Company such sources of supply of Heavy and/or Extra Heavy Crude Oil with the objective of keeping the upgrading facilities at Jose fully supplied and running as efficiently as possible; [...] "

36. On 26 and 27 October 1993, negotiation meetings were held between Conoco and Maraven. With regard to production cut backs, the Minutes of the Meetings, signed by Mr. David Griffith on behalf of Conoco and Mr. Joffre Rodríguez on behalf of Maraven, provided in particular that: [40]

[39] CL SoC, para 17; RSP SoD para 20; Exh. C-27.

[40] CL SoC, para 19; Exh. C-25 (Minutes of Meeting).

"*1. OPEC QUOTA*

Maraven re-stated the fact that it has been a premise all along since the project started that in the event of an OPEC production quota that may affect the joint venture company, the venture will be protected by PDVSA. Therefore it was agreed to change new section 13.04(c) as proposed by Conoco which will read '(i) that in the event that Maraven is required to cut back on its crude oil production rates for arty external to the Joint Venture Company imposed production quota [Maraven] shall fulfill [such requirements out of its own production, and that the Heavy and Extra Heavy Crude Oil production rates of the Petrozuata Project shall remain unaffected by, and completely independent of, any such cut-backs][...]"

37. In January 1994, a so-called 'Venezuela Strategy Management Team'[41] from Conoco prepared a report reviewing the Petrozuata Project in order to *"provide clear strategic direction for Conoco's activities in Venezuela"* and issued the following recommendations:[42]

"Recommendations

• Pursue both VHOP [Venezuelan Heavy Oil Projects] and light/medium oil exploration opportunities on their own individual merits. [...]

[...]

• The VHOP Team and Finance should develop more accurate estimates of the costs associated with using project financing, when better information is available, and the CMC should reassess whether the benefits provided by project financing are worth the costs involved prior to final project commitment.

[...]

• The VHOP Team and BDR should continue to monitor political and economic developments in Venezuela in terms of how they affect Conoco. (This should be the responsibility of the Venezuelan BU[Business Unit] once established.) As part of these ongoing monitoring efforts, the BU should be alert to any attractive opportunities that develop for Conoco to participate in areas other than heavy and light/medium oil (e.g., downstream)."

With regard to whether or not to pursue the Project, the report stated as follows:[43]

"• VHOP's basic strategic options are:

Yes or no? Is VHOP something the company should pursue or should it focus on light/medium oil as some other companies appear to be doing?

[...]

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[41] Consisting of various representatives of Conoco, including in particular Mr. David Griffith. This team seemed to be sponsored by the VHOP [Very Heavy Oil Project] Steering Committee consisting of Bob Holtsmith, Dave Jenkins, Paul Lashbrooke, and Mike Stinson. See Exh. R-8, Appendix A.

[42] Exh. R-8, p. 4

[43] Exh. R-8, p. 14.

Each of these strategic choices depends on VHOP's perceived economic attractiveness and risk. The risked [sic!] *economic analysis presented in the next section argues for actively pursuing VHOP now, and taking as large a share in VHOP as possible.*

[...]"

38. On 17 March 1995, a further negotiation meeting was held between Conoco and Maraven, during which Maraven insisted to remove Section 13.04(c) from the Association Agreement and incorporate it into a Side letter. [44]

The draft of the Association Agreement annotated during this meeting included the following clause in Section 13.04(c): [45]

14 such requirements out of its own production so that the Extra Heavy Oil production rares of the Company

15 shall remain unaffected by. and completely independent of, any such restrictions, to the extent such

16 restrictions can be fulfilled out of the Class A Privileged Shareholder's own production.[REDACTED]

17 [REDACTED] The Class A Privileged Shareholder shall release, hold harmless, indemnify and

18 defend the Company and all Class B and Class C Shareholders from any and all liabilities, damages, costs

According to Claimants, from that moment on, all future drafts of the Association Agreement would not include anymore language insulating the Project from OPEC Curtailments. [46]

39. On the same day, and following the meeting with Conoco, an internal meeting took place between Maraven and PDVSA. Based on the minutes of the meeting, signed among others by Claus Graf as Vice President of PDVSA and Acting President of the PDVSA Committee of Strategic Businesses, it appears that Maraven stressed during this meeting that the protection from OPEC Curtailments, i.e. Section 13.04(c), should be incorporated into a 'Side Letter' due to "the *implications they could have on the industry or the association".* [47]

40. On 4 April 1995, a next draft of the Petrozuata Association Agreement was circulated, which did not include anymore the former Section 13.04(c). [48]

41. In May 1995, Mr. José Urdañeta Pérez, legal counsel *("Consultor Jurídico")* of Maraven sent a letter

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[44] CL SoC, para 20.

[45] Exh. C-31, p. 61

[46] CL SoC, para 23.

[47] *Translation by the Arbitral Tribunal of "POR LAS IMPLICACIONES QUE ESTOS ACUERDOS PUEDAN TENER PARA LA INDUSTRIA O PARA LA ASOCIACION". See Exh. C-30 (Minutes of Meeting, Presentation Slide No. 15), see also CL SoC para 20 el seq.; RSP SoD para 22 et seq.*

[48] Exh. C-33, pp. 57-58.

to PDVSA's legal counsel *("Consultor Jurídico"),* Mr. Carlos E. Padrón, attaching the draft of the *"principle body of the Association Agreement, in English, to signify the arriving at an agreement in principle"*[49] relating to the Petrozuata Project.[50]

42. On 31 May 1995, Mr. Constantine S. Nicandros, President and CEO of Conoco,and Mr. Emilio Abouhamad, President of Maraven, signed the *'Agreement in Principle'* stating as follows:[51]

"Whereas, The Venezuelan Congress authorized a strategic association to be created between Maraven S.A. ("MARAVEN") and CONOCO INC. ("CONOCO") in accordance with specific terms and conditions set forth in the specific authorization published in official gazette No: 35293 dated 9 September, 1993; and [...]

MARAVEN and CONOCO (...) have reached agreement in principle on the terms and wording of what would be the english version of the main body of the Association Agreement that they intend to execute, subject to the corporate approvals required within each company's organization [...]

It is the intention of MARA VEN and CONOCO to execute a final Association Agreement during 1995, subject to agreement on the Spanish version of the main body of such Agreement and on the supplementary agreements which are to be attached to, and be part of, such Agreement and subject further to the final corporate approvals required within each company's organization [...]"

43. On 10 November 1995, Mr. Constantine S. Nicandros, as *"Attorney In Fact"* for Conoco Orinoco,and Mr. Emilio Abouhamad, as President of Maraven,executed the final version of the **'Petrozuata Association Agreement',** with the main purpose of *"(i) establishing, operating and owning* [a Joint Venture Company] *in Venezuela, (ii) carrying out the transactions contemplated in the Business Contracts and (ii) taking all other steps reasonably necessary to implement and develop the Project".*[52]

The Petrozuata Association Agreement established the following corporate structure for the project:

- Petrolera Zuata, Petrozuata C.A. (hereinafter **"Petrolera Zuata"),** a joint venture company formed by Conoco Orinoco and Maraven, with the business of producing, transporting and upgrading Extra Heavy Oil from the relevant area, as well as marketing and selling *"* [u]*pgraded Crude Oil and other by-products pursuant to the Purchase and Sale Agreement with Conoco Inc. and other agreements to be entered into by the* [Joint Venture] *Company with other purchasers from time-to-time".*[53]

- Conoco Orinoco, through CPZ, owned 50.1% of Petrolera Zuata, while Maraven owned the remaining 49.9%.

44. On the same day, Mr. Constantine S. Nicandros, as authorized representative ("*Apoderado"*) of Conoco Orinoco,and Mr. Emilio Abouhamad, as President of Maraven, signed the **'Petrozuata Side**

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[49] *Translation provided by Respondent of "cuerpo principal del Convenio de Asociación, en versión inglesa, en señal de haberse llegado a un acuerdo de principio [...] ".*

[50] Exh. R-10.

[51] Exh. C-34.

[52] *Exh. C-35, para 6 of the,Antecedents'.*

[53] *Exh. C-35, para 7 of the,Antecedents'.*

Letter', which stipulated as follows:

Original Spanish Version [54]	Claimants' Translation [55]	Respondent's Translation [56]
Por la presente hacemos referencia al Convenio de Asociación entre CONOCO ORINOCO INC. y MARAVEN S.A., el cual será suscrito el 10 de noviembre de 1995, [...] Sirva este documento para declarar que, estando las partes firmantes del Convenio de Asociación conscientes que a los efectos de la obtención del financiamiento necesario para la construcción, operación y las inversiones de capital para los últimos años del Proyecto (dicho término definido en el Convenio de Asociación) será necesario asegurar la capacidad de la Compañía de producir los volúmenes de crudo extra-pesado establecidos en la Descripción del Proyecto (dicho término definido en el Convenio de Asociación), las partes aquí firmantes han acordado lo siguiente: En el caso de que cualquier restricción en la producción sea impuesta a la industria petrolera venezolana durante la vigencia del Convenio de Asociación, el Accionista Privilegiado Clase A (dicho término también definido en el Convenio de Asociación) satisfacerá, de su propia producción, cualquier requirimiento de disminución de la producción que pudiera aplicar a la Compañía en la medida necesaria para asegurar que se cumplan las siguientes premisas:	This letter is made in reference to the Association Agreement between MARAVEN S.A: and CONOCO ORINOCO INC., effective as of November 10, 1995, [...] This is to place on record that the parties to the Association Agreement recognize that in order to obtain the necessary financing for the construction, operation and final years investments of the Project (as defined in the Association Agreement), it will be necessary to ensure the ability of the Company to produce the extra heavy oil volumes contemplated in the Project Description (as defined in the Association Agreement), and, therefore, the parties hereto have agreed as follows: In the event that any crude oil restrictions are imposed on the Venezuelan oil industry during the term of the Association Agreement, the Class A Privileged Shareholder [...] shall fulfill any production cutback requirements out of its own production so that: (i) the Company shall be able to keep the upgrader facilities	We refer to the Association Agreement between CONOCO ORINOCO INC. and MARAVEN S.A., signed on November 10, 1995, [...] This document states that the parties to the Association Agreement are aware that for the effects of obtaining the financing necessary for construction, operation, and investments for the last years of the Project (as defined in the Association Agreement) it will be necessary to ensure the capacity of the Company to produce the volumes of extra heavy crude established in the Project Description (as defined in the Association Agreement). Therefore the parties hereto agree as follows: In the event that any restriction in production is imposed on the Venezuelan petroleum industry during the effect term of the Association Agreement, the Class A Shareholder (as defined in the Association Agreement) will fulfill from its own production any requirement to decrease production that may be applicable to the Company as necessary in order to ensure compliance with the following: (i) The Company

[54] Exh. C-2/R-12.

[55] Exh. C-2.

[56] Exh. R-12.

(i) la Compañía estará en la capacidad de mantener la Planta de Mejoramiento (dicho término definido en el Convenio de Asociación) trabajando hasta su Máxima Capacidad; (ii) cualquier producción que tenga la Compañía, adicional a la que sea necesaria para mantener la Planta de Mejoramiento a su Máxima Capacidad, será afectada (disminuida) en el mismo porcentaje en que se vea afectado el Accionista Privilegiado Clase A en su propia producción; y (iii) la producción total de crudos de la Compañía en ningun caso se verá disminuida por debajo de ciento veinte mil barriles diarios, siempre que la Planta de Mejoramiento esté trabajando a su Máxima Capacidad. Queda igualmente entendido que cualquier mecanismo o tratamiento que aplicare de manera general a todas las asociaciones estratégicas para la producción de crudo extrapesado, y que sea más favorable que le establecido en este documento, prevalecerá sobre el mismo. [...]	working at Full Capacity; (ii) any company production above that necessary to keep the upgrader at Full Capacity shall be affected (cut back) by the same percentage as the one affecting the Class A Privileged Shareholder's own production; and (3) the Company's total crude oil production shall not be reduced below 120 MBPCD [sic!] at any time in which the upgrader is working at Full Capacity, it is understood that any production restriction protection mechanism or treatment which is generally applied to all extra heavy crude oil strategic associations, and which is more favorable than the one established herein, shall prevail. [...]	will be able to maintain the Upgrader Plant (as defined in the Association Agreement) operating at Maximum Capacity; (ii) any production of the Company in addition to what is necessary to maintain the Upgrade Plant at Maximum Capacity will be affected (decreased) in the same percentage as the Class A Shareholder is affected in its own production; and (iii) the Company's total production of crude will in no instance be decreased to below one hundred twenty thousand barrels daily, provided that the Upgrader Plant is working at Maximum Capacity. It is also understood that any mechanism or treatment applied in general to all the strategic partnerships for production of extra heavy crude that is more favorable than the conditions established in this document will prevail over the same. [...]

45. On the same day, Mr. Constantine S. Nicandros, as Vice-Chairman of Conoco Orinoco, and Claus Graf, as Vice-President of PDVSA signed the **'PDVSA Petrozuata Guarantee'** providing in particular as follows: [57]

Original Spanish Version	Official English Translation
CONSIDERANDO, que de conformidad con la autorización por el Congreso de la República de Venezuela, publicada en la Gaceta Oficial N° 35,293 [...] (en lo adelante referida como las "Condiciones"), [...] **CONSIDERANDO,** que CONOCO y MARAVEN se comprometerán a suscribir el Convenio de Asociación y a ejecutar el Proyecto solamente bajo la condición de que sus respectivas casas matrices, E.I. Du Pont de Nemours and Company Y	**WHEREAS,** in accordance with the authorization of the Venezuelan Congress, Gazetted on 9th of

[57] Exh. C-1 at Exhibit P.

PDVSA, acuerden garantizar el cumplimiento de las obligaciones de CONOCO y MARAVEN respectivamente; **EN CONSECUENCIA,** en virtud de las promesas, mutuos compromisos y acuerdos anteriormente referidos, las partes anteriormente identificadas por el presente documento acuerdan lo siguiente: [...] **ARTICULO 2. RECONOCIMIENTO Y APPROBACION:** Por el presente documento PDVSA declara conocer por completo el contenido, los términos y condiciones del Convenio de Asociación a ser suscrito por MARAVEN y CONOCO, así como también todos los Anexos que lo acompañan y todos los demás acuerdos complementarios a ser suscritos entre CONOCO y MARAVEN en relación con el Proyecto (dichos acuerdos complementarios en lo adelante referidos conjuntamente como los "Acuerdos"). **ARTICULO 3. GARANTIAS Y COMPROMISO DE INDEMNIZACION:** Por el presente documento, PDVSA garantiza a CONOCO: (a) que MARAVEN cumplirá fielmente con los términos, condiciones y compromisos establecidos en el Convenio de Asociación y en los Acuerdos que deban ser observados o ejecutados por MARAVEN; (b) que, en el caso de incumplimiento o inobservancia por parte de MARAVEN de cualquiera de los términos, condiciones y compromisos del Convenio de Asociación o de los prenombrados Acuerdos, PDVSA cumplirá, o hará que su cumplan todos y cada uno de dichos términos, condiciones y compromisos, y (c) que, al ser requerido, pagará a CONOCO [...] el monto correspondiente a cualquier pérdida o daño que CONOCO o que PETROZUATA puedan sufrir por causa de la inobservancia o incumplimiento, en todo o en parte, de alguno o de todos los referidos términos, condiciones y compromisos, de conformidad con lo previsto por el Convenio de Asociación o los Acuerdos. [...]

September, 1993, No. 35,293 ("Conditions") [...] **WHEREAS,** CONOCO and MARAVEN will commit to the Project and enter into the [Association Agreement] only on the condition that their parent companies, PDVSA and E.I. du Pont de Nemours and Company, agree to guarantee the performance of MARAVEN and CONOCO, respectively; **NOW, THEREFORE,** in consideration of the promises and the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows: [...] **Section 2. Acknowledgement and Approval.**

PDVSA is fully aware of the contents of the [Association Agreement] executed by MARAVEN and CONOCO, and hereby acknowledges the terms and conditions of said [Association Agreement], all Exhibits attached thereto, all ancillary agreements between CONOCO and MARAVEN in furtherance of the Project (said ancillary agreements hereinafter referred to as "Agreements"). **Section** 3. **Guaranty.** PDVSA hereby guarantees to CONOCO (a) the foil and proper observance and performance by MARAVEN of the terms, covenants and conditions in the [Association Agreement] and the Agreements which are to be observed or performed by it; (b) that upon breach by MARAVEN of any of the terms, covenants and conditions of said [Association Agreement] or the Agreements, PDVSA

> will perform, or cause to be performed, each and every one of said terms, covenants and conditions; and (c) to pay upon demand to CONOCO [...] the amount of any loss or damage which CONOCO or Petrozuata may suffer by reason of MARAVEN's non-performance or non-observance, in whole or in part, of all or any of said terms, covenants and conditions as provided by said [Association Agreement] or Agreements. [...]

46. On 5 February 1996, the President of the Permanent Congressional Commission of Energy and Mines, Mr. Ali Rodríguez Araque, wrote to Mr. Emilio Abouhamad, President of Maraven, requesting *"by virtue of the monitoring of the apertura process which this Commission undertakes,* [...] a *copy of the agreements signed by Mar aven for the exploitation of the crudes in the Orinoco Oil Belt".* [58]

47. On 9 February 1996, the President of the Permanent Congressional Commission of Energy and Mines, Mr. Ali Rodríguez Araque, wrote to Mr. Emilio Abouhamad, President of Maraven, inviting Mr Abouhamad to attend the next ordinary session of the Commission in order to explain to the members of the Commission the details of the strategic association between Maraven and Conoco. [59]

48. On 13 February 1996, Mr. Emilio Abouhamad, President of Maraven, responded by letter to the enquiry of the Congressional Commission (see above paras 46-47), attaching an 'Executive Summary'relating to the Petrozuata Association Agreement and announcing that on the next day, i.e. 14 February 1996, Maraven would conduct a presentation before the Commission and submit, among others, the Petrozuata Association Agreement *"together with all of its annexes".* [60]

    While Respondent argues that these 'annexes' did not include the Petrozuata Side Letter, [61]Claimants argue that the case record does not allow establishing the specific list of documents submitted together with the Petrozuata Association Agreement as 'its annexes'. [62]

49. On 17 June 1997, the 'Offering Circular' regarding the financing of the Petrozuata project was issued. [63]

50. On 18 June 1997, Conoco Orinoco and Maraven made certain modifications to the Petrozuata Association Agreement, none of which appear to be relevant for the present proceedings. [64]

51. On 27 June 1997, the financing for the Petrozuata Project closed. This financing included an approximately USD 1 billion bond issuance, as well as a USD 450 million commercial bank facility. [65]

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[58] *Exh. R-15. Translation provided by Respondent (original Spanish version: "En virtud del seguimiento que realiza esta Comisión sobre el proceso de apertura, [...] copia de los contratos firmados por Maraven para la explotación de los crudos de la Faja del Orinoco").*

[59] Exh. R-16.

[60] *Exh. R-17. Translation provided by Respondent (original Spanish version:"... conjuntamente con todossus anexos").*

[61] RSP SoD para 38, RSP Rejoinder p. 8 second bullet point.

[62] CL Reply para 52.

[63] Exh. R-18.

[64] Exh.C-1.

[65] CL SoC para 34; CL Reply para 8(i), 19.

52. On the same day, Conoco, represented by its Vice President Mr. J. R. Kemp, and Petrolera Zuata, represented by its President Mr. Carlos Jordá, signed a 'Contract for the Purchase and Sale of Upgraded Extra Heavy Crude Oil' (hereinafter the **"Offtake Agreement"),** according to which Conoco would purchase approximately 104,000 barrels per day for the Petrozuata Project's syncrude. [66]

53. In July 1997, construction of the upgrader at the Jose Industrial Complex began, and the pipeline construction was completed in July 1998. The upgrader was completed in late 2000. [67]

54. On 12 April 2000, the Petrozuata Project officially began full syncrude production and enjoyed its first commercial sale. [68]

2. Negotiation, Approval and Conclusion of the Hamaca Association Agreements and thereto related Documents

55. In 1994, Arco and Corpoven were negotiating the terms of an association agreement for the area of Hamaca. [69]

56. On 21 June 1995, Mr. Stuart Snow from Phillips confirmed to Mr. Carlos Bustamante from PDVSA its interest in pursuing an Orinoco Belt project, sending a note setting out Phillips position with regard to a possible cooperation with one of PDVSA's subsidiaries. [70]

57. In early 1996, Corpoven approached Phillips and Texaco to solicit their participation in the Hamaca Project. [71]

58. In early May 1996, a Phillips team travelled to Venezuela for a series of meetings with Corpoven and Maraven representatives to gather and assess information regarding the opportunities available in the Orinoco Belt. Among other information, Corpoven gave a presentation entitled *"Hamaca Project: Economic Evaluation, Assumptions & Results Business Basis & Structure".* [72] Regarding production curtailments, p. 17 of the presentation mentioned the following point:

"PROD. CURTAILMENT/ARBITR.

PRODUCTION CURTAILMENT (OPEP)

• ASSOCIATION SUBJECT TO QUOTAS

• RECOUP LOSSES POSSIBILITY EXTENT DURATIONS YEARS

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[66] Exh.C-114.
[67] CL SoC para 34, Exh- C-43.
[68] CL SoC para 36, Exh- C-40.
[69] CL SoC para 37.
[70] Exh. C-45.
[71] Exh. C-46; CL SoC para 38.
[72] Exh C-46.

[...]"

59. In the following months, Phillips took the necessary steps and issued the internal corporate approvals to acquire an interest in the Hamaca Project.[73]

60. On 18 November 1996, Mr. Guillermo Archila, Presidentof Corpoven, confirmed to Mr. W.W. Allen, Chairman of the Board and CEO of Phillips, the *"inclusion of Phillips Petroleum Company as a partner in the Hamaca Project"* and that Phillips would be eligible for a 20 percent share in the Project.[74]

61. On 4 December 1996, Phillips Venezuela together with a subsidiary of Arco, a subsidiary of Texaco and Corpoven entered into an **'Agreement for the Conduct of the Hamaca Project',** attaching a term sheet and the Project 'Conditions', which had been previously submitted to the Congress for Authorization on 2 December 1996.[75]

This agreement, in its English version,[76] contained the following relevant provisions:

(i) The term sheet provided as follows concerning 'Production Curtailments' (p. 25):

"If production curtailment is required for compliance with Venezuela's international commitments, the Association's curtailment will not exceed the percentage curtailment generally applicable to the Venezuelan oil industry as a whole. During periods of production curtailment, the upgrader(s) will be operated in such a manner as to maximize the economic benefit to the Association of available crude and product production. The options available to the Association will include, but not be limited to, obtaining crude supplies from any third party and selling higher gravity (API) crude oil, unfinished products and finished products.

Following any period of curtailment, the Parties will maximize the economic benefit to the Association of its production capacity, including, without limitation (to the extent they mutually deem appropriate given the existing market conditions and the likely effect of acceleration on such conditions) by accelerating production in the field and selling lower gravity crude to recapture the revenue loss resulting from the curtailment. Field production and shipments in excess of upgrader capacity will be allowed until all such loss is recouped and, if necessary to recoup such loss, the term of the Association will be extended up to 5 years to allow production of the same volume the Association failed to produce as a result of the curtailment."

(ii) The Thirteenth Condition, as submitted for authorization to the Congress, provided as follows concerning production curtailments:

*"**THIRTHEENTH:** In the event that the Association is required to reduce its production as a result of international commitments of the Republic of Venezuela, such reduction shall not exceed the percentage reduction generally applicable to the Venezuelan oil industry as a whole. This*

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[73] CL SoC para 39.

[74] Exh. C-47.

[75] Exh. C-48.

[76] No Spanish version was submitted to the Arbitral Tribunal.

percentage will be calculated on the basis of available production capacity The parties will take actions to allow the Association to produce the accumulated volume which it stopped producing due to the imposed reduction, which actions may include, as appropriate taking into account market conditions, acceleration of production or extension of the term of the Association Agreement, or both, so long as with any such extension the term of the Association Agreement ends no later than forty-five (45) years after the date of its execution."

(iii) The Eighteenth Condition, as submitted for authorization to the Congress, provided as follows concerning guarantees:

*"**EIGHTEENTH**: Each entity through which a Participant participates in the Association must have a financial capacity sufficient to meet its obligations under the Association Agreement. In the event that any such entity cannot demonstrate such capacity to Corpoven's satisfaction, a satisfactory parent company shall guarantee all of such entity's obligations in connection with the Association in a form, and of a breadth and sufficiency, satisfactory to Corpoven. PDVSA shall guarantee all of Corpoven's obligations under the Association Agreement on the same terms and conditions. Corpoven may assign its rights and obligations to any other affiliate of PDVSA, in which event references to Corpoven in these Conditions shall be interpreted as references to such other affiliate."*

(iv) The Twenty-first Condition, as submitted for authorization to the Congress, provided as follows concerning compensatory payments:

*"**TWENTY-FIRST**: The Association Agreement will include provisions that permit the compensation of the Participants, through amendment of the provisions set forth in the Association Agreement or through the payment of damages, in the event that the Participants' net cash flow from the Association's activities is substantially and adversely affected as the direct, necessary and demonstrable result of unjust discriminatory action, without prejudice to Corpoven's option, in accordance with such provisions, to purchase the interest of the affected Party, on equitable terms, if the effect of such amendments or the payment of damages would result in a change in conditions unacceptable to Corpoven; provided that the affected Party will be required to pursue all remedies provided by law to obtain relief from the discriminatory actions In no event will the application of such provisions limit, affect or restrict in any manner the authority of Organs of Public Power to take action in conformity with the Constitution and applicable law".*

62. On 24 April 1997, the Venezuelan Congress approved the framework for the Hamaca strategic association and issued the official 'Conditions' that would have to be embodied in the future Hamaca Association Agreement.[77] This authorization was published in the Official Gazette on 20 May 1997. The wording of the specific Conditions reproduced in the Gazette seems to have been identical to the wording of the Conditions submitted for authorization on 2 December 1996 (see above para 61).

63. On 8 May 1997, the Bicameral Commission issued a report approving the draft Hamaca Association Agreement as consistent with the 'Conditions', which had been previously approved by the Venezuelan Congress (see above para 62).[78]

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[77] Exh- C-49 / Exh. R-24; See CL SoC para 41; RSP SoD para 51.

[78] Exh. C-50 and C-51.

64. On 18 June 1997, by Resolution No. 36,235 published in the official Gazette on 26 June 1997,[79] the Venezuelan Congress agreed to *"authorize the undertaking of the* [Hamaca] *Association Agreement and its Annexes"*[80] based on the draft which had been previously approved by the Bicameral Commission (see above para 63).

65. On 9 July 1997, Phillips Venezuela, Arco, Texaco and Corpoguanipa (a subsidiary of Corpoven, see above para 15) entered into the **'Hamaca Association Agreement'.** [81] The objective of this Agreement was to produce and upgrade extra-heavy crude oil, and market a new synthetic crude oil and its by-products (sulphur and coke). After extraction, the extraheavy crude oil would be mixed with a diluent and transported by pipeline to an upgrading plant at the Jose Industrial Complex. The crude would then be processed into high-value syncrude and sold in international markets. [82]

The Hamaca Association Agreement established the following corporate structure for the Hamaca Project:

- **PETROLERA AMERIVEN, S.A.** ("Petrolera Ameriven") owned by the Project participants was responsible for day-to-day operations. The ownership was shared as follows: 20% for Phillips Venezuela, 30% for Arco, 20% for Texaco and 30% for Corpoguanipa;

PETROLERA HAMACA, S.A.("Petrolera Hamaca") was the management company responsible for the overall direction and supervision of the Project;

- **HAMACA MARKETING COMPANY("Hamaca** Marketing"), a Cayman Islands company formed by the Project participants, was to market Hamaca synthetic crude oil (syncrude).

66. On the same day, Phillips Venezuela, Arco, Texaco and PDVSA entered into the **'PDVSA Hamaca Guarantee',** under which PDVSA issued certain guarantees with regard to Corpoguanipa's obligations under the Hamaca Association Agreement. The terms of this guarantee provided in particular as follows: [83]

Original Spanish Version [84]	Official English Translation [85]
Se hace referencia al Convenio de Asociación [...] de esta misma fecha entre CORPOGUANIPA, S.A., [...] una filial cien por ciento propiedad del Fiador (como se define mas adelante), y:[Arco], [Phillips Venezuela] y [Texaco] [...] Con respecto a las obligaciones de [Corpoguanipa] de conformidad con el Convenio y los convenios en los formatos anexos al mismo, los cuales fueron	This document refers to the Association Agreement [...] of the same date between CORPOGUANIPA, S.A., [...], a wholly owned affiliate of the Guarantor, and [Arco], [Phillips Venezuela] and [Texaco] [...] With respect to the obligations of [Corpoguanipa] under the terms of the Agreement and the attachments to the Agreement, signed in

[79] Exh. R-25.
[80] *Translated by the Arbitral Tribunal from the Spanish "acuerda autorizar la celebración del Convenio de Asociación y sus Anexos".*
[81] Exh. C-3.
[82] Exh. C-3, Section 2.1.
[83] Exh. C-3, Exhibit M.
[84] Exh. C-3, Exhibit M.
[85] Exh. C-3, Exhibit M.

celebrados de conformidad con las "Condiciones" autorizadas por el Congreso de la República de Venezuela, según Acuerdo de fecha 24 de abril de 1997, publicado en la Gaceta Oficial de laRepública de Venezuela, No. 36,209 de fecha 20 de mayo de 1997, y específicamente autorizados por el Congreso de la República de Venezuela según Acuerdo de fecha II de junio de 1997, publicado en la Gaceta Oficial de la República de Venezuela N° 36,235, de fecha 26 de junio de 1997, [PDVSA], con el objeto de inducir a las Partes Extranjeras a celebrar el Convenio y los Convenios Relacionados, por medio de la presente conviene en 10 siguiente: [...] 2. El Fiador declara tener pleno conocimiento del contenido del Convenio y de cada uno de los Convenios Relacionados existentes, y por la presente Fianza declara estar conforme con los términos y condiciones de dichos convenios y todos los anexos a los mismos. 3. El Fiador, como fiador solidario y principal pagador, irrevocable e incondicionalmente por la presente Fianza garantiza a cada una de las Partes Extranjeras, el pago debido y puntual de todos los pagos que a [Corpoguanipa] le corresponda hacer conforme a los términos del Convenio y de los Convenios Relacionados, en cada caso, ya sea como pago de una obligación contractual, daños [...], indemnización o de otra forma, incluyendo sin limitación la cuotaparte de la [Corpoguanipa] de todos los Aportes al Proyecto. Si [Corpoguanipa] deja de efectuar cualquiera de dichos pagos en la forma y plazo especificados en, o determinados de acuerdo con, el Convenio o con el Convenio Relacionado correspondiente, o por cualquier otra circunstancia deje de efectuarlo en forma, pronta y oportuna, el Fiador efectuara dicho pago inmediatamente al serle solicitado por cualquier Parte Extranjera. EI Fiador expresamente conviene en efectuar dicho pago a

accordance with the "Conditions" authorized by the Congress of the Republic of Venezuela under the terms of the Resolution dated April 24, 1997, published in the Official Gazette of the Republic of Venezuela No. 36,209 on May 20, 1997, and specifically authorized by the Congress of the of the Republic of Venezuela in the Resolution dated June 11, 1997 and published in the Official Gazette of the Republic of Venezuela No. 36,235 on June 26, 1997, [PDVSA], for the purpose of inducing the Foreign Parties to sign the Agreement and the Related Agreements, hereby resolves: [...] 2. The Guarantor states that it is fully aware of the contents of the Agreement and each of the existing Related Agreements, and hereby declares that it consents to and accepts all of the terms and conditions of those agreements and all related attachments. 3. The Guarantor, as joint and several guarantor and irrevocable and primary obligor, hereby irrevocably and unconditionally guarantees to each of the Foreign Parties, full and prompt liquidation of all payments which the [Corpoguanipa] is responsible to make under the terms of the Agreement and the Related Agreements in each case, either as payment of a contractual obligation, damages [...], indemnification or other types of payments, including, but not limited to [Corpoguanipa]'s share of all Project Contributions. If [Corpoguanipa]fails to make any of the payments in the specified manner and within the specified time period, under the terms of or calculated in accordance with the Agreement or with the corresponding Related Agreement, or if [Corpoguanipa] for any other reason fails to make full and prompt payment, the Guarantor will make the payment immediately upon receipt of a request from any Foreign Party. The Guarantor expressly agrees to make the payment at the request of any Foreign Party acting individually, whether or not the other Foreign Parties are parties to the request. 4. As joint and several guarantor and primary obligor, the Guarantor furthermore irrevocably and unconditionally guarantees to each of the Foreign Parties full and prompt compliance with all of the

solicitud de cualquier Parte Extranjera actuando individualmente, independientemente de que las otras Partes Extranjeras se adhieran a tal solicitud. [...] 7. Las obligaciones del Fiador estarán limitadas a una garantía de: (i) el pago por [Corpoguanipa] de cualesquiera Aportes al Proyecto que a ésta le corresponda hacer y otros pagos que deban ser hechos exclusivamente por [Corpoguanipa] (y no conjuntamente por las Partes) conforme al Convenio (incluyendo [...]) y los Convenios Relacionados, (ii) el cumplimiento de [Corpoguanipa] de las obligaciones de acuerdo con el Convenio y los Convenios Relacionados que correspondan exclusivamente a [Corpoguanipa] (en contraposición alas obligaciones conjuntas de las Partes), (iii) el pago de la cuotaparte de [Corpoguanipa], según se determine conforme al Convenio o al Convenio Relacionado correspondiente, de todos los pagos que a las Partes les pueda corresponder hacer conjuntamente de acuerdo al Convenio o a cualquier Convenio Relacionado, (iv) el cumplimiento, y el pago de los daños resultantes del incumplimiento, por parte de [Corpoguanipa], de su cuotaparte de

obligations of [Corpoguanipa] under the terms of the Agreement and the Related Agreement. If [Corpoguanipa] fails to comply with any of the obligations in the manner and subject to the deadline required by the Agreement or the corresponding Related Agreement, the Guarantor will immediately comply with the obligation or ensure that the obligation is complied with upon receipt of a request from any Foreign Party. The Guarantor hereby expressly agrees to comply with the obligation at the request of any Foreign Party acting individually, whether or not the other Foreign Parties are parties to the request. [...] 7. The Guarantor's obligations will be limited to the following guarantees: (i) payment for [Corpoguanipa] of any Contributions to the Project it is obligated to make and other payments owed exclusively by [Corpoguanipa] (and not jointly by the Parties) under the terms of the Agreement (including [...]) and the Related Agreements, (ii) compliance by [Corpoguanipa] with its obligations under the terms of the Agreement and the corresponding Related Agreements which are the sole responsibility of [Corpoguanipa] (as opposed to joint obligations of the Parties), (iii) payment of [Corpoguanipa]'s share, as specified under the terms of the Agreement or the corresponding Related Agreement, of all payments which the Parties are obligated to make jointly under the terms of the

cualesquiera obligaciones conjuntas de las Partes de acuerdo con el Convenio o cualquier Convenio Relacionado, y (v) el pago de la cuotaparte de [Corpoguanipa], según se determine conforme al Convenio o al Convenio Relacionado correspondiente, de cualesquiera daños resultantes del incumplimiento por las Partes de obligaciones conjuntas de las Partes de acuerdo con el Convenio o cualquier Convenio Relacionado. [...]

Agreement or any Related Agreement, (iv) compliance with and payment of damages resulting from failure by [Corpoguanipa] to pay its share of any joint obligations of the Parties under the terms of the Agreement or any Related Agreement, and (v) payment of [Corpoguanipa]'s share, as specified by the Agreement or the corresponding Related Agreement, of any damages resulting from failure by the Parties to comply with the joint obligations of the Parties under the terms of the Agreement or any Related Agreement. [...]

67. In June 1999, Arco left the association and Phillips increased its shares to 40%, while TEXACO

increased its shares to 30%, the remaining 30% still being held by Corpoguanipa. [86]

68. In August 2000, the parties to the Hamaca Project set out to obtain bank financing and therefore prepared an 'Information Memorandum' that was supplied to potential lenders. [87] With regard to production curtailments, this Memorandum provided as follows:

> *"Production Curtailment. The Project Participants may be required to curtail the production of Extra Heavy Crude Oil as a result of government measures adopted in compliance with Venezuelan international commitments. If such a curtailment is required, the Project Participants' percentage curtailment shall not exceed the percentage level of production curtailment required of oil companies operating in Venezuela taken as a whole (determined on the basis of available production capacity), including PDVSA and its affiliates. [...] To recoup the loss to a Project Participant resulting from a production curtailment, the Project Participants are required to take such actions as the Board may deem appropriate, including, without limitation, accelerating production in the field, processing crudes in other associations' upgraders or selling blended crudes or lower gravity crudes. If such loss has not been recouped prior to the stated term of the Association Agreement, such term is required to be extended by up to five years in order to allow production for the same volume that the Project Participants failed to produce as a result of the curtailment."* [88]

69. On 22 June 2001, the financing of the project closed. In the end, the Project incurred approximately USD 1.1 billion in project finance debt. [89]

70. In the fall of 2001, early production began. [90]

71. In October 2004, the Hamaca Project began commercial syncrude production, utilizing the recently completed upgrader. Its first commercial shipment took place on 20 October 2004. [91]

3. Background and Context of the Government Curtailments imposed from November 2006 to May 2007

72. In December 1998, Hugo Chávez was elected President of the Bolivarian Republic of Venezuela.

73. In November 2001, Venezuela enacted a new Decree No. 1,510 entitled 'Decree with Force of Organic Law of Hydrocarbons' (*"Decreto con Fuerza de Ley Orgánica de Hidrocarburos"*) **("2001 Hydrocarbons Law"),** under which the only means of private participation in the oil industry, other than as pure service provider, was as minority shareholders in 'mixed companies' formed with the approval of the National Assembly. [92] This law, which took effect on I January 2002, did not apply to

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[86] Hamaca RfA para 19 (Exh. C-7).
[87] Exh. C-53.
[88] Exh. C-53, pp. VII-8-9.
[89] CL SoC para 52, Exh. C-53; CL Reply, para 8(p).
[90] Exh. C- 54.
[91] CL SoC para 54, Exh. C-55 p. 9.

the associations that had been entered into under the previous legal framework, including the Petrozuata and the Hamaca Projects. [93]

74. On 30 August 2002,Conocoand Phillips merged forming the new ConocoPhillips Company (see para 2).

75. In the year 2004, following a series of events, the Venezuelan Government decided to implement more forcefully its policy of'Full Oil Sovereignty'. [94]

76. In August 2006, the Venezuelan Government issued 'Non-Binding Term Sheets' concerning the migration of the existing Petrozuata and Hamaca structures into so-called '*empresas mixtas'* (mixed companies majority-owned by PDVSA). [95]

77. On 11 September 2006, the OPEC Conference held its 142nd Meeting. At that meeting, the Venezuelan Government announced that it would reduce voluntarily its total production level by 50,000 BPD. [96]

78. On 9 October 2006, Mr. Rafael Ramírez, the Energy Minister and simultaneously the President of PDVSA, sent two letters of identical content to Mr. Rubén Figuera, in his capacity as President of both Petrolera Zuata and Petrolera Ameriven, informing him as follows: [97]

Original Spanish Version [98]	Claimants' Translation [99]
Ref.: Recorte de Producción Estimados Señores, Nos dirigimos a ustedes, a fin de comunicarles que este Despacho en atención a la política trazada por el Ejecutivo Nacional de ejercer la Plena Soberanía sobre sus recursos petroleros, dentro la cual se inscribe la obligación de velar y resguardar el valor, aprovechamiento y conservación de los mismos, y en uso de la facultad contenida en el artículo 8 de la Ley Orgánica de Hidrocarburos, ha dispuesto reducir en 50,000 barriles diarios la producción de hidrocarburos	Re: Production Cutback Dear sir, This will inform you that pursuant to the policy indicated by the Office of the President to exercise full sovereignty over petroleum resources, [...] and in accordance with the authority provided under Article 8 of the [2001 Hydrocarbons Law], such Office has ordered the reduction of 50,000 barrels per day in the production of natural hydrocarbons within the country. The 50,000 barrels are 1.6% of the total national production for the months of
naturales provenientes de su explotación en el territorio nacional. Esos 50,000 barriles representan el 1.6% del total de la producción nacional del mes de septiembre de 2006. En tal	September 2006. Said reduction is 1.6% of the daily average measured

[92] Exh. RL-5.
[93] RSP SoD para 6.
[94] CL SoC para 57, Exh. C-58.
[95] CL SoC para 58, Exh. C-59 to C-61.
[96] Exh- C-67, New York Times news report, p. 2.
[97] Exh. C-68 & 69.
[98] Exh. C-68 & 69.
[99] Exh. C-68 & 69.

sentido, dicha reducción se corresponde a un 1.6% sobre el promedio diario de la producción fiscalizada proveniente de todas las actividades de explotación de los hidrocarburos naturales realizadas por esa empresa durante el mes de septiembre 2006. Dicha medida, entrará en vigencia a partir del día 5 de octubre de 2006.	production from all production of natural hydrocarbons carried out by the company during September 2006. Said measure will enter into effect on October 5, 2006. [...]

79. On 19-20 October 2006, the OPEC Conference held Consultative Meetings at which it took decisions, according to which Venezuela was to implement further OPEC Curtailments. [100]

80. On 27 October 2006, Mr. Rafael Ramirez, the Energy Minister and simultaneously the President of PDVSA, sent two letters with identical content to Mr. Rubén Figuera, President of both Petrolera Zuata and Petrolera Ameriven, informing him as follows:

Original Spanish Version [101]	Claimants' Translation [102]
Ref: Recorte de Producción mes de noviembre 2006 Estimado señor, Nos dirigimos a usted a fin de comunicarles que este Despacho, en atención a la política trazada por el Ejecutivo Nacional de ejercer la plena soberanía sobre sus recursos petroleros, dentro de la cual se inscribe la obligación de velar y resguardar el valor, aprovechamiento y conservación de los mismos, y en uso de la facultad contenida en el artículo 8 de la Ley Orgánica de Hidrocarburos, ha dispuesto reducir en 138,000 barriles diarios la producción de hidrocarburos naturales provenientes de su explotación en el territorio nacional, tomando como referencia el promedio de la producción fiscalizada proveniente de las actividades de explotación de los hidrocarburos naturales durante el mes de septiembre de 2006. En tal sentido, cumplo con informarle que a [Ameriven / Petrolera Zuata] le corresponde una reducción de 17,000 barriles diarios de su producción total para el mes de noviembre de 2006. Dicha medida entrara en vigencia a partir del día 1 de noviembre de 2006. La Gerencia del Terminal de Almacenamiento y Embarque Jose velará por el estricto cumplimiento de esta medida. [...]	Re: Production Cutback, November 2006 Dear sir, This is to inform you that pursuant to the policy indicated by the Office of the President to exercise full sovereignty over petroleum resources, [...] and in accordance with the authority provided under Article 8 of the [2001 Hydrocarbons Law], such Office has ordered the reduction of 138,000 barrels per day in the production of natural hydrocarbons within the country, based on the average measured production from production activities of natural hydrocarbons in the month of September 2006. Please be informed that [Ameriven / Petrolera Zuata]'s reduction will be 17,000 barrels per day of total production for November, 2006. This measure will take effect November 1, 2006. Management of the Jose Storage and Shipping Terminal will monitor the strict compliance of this measure. [...]

[100] CL SoC para 62, Exh. C-71 (OPEC Annual Report); CL Reply para 59.

[101] Exh. C-72 & 73.

[102] Exh. C-72 & 73.

81. On 30 October 2006,Mr. Roy Lyons, as President of ConocoPhillips Latin America and Director of Petrolera Zuata and Petrolera Ameriven, sent protest letters to Mr. Eulogio Del Pino, President of CVP and Director of Corpoguanipa and of PDVSA Petróleo, and to Mr. Rafael Ramírez, the Energy Minister and President of PDVSA, concerning the effects of the October and November curtailments on both the Petrozuata and the Hamaca Project.[103]

(a) In the letters concerning the Petrozuata Project, ConocoPhillips underlined that the production cutbacks "(i) *would prevent full operation of the Petrozuata's upgrader facilities (Upgrader); and (ii) would cause a fall in Petrozuata's crude oil production to under 120 MBPCD",* and that *"* [t]*herefore, in accordance with the provisions of our Agreement* [..]*., PDVSA Petróleo S.A. and CVP (successors of Maraven S.A.) are responsible for full compliance with the cutback, with their own production".*[104]

(b) In the letters concerning the Hamaca Project, ConocoPhillips underlined that the reduction in production announced by OPEC would not be effective until 1 November 2006 and that the reductions imposed by Venezuela in October where thus *"advance reduction in production made unilaterally by Venezuela"* and therefore under the responsibility of Corpoguanipa and/or the pertinent PDVSA affiliate. With regard to the November curtailments, the letters stressed that the production cutbacks had not been required from all the oil companies operating in Venezuela, but only from those operating in the Belt, and was therefore inconsistent with Section 13.1 of the Hamaca Association Agreement. ConocoPhillips stated that "[a]s *a consequence, any cutback in Hamaca's production will be the exclusive responsibility of Corpoguanipa S.A. and/or the pertinent PDVSA affiliate".*[105]

According to Claimants, for the Petrozuata Project, this OPEC Curtailment amounted to a monthly loss of 510,000 barrels of extra-heavy crude, or 438,036 barrels of syncrude, for the month of November.[106] For the Hamaca Project, the Curtailments allegedly resulted in a monthly loss of 510,000 barrels of extra-heavy crude or (or 17,000 BPD), equivalent to 463,865 barrels of snycrude, for the month of November.[107]

82. On 20 November 2006, Mr. Bernard Mommer, Vice Minister of Hydrocarbons, sent two letters - one relating to each Project - to Mr. Roy Lyons, President of ConocoPhillips Latin America and Director of Petrolera Zuata and Petrolera Ameriven, responding to the latter's letter of 30 October 2006 (see above para 81) and stating as follows:

Original Spanish Version[108]	Claimants' Translation[109]

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[103] CL SoC para 63, Exh. C-74-79.

[104] *Claimants' translation of impediría el funcionamiento pleno de la instalaciones de mejoramiento (Mejorador) de Petrozuata; (ii) causaría la caída de la producción de petróleo crudo de Petrozuata por debajo de 120 MBPCD. En consecuencia, de acuerdo a lo establecido en nuestro Convenio, [...] PDVSA Petróleo S.A. y CVP (como sucesores de Maraven S.A.) son responsables de cumplir totalmente tal recorte, con su propia producción". See Exh. C-74,-75.*

[105] Claimants' translation of "[c]*omo consecuencia de lo anterior, cualquier recorte en la producción de Hamaca debería ser responsabilidad y, por lo tanto, correr por cuenta de Corpoguanipa S.A. y/o la Filial de PDVSA que corresponda".* See Exh. C-76-79.

[106] SoC para 64, LECG Damages Assessment Report, Table 4, Lyons WS fn. 1.

[107] CoS para 66, LECG Damages Assessment Report, Table 7, Lyons WS fn. 1.

[108] Exh. C-82 & 83.

[109] Exh. C-82 & 83.

[...] Por medio de la presente le ratifico que, en razón de los fundamentos que detallé en la reunión que tuvimos con los socios de Ameriven llevada a cabo el pasado 1ro, de noviembre de 2006, este Ministerio no está de acuerdo y no acepta lo expresado en la referida carta. [...]	[...] I hereby confirm that based on the rationale that I provided in the meeting we had with the Petrozuata partners on November 1, 2006, this Ministry does not agree with or accept the statements made in the referenced letter. [...]

83. In mid-December 2006, with effect as of 1 February 2007, OPEC announced an additional overall cut of 500,000 BPD, out of which 57,000 BPD represented Venezuela's portion. [110]

84. In January 2007, Mr. Rafael Ramírez, the Energy Minister (and also the President of PDVSA), announced the Government's intention to go forward and implement the nationalization of the Orinoco associations. [111]

85. On 8 January 2007, Mr. Rafael Ramírez, the Energy Minister and PDVSA President, sent similar letters to Mr. Rubén Figuera, President of Petrolera Zuata and Petrolera Ameriven,one for each of the Petrozuata and Hamaca Projects, informing him of further 'Reduction in Production' *("Recorte de Producción")* effective as of January 2007 and which were to *"remain in effect until new instructions are issued".* [112]

By these letters, Petrozuata was instructed that its exports were not to exceed 2.1 million barrels of syncrude for the month of January 2007. According to Claimants, in terms of daily exports, this equated to a total loss of 1,117,009 barrels of syncrude for the month of January. [113] For the Hamaca Project, exports for January 2007 were capped at 3.8 million barrels, translating according to Claimants into a total loss of 1,116,099 barrels of syncrude for the month of January. [114]

86. On 10 January 2007, Mr. Roy Lyons, as President of ConocoPhillips Latin America and Director of Petrolera Zuata and Petrolera Ameriven, sent protest letters to Mr. Rafael Ramírez, the Energy Minister and PDVSA President, and to Mr. Eulogio Del Pino, President of CVP and Director of Corpoguanipa and of PDVSA Petróleo. In these letters Mr. Lyons underlined the environmental, industrial safety and operational risks relating to the cuts and stated ConocoPhillips' position:

(a) In the letter regarding the Petrozuata Project, Mr. Lyons stated that *"according to the applicable agreement dated November 10, 1995, PDVSA S.A. and CVP* [...] *shall be responsible to comply in full for such reduction with its own production"* and further challenged the decisions to cut production and reserved all of ConocoPhillips's rights relating thereto. [115]

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[110] Exh. C-71, at pp 19, 23 and 59.

[111] Exh. C-62.

[112] Claimants' translation of "[...]y *hasta nuevo aviso".* See Exh C-89 and 90.

[113] CL SoC para 72, LECG Damages Assessment Report, Table 4, Exh. C-87.

[114] CL SoC para 73, LECG Damages Assessment Report, Table 7, Exh. C-87.

[115] Claimants' translation of "[...] *y de acuerdo a lo establecido en los acuerdos relevantes de fecha 10 de Noviembre de 1995, PDVSA Petroleo S.A: y CVP (como sucesores de Maraven S.A.) son responsables de cumplir totalmente con tal recorte con su propia producción.* See Exh. C-92.

(b) In the letter regarding the Hamaca Project, Mr. Lyons underlined the fact that the production cuts did not seem to apply to all oil companies operating in Venezuela and were therefore inconsistent with Section 13.1 of the Hamaca Association Agreement. Mr Lyons further invited *""other participants of the Hamaca Project to discuss at the next Board of Directors Meeting of Petrolera Hamaca the actions that should be taken to mitigate the effects of cutbacks"* in accordance with Section 13.2 of the Hamaca Association Agreement. [116]

87. On 11 January 2007, Mr. Keli Hand (a ConocoPhillips representative on the Petrolera Ameriven Operating Committee) wrote to the Operating Committee of the Hamaca Project stressing the operational risks related to the curtailment and the operational options to limit such risks. [117]

88. On 1 February 2007, the Ministry notified Mr. Manuel Medina (then President of Petrolera Zuata) and Mr. Rubén Figuera (President of Petrolera Ameriven) that OPEC Curtailments would continue to affect the Petrozuata and Hamaca Projects for the month of February, to the extent of 25,600 barrels per day *""of its upgraded crude oil for export"* regarding Petrozuata and a *""reduction* [...] *of refined crude to be exported"* of 30,800 barrels per day for Hamaca. [118]

89. On 8 February 2007, Mr. Roy Lyons, as President of ConocoPhillips Latin America and Director of Petrolera Zuata and Petrolera Ameriven, sent again protest letters to Mr. Rafael Ramírez, the Energy Minister and PDVSA President, and to Mr. Eulogio Del Pino, President of CVP and Director of Corpoguanipa and of PDVSA Petróleo, further highlighting the risks of thereto-relating production shutdowns and repeating similar claims to those raised in his previous letters. [119]

90. On 14 February 2007, Mr. Asdrubal Chavez, the Executive Director of Commerce & Supply of PDVSA, sent two letters to Mr. Manuel Medina, then President of Petrolera Zuata, and to Mr. Rubén Figuera, President of Petrolera Ameriven detailing how the February 2007 OPEC Curtailments had to be implemented:

- For Petrozuata, the exports would be capped at 1,864,532 barrels of syncrude (or approx. 66,590 BPD). According to Claimants, this resulted in a total loss of 1,041,154 barrels of syncrude for the month of February 2007; [120]

- For Hamaca, the exports would be capped at 3,467,533 barrels of syncrude (or approx. 123,840 BPD). According to Claimants, this resulted in a total loss of 975,410 barrels of syncrude for February 2007. [121]

91. On 26 February 2007, Venezuela promulgated the Decree 5,200, entitled 'Decree with Rank, Value and Force of Law of Migration to Mixed Companies of the Association Agreements of the Orinoco

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[116] Claimants' translation of "[...] *exhortamos a los otros participantes del Proyecto Hamaca a discutir en la próxima reunión de la Junta Directiva de Petrolera Hamaca a discutir las acciones que deberían ser planificadas con miras a mitigar los efectos de los recortes* [...] Exh. C-93.

[117] Exh.C-94.

[118] Exh. C-96 and 97.

[119] Exh. C-100-101.

[120] CL SoC para 79, Exh. C-98, LECG Damages Assessment Report, Table 4.

[121] CL SoC para 79, Exh. C-99, LECG Damages Assessment Report, Table 7.

Oil Belt, as well as the Risk and Profit Sharing Exploration Agreements' (*"Decreto con Rango, Valor y Fuerza de Ley de Migración a Empresas Mixtas de los Convenios de Asociación de la Faja Petrolífera del Orinoco, así como de los Convenios de Exploración a Riesgo y Ganancias Compartidas')* (the **"Nationalization Decree 5,200").** requiring all associations operating outside the framework of the 2001 Hydrocarbons Law, including the Petrozuata and Hamaca Projects, to migrate to the *empresas mixtas* structure with a state entity owning at least 60% of the shares.[122] According to Article 3 of the Nationalization Decree 5,200, the operatorship of the Projects would have to be transferred to a PDVSA affiliate by 30 April 2007 and agreements regarding the transition to *empresas mixtas* would need to be reached with Venezuela by 25 June 2007.

The Parties widely disagree with regard to the effects that the enactment of this law and further implementation regulations had on their rights and obligation as deriving from the Association Agreements (see below para 173-176).

92. On 5 March 2007, Mr. Rafael Ramírez, the Energy Minister and PDVSA President,wrote to Mr. Manuel Medina, President of Petrolera Zuata, and Mr. Ruben Figuera, President of Hamaca, notifying them of OPEC Curtailments for the month of March 2007.[123]

- For Petrozuata, the exports would be capped at 2 million barrels for the month. According to Claimants, this resulted in a total loss of 1,152,719 barrels of syncrude for March 2007;[124]

- For Hamaca, the exports would be capped at 3.8 million barrels. According to Claimants, this resulted in a total loss of 1,093,357 barrels of syncrude for March 2007.[125]

93. On 8 March 2007, Mr. Roy Lyons, as President of ConocoPhillips Latin America and Director of Petrolera Zuata and Petrolera Ameriven, sent again protest letters to Mr. Rafael Ramirez, the Energy Minister and PDVSA President, and to Mr. Eulogio Del Pino, President of CVP and Director of Corpoguanipa and of PDVSA Petróleo,[126]allegedly without response.

94. On 16 April 2007, Mr. Ronald José Sanchez of PDVSA sent an email to Mr.Manuel Medina, President of Petrolera Zuata, informing him that an OPEC Curtailment would be in effect also for April 2007, capping the Project's syncrude exports at 1,997,713 barrels (or daily exports of approx. 66,590 BPD).[127] According to Claimant, this curtailment resulted in losses of 1,115,522 barrels of syncrude for April 2007.[128]

No such letter was addressed to Petrolera Ameriven. However, based on the wording of the letter regarding the January 2007 Curtailments which indicated that curtailments would apply *"until new instructions are issued"* (see above para 85), Petrolera Ameriven assumed that curtailments would continue to apply.[129] According to Claimants, this resulted in a total monthly loss of 1,054,336 barrels

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[122] Exh. C-63; CL SoC para 58 and RSP SoD para 7.

[123] Exh. 104-105.

[124] CL SoC para 83, LECG Damages Assessment Report, Table 4.

[125] CL SoC para 83, LECG Damages Assessment Report, Table 7.

[126] Exh.C-106-107.

[127] Exh.C-108.

[128] CL SoC para 85, LECG Damages Assessment Report, Table 4.

of syncrude for the Hamaca Project for the month of April. [130]

95. On 18 April 2007, Mr. Roy Lyons, as President of ConocoPhillips Latin America and Director of Petrolera Zuata and Petrolera Ameriven, protested against the April 2007 OPEC Curtailments by letter addressed to Mr. Rafael Ramírez, the Energy Minister and PDVSA President, and Mr. Eulogio Del Pino, President of CVP and Director of Corpoguanipa and of PDVSA Petróleo. [131]

4. Escalation of the Dispute

96. On 1 May 2007, PDVSA took over operational control of the Petrozuata and Hamaca Projects. [132]

97. Until 15 May 2007, the curtailments remained into effect and were lifted as of 16 May 2007. [133]

According to Claimant, this last curtailment was imposed on the same basis as the April 2007 OPEC Curtailments, and led to a total monthly loss of 557,761 barrels for the Petrozuata Project and 547,807 barrels for the Hamaca Project. [134]

98. On 26 June 2007, the deadline established in the Nationalization Decree 5,200 (see above para 91) for private companies to reach agreement with Venezuela with respect to the transition to *empresas mixtas* expired. Since no agreement had been reached by then between Claimants and Respondent, the Petrozuata and Hamaca projects passed under legal control of PDVSA with an ownership of 100% for the Petrozuata Project, and 70% for the Hamaca Project (the other 30% remaining with Chevron). [135]

99. On 8 October 2007, the 'Law on the Effects of the Process of Migration into Mixed Companies of the Association Agreements of the Orinoco Belt, as well as the Exploration at Risk and Profit Sharing Agreements' *("Ley Sobre los Efectos del Proceso de Migración a Empresas Mixtas de los Convenios de Asociación de la Faja Petrolífera del Orinoco, así como de los Convenios de Exploración a Riesgo y Ganancias Compartidas")* (hereinafter the **"Migration Law")** was published in the Venezuelan Official Gazette. [136] This law provided for the extinction of all associations mentioned in Article 1 of the Nationalization Law 1975 and which would not have migrated to *empresas mixtas* by 25 June 2007 (see above para 91).

100. On 9 January 2008, the 'Decree 5,804, by which the right to carry out specified primary exploration activities is transferred to the company PetroPiar, S.A.' *("Decreto N° 5,804, mediante el cual se transfiere a la empresa PetroPiar, S.A., el derecho a desarrollar actividades primarias de*

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[129] Exh. C-l 10.

[130] CL SoC para 83, LECG Damages Assessment Report, Table 7.

[131] Exh.C-111.

[132] CL Reply para 74; RSP Rejoinder para 123.

[133] Cl SoC para 89, Exh. 95, 112.

[134] CL SoC para 83, LECG Damages Assessment Report, Tables 4 & 7.

[135] CL SoC para 58, Exh. C-64; RSP SoD para 7.

[136] Exh. C-65.

exploración que en él se especifican') was published in the Official Gazette. [137]

D. CHRONOLGY OF THE ARBITRATION PROCEEDINGS

1. Opening of the Procedure

101. On 30 December 2009, Claimant 1 filed its **'Request for Arbitration'** ("the Request 1") according to the ICC Rules of Arbitration in force as from 1 January 1998 (the "ICC Rules"), which was received by the Secretariat of the ICC International Court of Arbitration (the "Secretariat") on 30 December 2009. The case was registered as ICC Case No. 16848/JRF. In its Request for Arbitration, Claimant nominated Dr. Horacio A. Grigera Naónas arbitrator. [138]

In the Request l, [139] Claimant 1 sought the following relief:

"(a) An award declaring that the application of the Disproportionate Cuts imposed on the Hamaca Project between October 2006 and April 2007 resulted in breaches of the Hamaca Association Agreement causing economic harm to Phillips Venezuela;

(b) An award declaring that by the terms of the PDVSA Guarantee, PDVSA is liable to Phillips Venezuela for the totality of the damages caused by the breaches in (a) above;

(c) Monetary damages in an amount to be quantified;

(d) Pre-award compound interest, at a commercially reasonable rate, between the lime of the latest damages update and the time of the award;

(e) Post-award compound interest, at a commercially reasonable rate or such other rate determined by the applicable law, until the date the compensation is actually paid;

(f) Protection for double taxation;

(g) The costs of the arbitration and all of Phillips Venezuela's reasonable legal fees, expenses and other costs incurred in connection with the arbitration and any related litigation, including all internal costs; and

(h) Such additional or other relief as may be just."

Claimant l further reserved its right to amend or supplement its Request or to make additional claims or revisions to its claims.

102. On the same day, Claimant 2 filed its **'Request for Arbitration'** ("Request 2") according to the ICC Rules of Arbitration in force as from 1 January 1998, which was received by the Secretariat on 4 January 2010. The case was registered as ICC Case No. 16849/JRF. In its Request, Claimant 2 also

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[137] Exh. C-66 RL-54.

[138] Hamaca RfA, para 15.

[139] Hamaca RfA, para 55.

nominated Dr. Horacio A. Grigera Naón as arbitrator.[140]

In the Request 2,[141] Claimant 2 sought the following relief:

"(a) An award declaring that the application of the production restrictions and export curtailments imposed on the Petrozuata Project between October 2006 and April 2007 resulted in breaches of the Petrozuata Side Letter and the Petrozuata Association Agreement causing economic harm to CPZ;

(b) An award declaring that by the terms of the PDVSA Guaranty. PDVSA is liable to CPZ for the totality of the damages caused by the breaches in (a) above;

(c) Monetary damages in an amount to be quantified;

(d) Pre-award compound interest, at a commercially reasonable rate, between the time of the latest damages update and the time of the award;

(e) Post-award compound interest, at a commercially reasonable rate or such other rate determined by the applicable law, until the date the compensation is actually paid;

(f) Protection for double taxation;

(g) The costs of the arbitration and all of CPZ's reasonable legal fees, expenses and other costs incurred in connection with the arbitration and any related litigation, including all internal costs; and

(h) Such additional or other relief as may be just."

Claimant 2 further reserved its right to amend or supplement its Request for Arbitration or to make additional claims or revisions to its claims.

103. By letters of 7 and 8 January 2010, the Secretariat notified Respondent of Claimants' Requests for Arbitration.

104. On 15 April 2010, Respondent filed **'Respondent's Answer to the Request for Arbitration'** in the ICC Case No. 16848/JRF and in the ICC Case No. 16849/JRF. Therein, Respondent nominated Prof. Ahmed Sadek El-Kosheri as arbitrator,[142] and sought the following relief:[143]

" a. A dismissal of all claims alleged in the Request for Arbitration;

b. The costs of the Arbitration and all of Respondent's legal fees, expenses and other costs incurred in connection with the Arbitration, including all internal costs; and

c. Such other and further relief as the Tribunal deems just and proper. "

105. At its session of 14 May 2010, the Secretary General of the ICC Court confirmed ***Prof. Horacio Alberto***

[140] Petrozuata RfA, para 14.
[141] Petrozuata RfA, para 50.
[142] RSP Hamaca Answer, para 6; RSP Petrozuata Answer, para 9.
[143] RSP Hamaca Answer, para 7; RSP Petrozuata Answer, para 8.

Grigera Naón as Co-Arbitrator upon Claimants' nomination in both arbitrations pursuant to Article 9(1) of the ICC Rules.

106. At its session of 14 May 2010, the Secretary General of the ICC Court confirmed ***Prof. Ahmed Sadek El-Kosheri*** as Co-Arbitrator upon Respondent's nomination in both arbitrations pursuant to Article 9(2) of the ICC Rules.

107. At its session of 1 July 2010, the Secretary General of the ICC Court confirmed ***Prof. Pierre Tercier*** as Chairperson of the Arbitral Tribunal in both arbitrations upon the joint nomination of the Co-Arbitrators pursuant to Article 9(2) of the ICC Rules.

108. By letters of 1 July 2010, the Secretariat transmitted the file of both cases to the Arbitrators.

109. On 17 August 2010, the ICC International Court for Arbitration (hereinafter the "ICC Court") extended the time limit for establishing the Terms of Reference in both cases until 31 October 2010.

110. On 30 September 2010, the Arbitral Tribunal and the Parties held a ***conference call,*** concerning the conduct of the arbitration proceedings, during which the Parties agreed on the adoption of the Terms of Reference and discussed the content of Procedural Order No. 1. The Parties further agreed to consolidate the ICC Case No. 16848/RJF and 16849/JRF into one single proceeding, and they undertook to prepare and send a joint request for consolidation to the ICC Secretariat.

111. On 1 October 2010, the Parties submitted their joint request for consolidation to the ICC Secretariat, which acknowledged receipt thereof on 6 October 2010 and assigned a new case reference to the case: 16848/JRF (C-16849/JRF).

112. On 26 October 2010, the Parties signed the ***Terms of Reference*** by way of correspondence and the Arbitral Tribunal issued ***Procedural Order No. 1*** (hereinafter "PO1"). The Terms of Reference were communicated to the Court at its session of 9 December 2010.

2. The Exchange of Briefs

113. On 10 December 2010, Claimant filed its **'Statement of Claim',** in which it sought for the following relief: [144]

"a. Declaring that the OPEC Curtailments imposed on the Petrozuata Project between November 2006 and May 2007 resulted in breaches of the Petrozuata Side Letter causing economic harm to CPZ;

b. Declaring that by the terms of the Petrozuata Guarantee, PDVSA is liable to CPZ for the totality of the damages caused by the breaches described in (a) above;

c. Declaring that the OPEC Curtailments imposed on the Hamaca Project between November 2006 and May 2007 resulted in breaches of the Hamaca Association Agreement causing economic harm

[144] CL SoC, para 137.

to Phillips Venezuela;

d. Declaring that by the terms of the Hamaca Guarantee, PDVSA is liable to Phillips Venezuela for the totality of the damages caused by the breaches described in (c) above;

e Monetary damages provisionally quantified at US$149.42 million;

f. Pre-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, between the time of the latest damages update and the time of the award;

g. Post-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, until the date the compensation is paid;

h. Appropriate protection from double taxation;

i. The costs of the arbitration and all of the Claimants' reasonable legal fees, expenses and other costs incurred in connection with the arbitration and any related litigation, including all internal costs; and

j. Such additional or other relief as may be just and appropriate under the law."

114. On 13 January 2011, after consultation with the Parties, the Arbitral Tribunal confirmed the appointment of Dr. Clarisse von Wunschheim as Administrative Secretary of the Arbitral Tribunal. This appointment was further acknowledged by the Secretariat on 20 January 2011.

115. On 15 August 2011, Respondent made a ***Request for Production of Documents*** to Claimants by providing to Claimants' counsel a 'Redfern Schedule' in accordance with Sections 4.3 and 4.4 of POl.

116. On 23 September 2011, after due completion by the Parties of the Redfern Schedule, the Tribunal issued ***Procedural Order No. 2*** (hereinafter "PO2") in which it decided on the document production request.

117. On 10 May 2011, Respondent filed its **'Statement of Defense',** in which it sought for the following relief: [145]

"For the reasons set forth above, all claims of CPZ and Phillips Venezuela should be dismissed and Claimants should be required to pay all costs of these proceedings."

118. On 10 August 2011, Claimant filed its Statement of **'Reply',** in which it sought for the following relief: [146]

"a. Declaring that the OPEC Curtailments imposed on the Petrozuata Project between November 2006 and May 2007 resulted in breaches of the Petrozuata Side Letter causing economic harm to

[145] RSP SoD, para 155.

[146] CL Reply, para 243.

CPZ;

b. Declaring that by the terms of the Petrozuata Guarantee, PDVSA is liable to CPZ for the totality of the damages caused by the breaches described in (a) above;

c. Declaring that the OPEC Curtailments imposed on the Hamaca Project between November 2006 and May 2007 resulted in breaches of the Hamaca Association Agreement causing economic harm to Phillips Venezuela;

d. Declaring that by the terms of the Hamaca Guarantee, PDVSA is liable to Phillips Venezuela for the totality of the damages caused by the breaches described in (c) above;

e. Awarding to the Claimants monetary damages provisionally quantified at US$158.38 million;

f. Awarding to the Claimants pre-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, between the time of the latest damages update and the time of the award,

g. Awarding to the Claimants post-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, until the date the compensation is paid;

h. Awarding to the Claimants appropriate protection from double taxation;

i. Awarding to the Claimants the costs of the arbitration and all of the Claimants' reasonable legal fees, expenses and other costs incurred in connection with the arbitration and any related litigation, including all internal costs; and

j. Awarding to the Claimants such additional or other relief as may be just and appropriate under the law."

119. On 10 November 2011, Respondent submitted its **'Rejoinder',** in which it sought for the following relief: [147]

"For the reasons set forth above, all claims of CPZ and Phillips Venezuela should be dismissed and Claimants should be required to pay all costs of these proceedings."

3. The Hearings

120. From 10 to 13 January 2012, a Hearing was held in New York, which was attended by the following party representatives:

(i) On behalf of Claimants:

[147] RSP Rejoinder, para 141.

- As Party representative: Laura Robertson, Kelli Jones, Fernando Avila, Angie McGinnis.

- As Counsel: Brian King, Elisabeth Eljuri, Alexander A. Yanos, Giorgio Mandelli,Becca Everhardt, Ramon J. Alvins, Daniela Jaimes, Luis Andueza, Ivan Guillot Boyer, Cassia Cheung, Matthew Simmons.

- As witnesses/experts: Albert Roy Lyons, Henry J. Wageningen, Manuel A. Abdala.

- Others: Carla Chavich (Compass Lexecon), Santiago Dellepiane (Compass Lexecon).

(ii) On behalf of Respondent:

- As Party representative: Armando Giraud, Moneeliec Peña, David Diaz.

- As Counsel: George Kahale, Benard Preziosi, Valentina Morales, Katiria Calderon, Lilliana Dealbert, Jorge Alcantar, Elizabeth O'Connell, Gloria Diaz-Busan, Ricardo J. Diez, Kabir Duggal, Dori Yoldi, F. Tupa,

- As witnesses/experts: Vladimir Brailovsky, Enrique Urdañeta Fontivéras.

The Hearing was organized as follows:

(i) On 10 January 2012, Claimants' and Respondent' Counsel held their 'Opening Statements', followed by the witness examination of Mr. Henry J. Wageningen.

(ii) On 11 January 2012, the day started with the witness examination of Mr. Albert Roy Lyons, followed by the examination of the Parties' experts Prof. Enrique Urdañeta Fontiveros, Dr. Manuel Abdala and Mr. Vladimir Brailovsky. At the end of the day, the hearing was adjourned until 13 January 2012.

(iii) On 13 January 2012, Claimants' and Respondent' Counsel held their 'Closing Statements':

- During the Closing Statements of Claimants' Counsel, Claimants updated the amount of damages claimed in their Reply of 10 August 2011 (see above para 118) claiming for a total of USD 165,190,000 as of 31 December 2011, and reserved their right to further update this amount as of the time of rendering of the award. [148]

- During the Closing Statements of Respondent's Counsel, Respondent confirmed its previous conclusions, i.e. that the Arbitral Tribunal reject all of Claimants' claims and asses all costs of these proceedings against Claimants. [149]

Following the Closing Statements, the Arbitral Tribunal and the Parties jointly discussed the next step of the proceedings. After listening to both Parties' position and after a short deliberation, the Arbitral Tribunal decided as follows:

- Itconcluded that Post-Hearing Briefs were not necessary, although the Arbitral Tribunal reserved the right to address further questions in writing to the Parties if it considered it necessary in view

[148] See CL Closing Statements, p. 66; see also Transcript p. 660 l.22 - p. 66l l. 25.

[149] See Transcripts p. 763 l.17-13.

of the progress of its deliberations. [150]

- It considered that the production of the ICC award in the Exxon Mobil case would be opportune and therefore encouraged its production, subject however to Respondent's prior consent and to Claimants' commitment not to use this award outside of this arbitration. [151]

- It ruled that the next step would consist in the finalization of the transcript, after which the Arbitral Tribunal would in due time invite the Parties to submit their Statement of Costs and then close the proceedings. [152]

121. On 17 January 2012, Respondent sent a copy of the ICC Award rendered in the Exxon Mobil case (ICC Case No. 15416/JRF/CA), first in electronic format and followed by a hard copy sent by mail.

122. On 15 February 2012, after collecting the Parties' joint comments and suggestions for modification, the final version of the hearing transcripts was sent to the Parties by the Court Reporter.

4. The Decision of the Arbitral Tribunal

123. As agreed during the Hearing, the Arbitral Tribunal considered the file to be sufficiently complete and the Parties to have had sufficient opportunity to present their case so that the submission of Post-Hearing Briefs was not considered necessary (see above para 120).

124. On 4 July 2012, the Arbitral Tribunal formally closed the procedure according to Article 22(1) of the ICC Rules and invited the Parties to liaise in order to agree on the format and modalities of submission of the Statements of Costs.

125. On 11 July 2012, the Arbitral Tribunal approved the agreement reached between the Parties to submit the Statements of Costs by 23 July 2012.

126. On 23 July 2012, the Parties submitted their Statement of Costs:

(i) Claimants' cost amount to a total of USD 5,698,290.65;

(ii) Respondent's cost amount to a total of USD 4,691,217.98.

127. On 31 August 2012, and pursuant to Article 27 of the Rules, the ICC International Court of Arbitration decided to approve the draft Final Award submitted by the Arbitral Tribunal, subject to certain amendments.

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[150] See Transcripts p. 775 l. 13 - p. 776 l. 8.

[151] See Transcripts p. 776 l. 9-20.

[152] See Transcripts p. 776 l. 21 to p. 777 l. 15.

II. LAW

A. IN GENERAL

1. The Object of the Arbitration

128. The present arbitration proceeding has been initiated by two separate arbitration requests:
- The first one, initiated by Claimant 1 on 30 December 2009, and which was given the case number ICC Case No. 16848/JRF by the ICC Secretariat;

- The second one, initiated by Claimant 2 on the same day, 30 December 2009, and which was given the case number ICC Case No. 16849/JRF by the ICC Secretariat.

129. These two proceedings were consolidated upon joint request of the Parties and subsequent approval by the ICC Court of 6 October 2010 into a single proceeding, which was given the number ICC Case No. 16848/JRF (C-l6849/JRF) by the ICC Secretariat (see above para 111).

130. Nonetheless, Claimants make two different sets of claims:
- The first set of claims concerns the Petrozuata Project and amount to a total of USD 62,380,000. [153]

- The second set of claims concerns the Hamaca Project and amount to a total of USD 102,910,000. [154]

Consequently, each of these sets of claims relies on partially different legal and factual bases, which the Arbitral Tribunal will need to examine separately. In other respects, the proceeding has been conducted in a consolidated manner upon the Parties' agreement, and the issues common to both sets of claims will be examined jointly.

2. The Arbitration and Applicable Law Clauses

131. With regard to the Petrozuata Project, Section 4 of the PDVSA Petrozuata Guaranty provides as follows:

Original Spanish Version [155]	Official English Translation [156]
Articulo 4- Ley aplicable y arbitraje Esta Garantía se regirá en todas sus partes por las Leyes de la	Section 4. Governing Law and Arbitration. This guaranty shall be governed by the

[153] See CL Closing Statements, slide 66.
[154] See CL Closing Statements, slide 66.
[155] Exh. C-l, Exhibit P.
[156] Exh. C-l, Exhibit P.

República de Venezuela y por los principios de derecho internacional generalmente aceptados siempre que dichos principios no contradigan las Leyes de la República de Venezuela. Cualquier disputa que se origine en relación con esta	laws of Venezuela and by generally accepted principles of international law to the extent that such principles do not contradict such laws. All disputes arising in connection with this Guaranty,
Garantía, o su incumplimiento, terminación, interpretación, ejecutoriedad o validez, será finalmente resuelta por arbitraje con carácter vinculante en la ciudad de Nueva York, Estado de Nueva York, Estados Unidos de América, de acuerdo a las Reglas de Conciliación y Arbitraje de la Cámara de Comercio Internacional de Paris, por tres (3) árbitros designados de conformidad a dichas Reglas. Este acuerdo de someterse a arbitraje, así como cualquier decisión arbitral, será ejecutado en cualquier Corte que tenga jurisdicción competente. De conformidad con lo establecido en la autorización otorgada por el Congreso de la República de Venezuela, el objeto de esta Garantía se refiere a actividades comerciales (a ser cumplidas por una empresa mercantil a ser constituida en virtud de la Asociación Estratégica entre CONOCO y la filial de PDVSA, MARAVEN), lo cual de ninguna manera compromete la responsabilidad de la República de Venezuela ni otorga a CONOCO recurso alguno contra aquélla. En virtud de dicho principio, PDVSA acuerda que solo hará uso de aquellos mecanismos y defensas que tenga a su alcance en su carácter de empresa comercial propiedad de la República de Venezuela, de conformidad con la legislación aplicable, y no aquellos que le correspondan a la República de Venezuela (o su Poder Ejecutivo) como Estado Soberano.	or the breach, termination, interpretation, enforceability or validity thereof, shall be finally settled by binding arbitration in New York, New York, USA, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with said Rules. This agreement to arbitrate and any resulting award shall be enforceable in any court with competent jurisdiction. In accordance with the requirement of the Venezuelan Congress in its approval of the AA, this is a Guaranty in support of commercial activities (to be performed by a mercantile enterprise created pursuant to a Strategic Association between CONOCO and PDVSA'S affiliate MARAVEN)which in no way grants to CONOCO recourse to the full faith and credit of the Republic of Venezuela. Consistent with this principle, PDVSA agrees that it shall only raise or claim or cause to be pleaded defenses available to it as a government owned commercial entity under the applicable law as opposed to those as may be available to the Republic of Venezuela (and its govemment)as a sovereign state.

132. With regard to the Hamaca Project, Sections 10 and 13 of the PDVSA Hamaca Guaranty provides as follows: [157]

Original Spanish Version [158]	Official English Translation [159]
10. Esta Fianza se regirá e interpretará de	10. This Guarantee will be governed and

[157] Exh. C-3, Annex M.
[158] Exh. C-3, Annex M.
[159] Exh. C-3, Annex M.

acuerdo con las leyes de la República de Venezuela. [...] 13. Cualquier disputa que surja de, o se relacione de cualquier manera con esta Fianza o ejecución, será resuelta exclusiva y definitivamente mediante arbitraje. El arbitraje estará regido y será resuelto en forma definitiva de conformidad con la Normas de Conciliación y Arbitraje de la Corte Internacional de Arbitraje (en adelante "ICA ") de la Cámara Internacional de Comercio (en adelante las "Normas ICC"). El Fiador designará a un (1) árbitro y la Parte Extranjera (o si hay más de una Parte Extranjera en la disputa, colectivamente las Partes Extranjeras) designará a un (1) árbitro, y si el Fiador o la Parte Extranjera (o las Partes Extranjeras colectivamente) no le designan dentro de los treinta (30) días siguientes al recibo de la notificación del comienzo del arbitraje, la ICA designará un árbitro en representación de tal parte. Los dos (2) árbitros así designados, bien por las partes o en representación de cada parte, designarán el

interpreted in accordance with the laws of the Republic of Venezuela. [...] 13. Any disputes resulting from or related to this Guarantee or its performance will be resolved exclusively by arbitration and any arbitration ruling will be binding. The arbitration will be governed and conducted in accordance with the Mediation and Arbitration Rules of the International Arbitration Court (hereinafter referred to as the "ICA") of the International Chamber of Commerce (hereinafter referred to as the "ICC Rules"). The Guarantor will appoint one (1) arbitrator and the Foreign Parties (or if more than one Foreign Party is involved in the dispute, collectively, the Foreign Parties) will appoint one (1) arbitrator, and if the Guarantor or the Foreign Party (or the Foreign Parties collectively) fail to appoint their arbitrators within a period of thirty (30) days following receipt of the notice of the initiation of the arbitration process, the ICA will appoint an arbitrator to represent the party in question. The two (2) arbitrators thus

tercer árbitro, quien presidirá, dentro de los treinta (30) días siguientes después que el último de los dos árbitros haya sido designado por, o en representación del Fiador y de la Parte Extranjera (o colectivamente las Partes Extranjeras). Si los dos (2) árbitros así designados no pudieran acordar dentro de los treinta (30) días siguientes después de que el último de los dos árbitros haya sido designado por, o en representación del Fiador o de la Parte Extranjera (o colectivamente las Partes Extranjeras) sobre quién será el tercer árbitro quién presidirá, y dicho lapso no es prorrogado, entonces el árbitro quién presidirá será designado por la ICA tan rápidamente como fuere posible. Ningún árbitro tendrá ningún interés financiero, directo o indirecto, en la disputa, ni dependerá financieramente, en forma alguna directa o indirectamente, de cualquier parte de la disputa. Todos los árbitros serán imparciales y deberán obedecer las Reglas de

appointed, either by the parties or in representation of the parties, will appoint the third arbitrator, who will preside over the arbitration court, with a period of thirty (30) days following the date on which the last of the two arbitrators is appointed by or in representation of the Guarantor and the Foreign Party (or the Foreign Parties collectively). If the two (2) arbitrators thus appointed are unable to reach an agreement regarding the appointment of the third arbitrator to preside over the arbitration court within a period of thirty (30) days following the date on which the last of the two arbitrators is appointed by or in representation of the Guarantor or the Foreign Party (or the Foreign Parties collectively), and if the deadline is not extended, then the arbitrator who will preside of the arbitration court will be appointed by the ICA as soon as possible. No arbitrator may have any direct or indirect financial interest in the dispute, nor may any arbitrator be a direct or indirect financial dependent of any of the

Etica para Arbitros Internacionales del International Bar Association. El árbitro quién presida no será de la misma nacionalidad que ninguna de las partes de la disputa. Todos los árbitros tendrán conocimiento del negocio petrolero internacional. El tribunal arbitral designado conforme a esta Fianza, tendrá la facultad de emitir órdenes para medidas provisionales. Todos los procedimientos de arbitraje previstos en esta Fianza, tendrán que celebrarse en la ciudad de Nueva York, Estados Unidos de América, a menos que se acuerde de otra forma por todas las partes del arbitraje. Los procedimientos de arbitraje tendrán que sustanciarse en idioma inglés, con los correspondientes arreglos para la traducción de cualquier testimonio y documentos, siendo los costos de tales arreglos compartidos igualitariamente por las partes del arbitraje. El laudo, decisión o determinación del tribunal arbitral, el cual debe constar por escrito y ser fundamentado, será definitivo y vinculante para el Fiador y cada una de las Partes Extranjeras. El reconocimiento y ejecución de cualquier laudo, decisión o determinación emitido por el tribunal arbitral, podrá ser obtenido en cualquier corte o tribunal de la jurisdicción competente. En la medida en que sea permitido por la ley, el Fiador y cada una de las Partes Extranjeras por medio del presente renuncian a cualesquiera derechos de apelar o pedir una revisión de cualquier laudo arbitral, por ante cualquier corte o tribunal. En cualquier procedimiento ante las cortes de los Estados Unidos de América, relacionado con este compromiso arbitral, los procedimientos de arbitraje, o el laudo, decisión o determinación arbitral, se regirán exclusivamente por la Ley de Arbitraje de los Estados Unidos de América, con exclusión de la ley de cualquier estado de los Estados Unidos de América. El Fiador y cada una de las Partes Extranjeras reconocen que esta Fianza y cualquier laudo, decisión determinación arbitral dictados de conformidad con esta Fianza son de

parties to the dispute. All arbitrators will be impartial and will be subject to the Rules of Ethics for International Arbitrators issued by the International Bar Association. The arbitrator presiding over the court may not be of the same nationality as any of the parties to the dispute. All arbitrators must be knowledgeable in matters related to the international petroleum sector. The arbitration court established in the manner specified in this Guarantee will have the authority to issue orders imposing interim relief measures. All arbitration procedures described in this Guarantee will be conducted in the city of New York, United States of America, unless all parties to the arbitration agree otherwise. The arbitration procedures will be conducted in English, with the corresponding arrangements for translation of any testimony and documents, and the cost of these arrangements will be shared equally by the parties to the arbitration. The ruling, decision or determination of the arbitration court, which must be in writing and must be based on the corresponding facts and legal principles, will be final and binding for the Guarantor and each of the Foreign Parties. Recognition and enforcement of any ruling, decision or determination issued by the arbitration court may be obtained from any court or tribunal having jurisdiction. To the extent allowed by law, the Guarantor and each of the Foreign Parties hereby waive any right of appeal or review of any arbitration ruling by any court or tribunal. Any process before the courts of the United States of America related to the arbitration commitment, the arbitration process or the arbitration ruling, decision or determination will be exclusively subject to the Arbitration Law of the United States of America to the exclusion of any law of any State of the United States of America. The Guarantor and each of the Foreign Parties acknowledge that this Guarantee and any arbitration ruling, decision or determination issued under the terms of this Guarantee are international in nature, and that enforcement of this Guarantee or any ruling, decision or determination issued under the

naturaleza internacional, y que la

ejecución de esta Fianza o cualquier laudo, decisión o determinación arbitral dictados de conformidad con esta Fianza, se regirán por la Convención de las Naciones Unidas sobre el Reconocimiento y Ejecución de Laudos Arbitrales Extranjeros de 1958. Los costos del procedimiento de arbitraje (distintos de los costos relacionados con los arreglos para traducciones), incluyendo honorarios de abogados y costas, serán asumidos de la manera que determine el tribunal arbitral. [...] En el caso de cualquier arbitraje o laudo dictado de conformidad con un arbitraje efectuado de acuerdo a las disposiciones de esta Sección 13, sea declarado inválido o inejecutable en Venezuela, por cualquier razón, el Fiador y cada una de las Partes Extranjeras convienen en someter dicha disputa, a la solicitud del Fiador o cualquier Parte Extranjera, que surja o esté relacionada de cualquier manera con esta Fianza o su ejecución, a arbitraje vinculante ante el Centro Internacional para la Resolución de Disputas por Inversión (International Center for Settlement of Investment Disputes, en adelante ICSID), de conformidad con sus normas de arbitraje vigentes para el momento de dicha disputa. El Fiador y las Partes Extranjeras acuerdan que a los fines de un arbitraje en el ICSID, las actividades contempladas en el Convenio y en los Convenios Relacionadas, constituirán una inversión. En el caso de que ICSID no esté dispuesto o sea incapaz de conocer una disputa por cualquier razón, el Fiador y las Partes Extranjeras que sean partes en la disputa seleccionarán un foro de arbitraje alterno para determinar la disputa. Sujetas a los requerimientos de este foro, todas las otras disposiciones de esta Sección 13 se mantendrán en efecto en relación a cualquier otro arbitraje.

terms of this Guarantee, will be governed by the 1958 United Nations Convention on Recognition and Enforcement of Foreign Arbitration Rulings. The cost of the arbitration (other than costs related to translation arrangements), including attorneys' fees and costs, will be assumed in the manner specified by the arbitration court. [..] If any arbitration or ruling issued under the terms of an arbitration conducted in accordance with the provisions of Section 13 is declared to be invalid and unenforceable in Venezuela for any reason, at the request of the Guarantor or any Foreign Party, the Guarantor and each of the Foreign Parties agree to submit any dispute resulting from or related in any way to this Guarantee or its enforcement, to binding arbitration conducted by the International Center for Settlement of Investment Disputes (hereinafter referred to as "ICSID"), subject to the arbitration regulations in effect at the Center at the time of the dispute. The Guarantor and the Foreign Parties agree that, for purposes of the ICSID arbitration, the activities described in the Agreement and the Related Agreements will constitute an investment. If the ICSID is unwilling or incapable of hearing the dispute for any reason, the Guarantor and the Foreign Parties who are parties to the dispute will select an alternate arbitration venue to resolve the dispute. Subject to the requirements of the venue in question, all other provisions included in this Section 13 will remain in full force and effect in any other arbitration process.

133. Based on the above mentioned clauses, the present arbitration shows the following features:
(i) It is an ICC arbitration subject to the ICC Rules of Arbitration of 1998;

(ii) The place of arbitration is in the city of New York;

(iii) The arbitration procedure is subject to the laws of the city of New York;

(iv) The law applicable to the merits is,

• With regard to the Hamaca Project, the *"the laws of the Republic of Venezuela";*

• With regard to the Petrozuata Project, *"the laws of the Republic of Venezuela and generally accepted principles of international law to the extent that such principles do not contradict the laws of the Republic of Venezuela";*

134. The validity of the above-mentioned arbitration clauses has never been challenged by either Party and all these points are undisputed between the Parties. [160]

3. *TheConstitution of the Tribunal*

135. Originally, two arbitral tribunals with identical composition had been constituted. Following the consolidation of the two cases (see above para 111) the present proceeding is now heard by one single arbitral tribunal. The constitution and composition of this arbitral tribunal has never been challenged by either Party.

136. Based thereon, the Arbitral Tribunal has been validly constituted and can therefore validly hear the present case.

4. The Overview of the Proceedings

137. The Parties had sufficient opportunity to present their case, first in writing and then orally during the Hearing (see above para 120).

138. Each Party submitted two sets of written submissions, the second submission following a process of document production (see above para 115-116). During the Hearing, the Arbitral Tribunal listened to the Parties' examination of witnesses and experts. This Hearing was subject to recording as well as live transcript. The final version of the transcripts has been agreed upon by the Parties and was circulated on 15 February 2012 (see above para 122).

139. At the closing of the Hearing, both Parties confirmed that they had no objections regarding the conduct of the present proceeding. [161]

140. Originally, the 1CC Court set the time limit to render the Final Award to 26 April 2011 in line with Article 24(1) of the ICC Rules. Subsequently, the ICC Court extended this date as follows upon the request of the Arbitral Tribunal:

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[160] See Hamaca RfA para 12, Petrozuata RfA para 11, RSP Hamaca Answer para 9, RSP Petrozuata Answer para 10.

[161] See Transcript p. 769 l. 2 to p. 770 l.4.

(i) 1st extension until 31 March 2012granted on 21 April 2011;

(ii) 2nd extension until 31 May 2012 granted on 15 March 2012;

(iii) 3rd extension until 31 July 2012 granted on 24 May 2012;

(iv) 4th extension until 31 August 2012 granted on 19 July 2012;

(v) 5th extension until 28 September 2012 granted on 16 August 2012.

141. As a consequence of the foregoing, the Arbitral Tribunal is competent to finally and validly decide on the Parties' respective claims.

5. Parties' Conclusions and Position

(a) Claimant's Conclusions and Position

142. In their Reply (see above para 118), Claimants concluded as follows:
"[...] Accordingly, the Claimants respectfully request that the Tribunal issue an Award:

a. Declaring that the OPEC Curtailments imposed on the Petrozuata Project between November 2006 and May 2007 resulted in breaches of the Petrozuata Side Letter causing economic harm to CPZ;

b. Declaring that by the terms of the Petrozuata Guarantee, PDVSA is liable to CPZ for the totality of the damages caused by the breaches described in (a) above;

c. Declaring that the OPEC Curtailments imposed on the Hamaca Project between November 2006 and May 2007 resulted in breaches of the Hamaca Association Agreement causing economic harm to Phillips Venezuela;

d. Declaring that by the terms of the Hamaca Guarantee, PDVSA is liable to Phillips Venezuela for the totality of the damages caused by the breaches described in (c) above;

e. Awarding to the Claimants monetary damages provisionally quantified at US$ [165.19 million [162]];

f. Awarding to the Claimants pre-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, between the time of the latest damages update and the time of the award;

g. Awarding to the Claimants post-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, until the date the compensation is paid;

h. Awarding to the Claimants appropriate protection from double taxation;

[162] According to Claimants' latest update of its damage claims during the Hearing, see above para 120.

i. Awarding to the Claimants the costs of the arbitration and all of the Claimants' reasonable legal fees, expenses and other costs incurred in connection with the arbitration and any related litigation, including all internal costs; and

j. Awarding to the Claimants such additional or other relief as may be just and appropriate under the law."

143. Claimants base their claims on the following main arguments:

144. **With regard to the Petrozuata Project,** Claimants' main line of argument is to say that Maraven (and/or its successor in interest, i.e. PDVSA Petróleos) had the obligation under the Petrozuata Side Letter to absorb any impact that OPEC curtailments may have had on the Petrozuata Project out of its own production, and that the compliance with such obligation was guaranteed by PDVSA under the PDVSA Petrozuata Guaranty. Maraven failed to comply with its obligation under the Petrozuata Side Letter and PDVSA failed to step into the shoes of Maraven (and/or its successor in interest, i.e. PDVSA Petróleos). Thus, by failing to either thereby directly absorb or cause Maraven (and/or its successor in interest, i.e. PDVSA Petróleos) to absorb the impact of the OPEC curtailments, PDVSA breached the terms of the PDVSA Petrozuata Guaranty and is therefore liable to Claimants for the damage resulting therefrom.[163]

In particular:

(i) The Petrozuata Side Letter is valid as a matter of Venezuelan law:[164]The Congressional Authorization required under Article 5 of the Nationalization Law 1975 is an 'authorization' setting out the general framework and basic aspects for the project. It is not and does not require an *a posteriori* approval of the specific agreement and the specific clauses contained therein. The execution and scope of the Petrozuata Side Letter were within the scope of the basic framework established by the Congressional Authorization. In addition, if the Arbitral Tribunal considered it necessary to link the Side Letter to any of the particular Conditions, the Side Letter would fall within the scope of the Fifteenth Condition of the Congressional Authorization of 10 August 1993, which provides that "[...], *the Parties may exercise their best efforts to obtain any safeguards that may reasonably be beneficial or appropriate,*"(see above para 34). This wording would clearly leave sufficient discretion to the Parties to agree on a guarantee as the one contemplated in the Petrozuata Side Letter. Condition Sixteenth would in contrast be irrelevant, since it would only deal with measures that discriminated against Conoco and was not meant to exhaustively deal with potential safeguard mechanisms. Finally, based on the principles of interpretation and performance of contracts according to the principle of good faith and the fact that Respondent has never before contested the validity of the Side Letter, Respondent's argument that the Side Letter is invalid due to a lack of express authorization is in violation of such principles.

(ii) The Petrozuata Side Letter covered the OPEC curtailments at issue in the present arbitration:[165] *The* scope of the Petrozuata Side Letter must be determined based on general principles of contract interpretation as set out in Article 12 of the Venezuelan Code of Civil Procedure. An interpretation

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[163] CL SoC paras 98-105.

[164] CL Reply paras 101 et seq., 111-112; see also Transcripts p. 64 l. 17 to p. 68 1. 19; p. 85 1. 17.

[165] *CL Reply paras 126-139; Transcripts p. 47 l. 9 to p. 48 l. 9.*

according to these principles leads to the conclusion that the Petrozuata Side Letter intended to protect the Project from (i) any OPEC imposed curtailments applicable to the Venezuelan oil industry (irrespective of the final allocation by the Venezuelan Government of such curtailments) and (ii) which would otherwise affect the Project's ability to obtain and maintain financing. Therefore, the Side Letter was meant to cover both export and production curtailments, as long as these curtailments resulted from Venezuela's obligations as OPEC member. In addition, there is no real difference between export and production cuts for the Petrozuata Project, since all the syncrude produced was meant to be exported under the Offtake Agreement (see above para 52).

(iii) The PDVSA Petrozuata Guaranty is valid and fully covers the obligations assumed by Maraven in the Petrozuata Side Letter:[166] The execution and scope of the PDVSA Petrozuata Guaranty has been authorized by Congress under the Seventeenth Condition of the Congressional Authorization of 10 August 1993 (see above para 34). The wording of the relevant Section 13.04(b) of the Petrozuata Association Agreement is consistent with the scope of the Seventeeth Condition, and so is therefore also the PDVSA Petrozuata Guaranty. The fact that the PDVSA Petrozuata Guaranty extended its coverage to *"ancillary agreements between CONOCO and MARAVEN in furtherance of the Project"* confirms that all the obligations contained in valid agreements entered into between Conoco and Maraven in execution of the Project, including the Petrozuata Side Letter, would be assumed and guaranteed by PDVSA.[167] With regard to the scope of obligations covered by the PDVSA Petrozuata Guaranty, the wording of the guarantee is very broad, clear and unambiguous and covers all obligations of Maraven under all agreements concluded in connection with the Petrozuata Association Agreement. Alleged inconsistencies between Section 13.04(b) of the Petrozuata Association Agreement and the PDVSA Petrozuata Guarantee regarding in particular the agreements referenced therein (e.g. 'Business Contract', 'ancillary agreement', etc.) should not be interpreted based on the principles of interpretation of linked contracts and would in any case be irrelevant for the following reason: Since PDVSA is not a party to the Petrozuata Association Agreement, it was free to grant a guarantee under different terms than those provided in Section 13.04(b) of the Petrozuata Association Agreement provided the scope of such guarantee did not exceed the obligations assumed by Maraven under the Petrozuata Side Letter, which it did not.

145. **With regard to the Hamaca Project,** Claimants' main line of argument is to say that under Section 13 of the Hamaca Association Agreement, Corpoguanipa had the obligations to (i) ensure that the curtailments were established in a proportionate manner and (ii) mitigate the effects produced by the OPEC curtailments. To the extent that Corpoguanipa was the entity in charge of exercising control of the Hamaca Association Agreement on behalf of the State based on Article 5 of the 1975 Nationalization Law, the breaches of Section 13 are attributable to Corpoguanipa; while Corporguanipa was not responsible for imposing the OPEC Curtailments proportionately, it was responsible for the consequences of any nonproportionate curtailment in accordance with Section 13.1. Further by failing to arrange for appropriate mitigation measures, Corpoguanipa also breached its obligations under Section 13.2 of the Hamaca Association Agreement. Corpoguanipa's affirmative vote was required for any decision on mitigation measures under Section 13.2 of the Hamaca Association Agreement, and by cancelling the Board meeting planned in February 2007 and by failing to arrange for any further Board meeting, Corpoguanipa rendered the taking of mitigation measures impossible. PDVSA failed to step into the shoes of Corpoguanipa and ensure the

[166] CL Reply paras 151-184; Transcripts p. 57 l. 12 top. 62 l. 10; p. 85 l. 23 to p. 92 l. 5.

[167] CL Reply paras 140-150.

proportionate allocation of the curtailments and/or mitigation of the disproportionate impact of such allocation. It thereby breached Section 4 of the PDVSA Hamaca Guaranty. The failure to comply with such obligation entitles Claimants to seek compensation for damages resulting therefrom. [168]

146. Claimants further stress that all relevant Agreements and other contractual documents relied upon were in full force when the breaches occasioned by the OPEC Curtailments occurred and when all damages occurred: Even if the Migration Law had as effect to extinguish the Association Agreements and all other thereto related contractual arrangements, such extinction could only be *ex nunc.* Since all the relevant breaches and damages occurred before the entering into force of the Migration Law, Claimants' rights under the Association Agreements could not have been affected by the Migration Law. With regard to the argument of *'hecho delprínципe'* brought forward by Respondent to argue the lack of any obligation on its part, such principle would not apply in the present case because it would - among other -require an absolute impossibility to perform due to an external and non-imputable cause at the time of due performance. Again, the promulgation of the Migration Law cannot serve as a basis to justify a non-performance, which occurred prior to such date. [169]

147. Claimants are therefore seeking compensation for the lost income caused by Respondent's alleged breaches and estimated as of 31 December 2011 as follows: [170]

In Million of USS	Nominal Dollars (2007)	As of December 31,2011
PETROZUATA	38.50	62.28 [171]
HAMACA	63.64	102.91 [172]
TOTAL	**102.14**	**165.19**

148. The more specific arguments and legal provisions relating to the various claims will be further dealt with below, when dealing with the specific claims (see below para 155-235 and 236-265).

(b) Respondent's Conclusions and Position

149. In its Rejoinder, Respondent concluded as follows (see above para 119):
"For the reasons set forth above, all claims of CPZ and Phillips Venezuela should be dismissed and Claimants should be required to pay all costs of these proceedings. "

150. **In summary,** Respondent's main line of argument is to say that Claimants' claim lacks any legal basis for two main reasons: *(i)* First, the promulgation of the Migration Law and the migration process

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[168] CL SoC paras 106-119; CL Reply paras 190-218; Transcripts p. 53 l. 14 to p. 571. 11; p. 92 1. 11 to p. 99 1.5.
[169] CL Reply paras 76-90; Transcripts p. 99 1.10 to p. 102 1. 21.
[170] See CL Closing Statements, slide 66; Transcripts p. 661 1. 3-25.
[171] Updated at cost of equity at an annual average rate of 10.55%.
[172] Updated at cost of equity at an annual average rate of 10.56%.

implemented thereunder had as effect, not only to immediately extinguish by operation of law the Association Agreements and all the further contractual arrangements relating thereto, but also any right or obligation which may have arisen out of these agreements, *(ii)* second, even if one considered for the sake of argument that these agreements were not extinguished, Claimants' claim would still lack basis because the contractual arrangements they rely on are either invalid or do not provide for the obligations Claimants claim were breached. And in any event, the production curtailments ordered by the Venezuelan government were of a mandatory nature and could not be avoided by the Parties to the Project. Therefore, they constituted an 'external non-imputable cause' *('causa externa no imputable'")* excusing any non-performance.

151. **With regard to the argument of extinction,** Respondent contends that the entire contractual framework ruling the two Projects extinguished as a consequence of the migration process implemented under the Migration Law based on Articles 1,159 of the Venezuelan Civil Code and Article 131 of the Venezuelan Constitution. Under Venezuelan law, new laws dealing with matters of public order, such as projects relating to the hydrocarbons industry, have immediate effect and therefore also apply to existing legal relationships.[173] Further, the Venezuelan laws regarding the migration process constitute an *'hecho del príncipe'* that rendered contractual performance of the Association Agreements impossible and thereby released Respondent from any liability or responsibility for non-performance according to Article 1,271 and 1,272 of the Venezuelan Civil Code.[174] As a consequence thereof, the Association Agreements cannot form the basis of the claims asserted by Claimants in this case.

152. **Alternatively,** even if the agreements were not considered to have extinguished, Respondent contends that Claimants' claims lack basis for the following reasons:

(i) **With regard to the Petrozuata Project,** Claimants rely on an invalid contractual document: the Petrozuata Side Letter. According to Respondent, this Letter never came into valid existence because its execution and content is not covered by the Congressional Authorization of 10 August 1993 (see above para 34) for various reasons:[175]

• The content of the Side Letter clearly constituted 'pertinent circumstances' *('circunstancias pertinentes')* which had to be disclosed to the Venezuelan Congress under Article 5 of the 1975 Nationalization Law.

• However, the Side Letter was never shown to the Congress, neither in form, concept or content, and none of the contractual arrangements shown to Congress ever mentioned - either directly or through reference to further agreements - the obligation set out in the Petrozuata Side Letter.

• The Conditions approved by Congress are of an exhaustive nature *('taxativas')* and they cannot cover issues, which were not duly disclosed to Congress. Given that none of these Conditions nor the report previously submitted by the Bicameral Commission refers anywhere to OPEC curtailments or the Side Letter, the Congressional Authorization cannot be deemed to cover the Side Letter. In particular, an authorization cannot be implicitly derived from the Sixteenth Condition of the Congressional Authorization, the terms and wording of which cannot be interpreted as covering

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[173] RSP SoD paras 62-72.

[174] RSP SoD paras 73-81; See also Urdaneta Legal Opinion para 10 *et seq.;* Transcripts p. 125 l. 22 to p. 129 l.3.

[175] RSP SoD paras 82-106; Transcripts p. 124 1. 7 to p. 125 1. 18; p. 1291. 19 to p. 161 l. 9.

obligations of the nature of the one contemplated in the Petrozuata Side Letter.

• Therefore, PDVSA could not have any obligation under the PDVSA Petrozuata Guaranty as a result of Maraven's purported breach of the Petrozuata Side Letter, because according to Article 1805 of the Venezuelan Civil Code a guaranty can only cover existing and valid obligations. The Petrozuata Side Letter being invalid, the guarantee provided by PDVSA cannot cover such Side Letter or the effects of the OPEC curtailments.

Alternatively, even if considered authorized by Congress, the Petrozuata Side Letterdoes not cover the production curtailments at issue, i.e. projects-sepcific cuts. First, as derives from the wording of the previous drafts of the Petrozuata Association Agreement with regard to Section 13.04(c) and later on incorporated into the Side Letter, the production curtailments against which protection was sought by Claimants referred to production curtailments imposed on Maraven.[176] Second, even if the Petrozuata Side Letter was drafted in broader terms than the former Section 13.04(c) of the Petrozuata Association Agreement, it was not meant to broaden its scope of application and, in any case, it covers only *"restrictions in production"* imposed on *"the Venezuelan oil industry".* The Side Letter was not meant and did not address restrictions imposed on the Petrozuata Project itself. However, all curtailments at issue in the present case were directed specifically at the four upgrading projects of the Orinoco Belt, including the Petrozuata and the Hamaca Project. In addition, the curtailments at issue were directed at exports of upgraded syncrude, which are different from production restrictions. Thus, the curtailments at issue did not constitute 'production restrictions' nor were they imposed generally on the Venezuelan oil industry. Therefore they fall outside of the scope of the Petrozuata Side Letter, and consequently may not engage PDVSA's liability.[177] However, even if considered to fall within the scope of the Petrozuata Side Letter, a breach of such Side Letter would not engage PDVSA's liability because the scope of the Side Letter was not within the scope of the obligations guaranteed under the terms of the PDVSA Petrozuata Guaranty. Section 13.04(b) of the Petrozuata Association Agreement refers to the Petrozuata Guarantee and provides that such guarantee will be provided only with regard to obligations under the Petrozuata Association Agreement or any of its 'Business Contracts'. The PDVSA Petrozuata Guarantee in turn refers to 'ancillary agreement'. Based on a due interpretation of these terms according to the relevant principles of Venezuelan law, the Side Letter does not qualify as 'Business Contract' or 'ancillary agreement', and can therefore not be covered by the PDVSA Petrozuata Guaranty.[178] Finally, and whatever the position of the Arbitral Tribunal on the above mentioned points may be, the production curtailments imposed on the Petrozuata Project were of a mandatory nature and therefore constituted an 'external non-imputable cause' rendering performance of the Side Letter impossible. Consequently, any failure to comply with the obligations under the Side Letter would be excused and could not engage the liability of either Maraven or PDVSA.[179]

(ii) **With regard to the Hamaca Project,** nothing in the Hamaca Association Agreement (and in particular nothing in Section 13 thereof) created an obligation on the part of Corpoguanipa to bear the burden of production or export cuts on the Hamaca Project and nothing in there imposed upon Corpoguanipa any obligation to indemnify Phillips Venezuela for losses it may suffer as a result of such governmental measures. Therefore PDVSA could have no obligation with respect to

[176] Transcripts p. 174 1.10 to 178 1. 14.

[177] RSP SoD paras 107-122.

[178] RSP SoD paras 123-131; Transcripts p. 181 1. 16 to p. 185 p. 4.

[179] Transcripts p. 126 1. 13 to p. 129 l. 3.

such cuts under the Hamaca PDVSA Guaranty.[180] While Section 13.2 of the Hamaca Association Agreement provided for a duty to mitigate damages arising from production cuts, such duty was directed at the parties to the Hamaca Association Agreement, and not only to Corpoguanipa. In this respect, Corpoguanipa had, contrary to Claimants' assertion, no affirmative control over the Hamaca Association or over the Energy Ministry. Corpoguanipa was therefore not in a position to either influence the Ministry in the allocation of production curtailments, or otherwise take mitigation measures in the sense of Section 13.2 of the Hamaca Association Agreement. In any event, there was no opportunity to make up for lost production as the curtailments remained in place until implementation of the 2007 Migration Law, which excused Corpoguanipa from the performance of any obligation it may have had under the Agreement.[181]

153. In addition, Respondent stresses that both Association Agreements contained provisions for compensation by Maraven/Corpoguanipa for discriminatory government action causing economic damage to the foreign partners (see Sections of the 9.07 Petrozuata Association Agreement and 14.2 of the Hamaca Association Agreement). These provisions constitute the only possible basis for compensation claims by Claimants. However, Claimants have failed to rely on such provisions to claim the alleged damage from Maraven/Corpoguanipa for the simple reason that these provisions would not entitle Claimants to any compensation under the circumstances of the present case.[182]

6. Structure of the A ward

154. The present Award will be structured as follows:
- The basis for Claimants' claims concerning the Petrozuata Project (see below section B);

- The basis for Claimants' claims concerning the Hamaca Project (see below section C);

- In case the Arbitral Tribunal considers that some of these claims are well-founded, the amount of damages to be granted (see below section D);

- The claims regarding the tax issues (see below section E)

- The allocation of the arbitration cost (see below section F).

B. BASIS FOR CLAIMANTS' CLAIMS CONCERNING THE PETROZUATA PROJECT

1. Claimants' Claim and the Relevant Issues

[180] RSP SoD paras 140-145; RSP Rejoinder paras 115-116.

[181] RSP Rejoinder paras 115-135; Transcripts p. 187 l. 18 to p. 188 1.25; p. 189 l. 2 to p. 192 l. 6.

[182] RSP SOD para 132-138, paras 146-153; RSP Rejoinder para 134; Transcripts p. 183 l. 3 to p. 187 l. 9; p. 193 l. 14 to 195 l. 12.

155. As set out above (see above paras 142 and 147), Claimants request from Respondent the payment of USD 62,180,000.

156. In order to determine whether Claimants' claims are well-founded, it is firstly necessary to determine the following two issues:
(i) If not extinguished, the scope of the PDVSA Petrozuata Guaranty and in particular whether it covers the obligations of Maraven under the Petrozuata Side Letter; and

(ii) The existence and scope of Maraven's obligations, and in particular whether Maraven is liable for the damage or loss caused to Claimant 2;

These two issues must be examined separately, and the Arbitral Tribunal will proceed with such examination reversely, i.e. starting with the issue of Maraven's scope of liability (see below section 2), and followed by the issue of the scope of the PDVSA Petrozuata Guaranty (see below section 3).

157. If the Arbitral Tribunal determined a liability of Maraven and PDVSA, it would then examine the issue of the claim for damages (see below section D).

2. Maraven's Liability

(a) Legal Basis

158. Claimants base their claim on the Petrozuata Side Letter concluded between Maraven and Conoco Orinoco. The relevant part of the Side Letter provides as follows (for the English translation, see above para 44):
" [...] *Sirva este documento para declarar que, estando las partes firmantes del Convenio de Asociación conscientes que a los efectos de la obtención del financiamiento necesario para la construcción, operación y las inversiones de capital para los últimos años del Proyecto (dicho término definido en el Convenio de Asociación) será necesario asegurar la capacidad de la Compañía de producir los volúmenes de crudo extra-pesado establecidos en la Descripción del Proyecto (dicho término definido en el Convenio de Asociación), las partes aquí firmantes han acordado lo siguiente:*

En el caso de que cualquier restricción en la producción sea impuesta a la industria petrolera venezolana durante la vigencia del Convenio de Asociación, el Accionista Privilegiado Clase A (dicho término también definido en el Convenio de Asociación) satisfacerá, de su propia producción, cualquier requerimiento de disminución de la producción que pudiera aplicar a la Compañía en la medida necesaria para asegurar que se cumplan las siguientes premisas: (i) la Compañía estará en la capacidad de mantener la Planta de Mejoramiento (dicho término definido en el Convenio de Asociación) trabajando hasta su Máxima Capacidad; (ii) cualquier producción que tenga la Compañía, adicional a la que sea necesaria para mantener la Planta de Mejoramiento a su Máxima Capacidad, será afectada (disminuida) en el mismo porcentaje en que se vea afectado el Accionista Privilegiado Clase A en su propia producción; y (iii) la producción total de crudos de la Compañía

en ningún caso se verá disminuida por debajo de ciento veinte mil barriles diarios, siempre que la Planta de Mejoramiento esté trabajando a su Máxima Capacidad. Queda igualmente entendido que cualquier mecanismo o tratamiento que aplicare de manera general a todas las asociaciones estratégicas para la producción de crudo extra-pesado, y que sea más favorable que le establecido en este documento, prevalecerá sobre el mismo. [...] "

(b) Reminder of the Parties' Position

159. As reminder (see above paras 142-144 and paras 150-153), the position of the Parties is in summary the following in relation to the Petrozuata Side Letter:

160. Claimants' argue that, based on the Petrozuata Side Letter, Maraven undertook the contractual obligation to absorb out of its own production any curtailment imposed by Venezuela as a result of its OPEC membership. By failing to absorb such curtailments, Maraven breached its obligations under the Petrozuata Side Letterand is thus liable for any damages or loss resulting from such curtailments to Claimant 2. With regard to the validity of the Petrozuata Side Letter, Claimants contend that it is valid and in particular, that the Petrozuata Side Letter did not require the specific approval of Congress and that, in any case, it is covered by the Fifteenth Condition of the Congressional authorization. With regard to the scope of the Petrozuata Side Letter, Claimants contend that it was meant to encompass both export and production curtailments, since there is no real difference between export and production cuts for the Petrozuata Project, given that all the syncrude produced was meant to be exported under the Offtake Agreement.

161. Respondent argues that all contractual agreements concluded between the Parties, including the Petrozuata Side Letter, and any obligation arising thereunder have extinguished with immediate effect as a result of the entering into force of Migration Law. Consequently, it would not be possible for Claimants after the date of entering into force of the Migration Law to raise any claim under such agreements. Alternatively, even if the contractual agreements were not deemed to have been extinguished, the migration system imposed by the Venezuelan government constitutes an *"hecho del príncipe",* which qualifies as an 'external imputable cause' excusing performance of the contractual obligations. Thus, any compensation for nonperformance would be excluded. As second alternative, Respondent contends that no contractual obligation ever arose from the Petrozuata Side Letter, as this Side Letter was never approved by Congress and therefore fails to fulfill the conditions of Article 5 of the Nationalization Law 1975, and finally that the terms of the Petrozuata Side Letter do not cover the curtailments at stake.

(c) Reminder of the Relevant Facts

162. Negotiations of the Petrozuata project started in the early 90's and followed, in summary, the following chronology :
(i) In 1992, Conclusion of Joint Study Agreement, followed by the conduct and issuance of a Feasibility Study (see above paras 27-28);

(ii) In fall 1992, preparation by Maraven of a first draft of the specific conditions for the Congressional Authorization, and submission for comments to Conoco (see above para 30);

(iii) In April 1993, submission of the April 1993 Report by Maraven to the Venezuelan State attaching the proposed 'Conditions' for the Congressional Authorization (see above para 32);

(iv) In August 1993, approval of the Conditions by the Bicameral Commission of the Venezuelan Congress and the Senate (see above para 0);

(v) In fall 1993, preparation of the first draft Petrozuata Association Agreement (see above paras 35-36);

(vi) From fall 1993 to spring 1995, several rounds of negotiations regarding the specific content and wording of the Petrozuata Association Agreement (see above paras 36-40);

(vii) In March-April 1995, upon Maraven's request, Section 13.04(c) of the draft Petrozuata Association Agreement was moved from the body of the Association Agreement into a separate Side Letter (see above paras 38-39);

(viii) In May 1995, conclusion of the 'Agreement in Principle' between the heads of Conoco Inc. and Maraven (see above para 42);

(ix) On 10 November 1995, execution of the final version of the Petrozuata Association Agreement, the Petrozuata Side Letter and the PDVSA Petrozuata Guarantee (see above para 43);

(x) In spring 1996, enquiries from the Congressional Commission of Energy and Mines with Maraven regarding the details of the strategic association between Maraven and Conoco (see above paras 46-48);

(xi) In June 1997, finalization of the financing of the project (see above para 51);

(xii) In July 1997, beginning of the construction of the upgrader and pipelines (see above para 53);

(xiii) In 2000, completion of the construction works and start of syncrude production (see above para 53).

163. As is visible from this chronology, the Congressional authorization of the Petrozuata project was issued based on a set of 'Conditions' delimiting the scope and nature of the project, and was given before the first draft of the Petrozuata Association Agreement had been prepared.

164. The Petrozuata Side Letter deals with consequences of *'restrictions in production imposed on the Venezuelan petroleum industry during the term of the Association Agreement'*[183]. This issue had previously been addressed by Section 13.04(c) of the early drafts of the Petrozuata Association Agreement, and in March 1995 Maraven requested that this issue be removed from the body of the Association Agreement and be put in a separate Side Letter.

[183] *Autonomous translation by the Arbitral Tribunal of "restricción en la producción [...] impuesta a la industria petrolera venezolana durante la vigencia del Convenio de Asociación".*

165. Conoco conceded to Maraven's request and the issue of production restrictions was therefore removed from the Association Agreement and incorporated into what became the Petrozuata Side Letter. It should be noted that while Section 13.04(c) of the early draft of the Petrozuata Association Agreement and the Petrozuata Side Letter obviously deal with the same issue, their wording is not identical.

166. The three contractual agreements forming the core of the Parties' contractual relationship with regard to the Petrozuata Project were signed during a public ceremony on 10 November 1995.

167. As a matter of fact, neither the Petrozuata Side Letter nor the Petrozuata Association Agreement were submitted to Congress for their authorization or approval. They were prepared and executed after such authorization had been granted based on the 'Conditions' submitted to Congress.

168. However, in February 1996, i.e. after the execution of the Petrozuata Association Agreement, the Petrozuata Side Letter and the PDVSA Petrozuata Guarantyand about 2.5 years after the Congressional authorization, the Congressional Commission of Energy and Mines made certain enquiries with Mr. Emilio Abouhamad, President of Maraven, requesting *'copy of the agreements signed by Maraven for the exploitation of the crudes in the Orinoco Oil Belt'* and invited Mr. Abouhamad to attend a session of the Commission in order to explain the details of the strategic association between Maraven and Conoco. Based on the record, it appears that Mr. Abouhamad proceeded as requested by the Commission (see paras 46-48).

169. From the incorporation of the issue of 'restriction in production' into the Petrozuata Side Letter and until today, the record does not contain any indication showing that the validity of the Petrozuata Side Letter would have been contested or otherwise put into question by any of the Parties or any of the government authorities implicated in the authorization and/or supervision of the strategic association.

(d) Validity of the Side Letter

170. As mentioned above (paras 150-152 and 161), Respondent raises two main objections regarding the validity of the Petrozuata Side Letter as basis for Claimants' thereto related claims :
(i) The first objection is based on the argument that the Migration Law has extinguished all contractual agreements and any entitlement deriving therefrom *(ex nunc* invalidity);

(ii) The second objection challenges the validity of the entering into effect of the Petrozuata Side Letter (ex *tunc* invalidity);

171. The Arbitral Tribunal will deal with each objection separately.

172. *(i) Regarding the effects of the Migration Law on the existence and validity of the Petrozuata Side Letter and the obligations deriving therefrom:*

173. Respondent makes the argument that the entering into force of the Migration Law and the implementation of the migration process provided thereunder had as effect to extinguish all

contractual agreements relating to the Petrozuata project, including the Petrozuata Side Letter. Whilst Respondent recognizes that a law may in principle not have any retroactive effect, it however argues that such principle suffers certain exceptions with regard to laws of public interest, which are to be given immediate effect. In the case of the Migration law such 'immediate effect' would mean that the extinction not only affectsthe agreements as such, but also any right or obligation deriving therefrom. In other words, according to Respondent, any right or obligation that would have arisen out of these agreements would cease to exist with the entering into force of the Migration Law, even if such right or obligation is linked to circumstances which occurred prior to the promulgation of the Migration Law. Claimants would have no more right to make claims with regard to such rights and obligations.

174. Claimants in return argue that such understanding and application of the law would amount to granting a 'retroactive' effect to the Migration Law, which is not admissible under Article 24 of the Venezuelan Constitution, and reject Respondent's alleged exception to the principle of non-retroactivity.

175. It is not disputed that the promulgation of the Migration Law had the effect of extinguishing the Petrozuata agreements. It is further not disputed that Claimants' claims are based on facts prior to the promulgation of the Migration Law and relate to rights and obligations arising in connection with those facts, i.e. before the promulgation of the Migration Law.

176. What is disputed is whether this extinction may affect rights and obligations, which have already arisen before the promulgation of the Migration Law but the performance and/or enforcement of which had not been formally claimed before such date.

177. To the extent that Claimants' claims rely on facts occurred and rights and obligations arisen before the promulgation of the Migration Law, the Arbitral Tribunal is of the opinion that following Respondent's line of argument and considering Claimants' claims as being extinguished would amount to affording retroactive effect to the Migration Law. Such retroactive effect is formally prohibited under Article 24 of the Venezuelan Constitution, which provides as follows:

Original Spanish Version [184]	Claimants' Translation [185]	Respondent's Translation
Ninguna disposición legislativa tendrá efecto retroactivo, excepto cuando imponga menor pena. Las leyes de procedimiento se aplicarán desde el momento mismo de entrar en vigencia, aun en los procesos que se hallaren en curso; pero en los procesos penales, las pruebas ya evacuadas se estimarán en cuanto beneficien al reo o a la rea, conforma a la	No legislative provision shall have retroactive effect, except where it imposes a lesser penalty. Procedural laws shall apply from the moment they enter into force, even to proceedings that are already in progress, however, in criminal proceedings, evidence already submitted shall be weighed insofar as it benefits the defendant, in accordance with the	[no independent translation provided]

[184] Exh. CL-17/RL-4.
[185] Exh. CL-17.

ley vigente para la fecha en que se promovieron. Cuando haya dudas se aplicará la norma que beneficie al reo o a la rea.	laws in effect when the evidence was submitted. When there are doubts, the rule of law that benefits the defendant will be applied.

178. With regard to Respondent's argument that the Migration Law as law of public interest qualifies as an exception to this principle, Respondent has failed to establish that such exception really exists. The alleged exception brought forward by Respondent is actually based on an interpretation of the concept of 'immediate effect' to be given to laws of public interest. The Arbitral Tribunal disagrees with such interpretation:
(i) 'Immediate effect' and 'retroactive effect' are two different concepts, the first one affecting only the future, the second one affecting also the past. Interpreting the concept of 'immediate effect' as affecting past circumstances and applying to rights and obligations which have arisen in the past would amount to erasing the difference between 'immediate' and 'retroactive' effect and undermine the constitutional prohibition of the principle of non-retroactivity of laws.

(ii) The Migration Law itself provides in Article 5 that

Original Spanish Version [186]	Claimants' Translation [187]	Respondent's Translation [188]
Todos los hechos y actividades objeto de la normativa que antecede se regirán por las leyes de la República Bolivariana de Venezuela, y las controversias que de los mismos deriven estarán sometidas a su jurisdicción, en la forma prevista en la Constitución de la República Bolivariana de Venezuela	All the facts and activities object of the previous Laws shall be governed by the Laws of the Bolivarian Republic of Venezuela, and the controversies that derives from the same shall be subject to its jurisdiction as established in the Constitution of the Bolivarian Republic of Venezuela.	All the facts and activities subject to the above-mentioned provisions shall be governed by the laws of the Bolivarian Republic of Venezuela, and the controversies deriving from them shall be submitted to its jurisdiction, in the manner established in the Constitution of the Bolivarian Republic of Venezuela.

This provision clearly indicates that the Migration Law does not affect rights existing under the previous legal framework, thereby confirming that this law is not supposed to produce a retroactive effect.

179. Consequently, the Arbitral Tribunal finds that the promulgation of the Migration Law has not extinguished Claimants' right to raise claims based on circumstances which occurred and rights and obligations which arose prior to the promulgation of the Migration Law.

180. *(ii) Regarding the validity of the Petrozuata Side Letter itself in the light of Article 5 of the Nationalization Law 1975:*

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[186] Exh. C-65 / RL-2.
[187] Exh. C-65.
[188] Exh. RL-2.

181. It is undisputed between the Parties that the legal basis for the Petrozuata strategic association is Article 5 of the Nationalization Law 1975 and that such association may only validly exist and operate within the framework established by such provision. What is disputed between the Parties is whether or not the Petrozuata Side Letter was entered into in accordance with the requirements set by Article 5.

182. As reminder, Article 5 of the Nationalization Law 1975 provides as follows (for English translations, see above para 23):
"El Estado ejercerá las actividades señaladas en el artículo 1° de la presente Ley directamente por el Ejecutivo Nacional o por medio de entes de su propiedad, pudiendo celebrar los convenios operativos necesarios para la mejor realización de sus junciones, sin que en ningún caso estas gestiones afecten la esencia misma de la actividades atribuidas.

En casos especiales y cuando así convenga al interés público, el Ejecutivo Nacional o los referidos entes podrán, en el ejercicio de cualquiera de las señaladas actividades, celebrar convenios de asociación con entes privados, con una participación tal que garantice el control por parte del Estado y con una duración determinada. Para la celebración de tales convenios se requerirá la previa autorización de las Cámaras en sesión conjunta, dentro de la condiciones que fijen, una vez que hayan sido debidamente informadas por el Ejecutivo Nacional de todas la circunstancias pertinentes."

183. In summary, Article 5 of the Nationalization Law 1975 provides for an exception to the nationalization of all hydrocarbons-related activities and allowed private entities to participate in projects otherwise reserved to the State and/or state-owned entities. However, this exception was subject to the following sets of conditions:
(i) *Conditions relating to the circumstances in which an exception is appropriate:* Exceptions may only be made in 'special cases' and provided the case conforms to the public interest;

(ii) *Conditions relating to the form and extent of participation of the private entity:* The participation of private entities shall be in the form of 'association agreements' of a specified duration and in which the State keeps a controlling participation;

(iii) *Conditions relating to the authorization process:* The association agreement requires 'prior authorization' of the Congressional Chambers in joint session, within the conditions that they establish based on information they receive from the National Executive of all the 'pertinent circumstances'.

184. The first two sets of conditions are undisputed between the Parties. The dispute concerns only the third set of conditions, and in particular whether the Petrozuata Side Letter was duly authorized by the Congressional Chambers.

185. First of all, it should be noted that whilst Article 5 of the Nationalization Law 1975 requires a 'prior authorization' within specific 'conditions' to be formulated based on information provided by the National Executive of all 'pertinent circumstances', it does not set forth the detailed procedure to be followed by the parties requesting such authorization, by the Congress when fixing the relevant conditions or by the National Executive with regard to the information to be submitted to the

Congress.

186. It has also to be noted that the Petrozuata project was the very first of the four Orinoco Belt projects, and that it was thus the first time that Article 5 of the Nationalization Law 1975 was applied. In this respect, it appears that Article 5 was not applied in a uniform way with regard to each of the four projects and that the authorization process regarding various projects took various forms and durations. For example, while in the Petrozuata Project the Bicameral Commission examined and approved the specific Conditions submitted in draft by Maraven without examining the draft Petrozuata Association Agreement (see above paras 32-34). In contrast, in the Hamaca Project the Congress firstly approved the framework agreement and the Conditions and the Bicameral Commission later on issued a report in which it approved a draft of the Hamaca Association Agreement (see above paras 62-64).

187. Thus, Article 5 of the Nationalization Law 1975 does not give any detail as to the formalities of the authorization required by Congress, and the application in practice of this provision also shows that Congress may have interpreted and applied this article differently at different times. What matters here is therefore how at the time of the Petrozuata project a reasonable person was entitled to interpret this provision and whether or not the process followed by the Parties in the Petrozuata project was in line with such interpretation.

188. In this respect, following aspects of the authorization process provided for in Article 5 deserve closer attention:
(i) Article 5 expressly refers to a 'prior' authorization, thereby indicating that the authorization to be granted by the Congressional Chambers was meant to be an *exante* authorization of the project before its implementation, and not *anex-post* approval of an agreement already entered into.

Thus, even if later on the Congress decided to approve specific agreements, at the time of the authorization of the Petrozuata Side Letter no such specific approval could be expected and it was also not required by any State authority.

(ii) Article 5 provides that the authorization would be granted *"within the conditions that they* [the Congressional Chambers] *establish".*

In the Petrozuata project however it appears that these 'Conditions' were established by the Parties under the lead of Maraven and were submitted to Congress for approval, without Congress making or suggesting any amendments thereto.

(iii) Article 5 provides that the Conditions and the authorization should be based on information to be provided by the National Executive *"of all pertinent circumstances".*

Article 5 does not define the concept of 'pertinent circumstances' and thereby seems to leave it to the 'National Executive' to determine what does or does not constitute such 'pertinent circumstances'. Article 5 does also not specify which entity of the 'National Executive' is in charge of conveying the information, and in particular what - if any - would be the role of the relevant state-owned entities involved in the relevant association. In the present case, it appears based on the record that all information submitted to Congress was provided by Maraven.

189. Based on the above considerations, the mere fact that the Petrozuata Side Letter itself was never formally and explicitly approved by Congress is not sufficient to conclude to its nullity or invalidity. What matters is rather whether or not the Petrozuata Side Letter falls within the scope of the Congressional Authorization.

190. In this regard, Claimants and Respondent follow a different approach. Respondent argues that for the Petrozuata Side Letter to be valid, it must fall under one of the specific conditions approved by Congress, which is not the case. In contrast, Claimants argue that the Conditions only set out the general framework of the project and that it is thus sufficient to establish that the Side Letter fits into this general framework. Alternatively, should the Arbitral Tribunal follow a more restrictive approach, Claimants contend that the Side Letter would in any case be covered by the Fifteenth Condition. This is contested by Respondent, according to whom the Fifteenth Condition may not cover an obligation of the nature and scope of the one contemplated in the Side Letter.

191. Thus the Arbitral Tribunal must determine whether it is sufficient if the object of the Petrozuata Side Letter is considered acceptable in view of the general framework established by the Conditions, or whether it is necessary that the Side Letter and its object be subsumed under a specific Condition.

192. The first step is therefore to determine the nature of the 'Conditions' approved by Congress.

193. On one side, it should be noted that the Bicameral Commission's report of 12 August 1993 (see above para 0) specified that the authorization of the Petrozuata project was recommended *"within the 'conditions' restrictively stated in this report".*[189] Similarly, the Congressional Authorization published on 9 September 1993 specifying that the authorization granted shall be used "*within the legal framework of the 'conditions' restrictively stated in this* [i.e. the Bicameral Commission's] *Report".*

194. On the other side, it should also be noted that, as mentioned above (para 188(iii)), Article 5 of the Nationalization Law 1975 does not provide any indication as to the nature of these 'Conditions', and while it provided that these conditions should be fixed by Congress, it appears that they were in practice submitted in their final wording by Maraven. In this respect, it should further be noted that when Maraven first prepared the draft of what became the list of 'Conditions' submitted to Congress, Maraven qualified these conditions as *"certain broad/preliminary guidelines for the structuring of prospective strategic Joint Ventures".*[190]It also appears that Claimant 2 never had detailed knowledge of the authorization process nor the exact nature and impact of the Conditions, although the record does indicate that Claimant 2 was not unaware that the approval of the Conditions was an important element of the process.[191]

195. In addition, as mentioned above (para 188(i)), the authorization process as implemented at the time of the Petrozuata project was one of prior 'authorization' and was therefore by nature not meant to encompass all the details and specificities of the future association agreement. Nothing would have prevented the Congress from requesting the filing of the draft agreements for prior authorization

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[189] *Autonomous translation by the Arbitral Tribunal of "dentro de las condiciones expresadas taxativamente en este informe"..*

[190] See above para 30 and Exh. R-4.

[191] See above para 28 referring to the Feasibility Study, in which Conoco acknowledges the need of certain approval by the government, and Transcripts, Day 1, p. 215 l. 22 to p. 219 l. 18, where Mr. Wageningen declares that Conoco was never really involved in the authorization process, which was managed solely by Maraven..

purposes, as it did in the Hamaca project (see below paras 61-64). However, this was not the approach chosen by Congress for the Petrozuata project, and while it is true that the Congressional Commission of Energy and Mines at some point requested a copy of the Petrozuata agreements and further details on the strategic association (see above paras 46-48), nothing in the record indicates that the purpose of this request went beyond the general purpose of *"following-up of the apertura process."*[192]

196. Therefore, the Arbitral Tribunal considers that the use by Congress of the term 'restrictively' *("taxativamente")* is in itself not sufficient to require that the Petrozuata Side Letter or its object to fall under the scope of a specific Condition.

197. The question is therefore rather whether the Petrozuata Side Letter fits into the general framework established by the Conditions, or whether the spirit and/or object of the Petrozuata Side Letter must be seen as contravening or exceeding such framework.

198. The Petrozuata Side Letter deals with the issue of production curtailments imposed by the Venezuelan State as a result of its OPEC membership and how to protect the project from the impact of such curtailments and distribute the risks related thereto among the project participants. While Claimants argue that the guarantee provided by the Side Letter to Claimant 2 was essential in order to secure the financing of the project and must therefore be seen as fitting into the general framework of the authorized project, Respondent contests the financial value of the Petrozuata Side Letter and argues that it could not have been validly entered into without the Congress having knowledge of such Letter as a 'pertinent circumstance' under Article 5 of the Nationalization Law 1975.

199. The Arbitral Tribunal considers that the financial use of the Petrozuata Side Letter can for the time being be left open, to the extent that other elements clearly indicate that the Petrozuata Side Letter constituted an essential element of the project. In particular, it arises from the record that the good and safe functioning of the upgrader required minimal levels of production and that curtailments restricting the production volume below such levels represented operational and safety risks.[193] As such, the protection provided in the Petrozuata Side Letter with regard to production levels was important for the safe and efficient operation of the project.

200. Based thereon, the Arbitral Tribunal is of the opinion that the purpose and object of the Petrozuata Side Letter was in line with the general framework of the project as authorized by Congress.

201. Therefore, the only question that remains is whether the Congress' knowledge of Maraven's undertaking to grant protection from OPEC curtailments was necessary for such undertaking to be validly entered into.

202. In this regard, it should first be noted that it is disputed between the Parties to what extent, if at all, the Congress was aware of Maraven's undertaking as contemplated in the Petrozuata Side Letter. Respondent asserts that Congress had no knowledge of the Petrozuata Side Letter, neither in form, concept or content,[194] Claimants contest this assertion arguing that the record does not show what

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[192] Autonomous translation of the Arbitral Tribunal of *"En virtud del seguimiento que realiza est Comision sobre el proceso de apertura"*, see above para 46 and Exh. R-l5.

[193] Lyons WS para 37; Exh. C-92 to C-94.

documents and information was actually submitted by Maraven to the Congress.[195]

203. In this regard, the Arbitral Tribunal notes the following:
(i) First, it is true that the record does not clearly establish whether or not, and if so to what extent, the Congress had knowledge of the undertaking contemplated in the Petrozuata Side Letter.

(ii) Second, the party in charge of submitting relevant information to the Congress was Maraven, and the burden to establish what documents and information was in fact provided to Congress therefore lies on Maraven. However, Maraven has failed to either provide a specific list of documents and/or information submitted to Congress, or to otherwise provide witness statements of relevant persons, such as Mr. Abouhamad, testifying to the nature and scope of the information submitted to Congress.

(iii) Third, the request to incorporate the protection from OPEC curtailments in the Side Letter came from Maraven, and the reasons given to Claimant 2 were that Maraven wished to avoid drawing too much attention to this matter from the media as well as from certain members of Congress (in particular its president Mr Ramirez) allegedly opposed to the *apertura petrolera* and who would therefore have been opposed to an undertaking as the one contemplated in the Side Letter.[196] However, nothing in the record allows drawing definitive conclusions as to the reasons for which Maraven requested the incorporation of the OPEC curtailments protection undertaking into the Petrozuata Side Letter, and it appears in particular that this issue was not subject to lengthy discussions and decided rather quickly.[197] Whatever the specific reasons may have been, according to the principle of good faith as contemplated in Articles 12 of the Venezuelan Code of Civil Procedure (see above para 207) and Article 1160 of the Venezuelan Civil Code,[198] the Arbitral Tribunal can only assume that Maraven's intention was to enter into a valid undertaking and that it was not its intention to do anything that would have contravened applicable legal provisions and thereby put into question the validity of the undertaking.

(iv) Fourth, the three contractual agreements, i.e. the Petrozuata Association Agreement, the Petrozuata Side Letter and the PDVSA Petrozuata Guaranty were all signed on the same day at the same public ceremony by Mr. Emilio Abouhamad, Maraven's President, and Mr. Constantine S. Nicandros, CEO of Conoco as concerns the Petrozuata Association Agreement and the Petrozuata Side Letter and by Mr. Claus Graf, Vice-President and Acting President of PDVSA, as concerns the PDVSA Petrozuata Guaranty and in further presence of Mr. Van Wageningen on behalf of Conoco and Tomas Carrillo and Gustavo Gabaldon on behalf of Maraven. This event was attended by the press, who reported on it the following day.[199] Therefore, although it is very likely that no particular attention was given to the Side Letter at this signing ceremony, nothing indicates that the Petrozuata Side Letter was 'hidden' from the public or the Congress.

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[194] See Transcripts, Day 1, p. 161 1. 6-9, see also Respondent's Opening Argument, slide 45.

[195] CL Reply para 52.

[196] See Von Wageningen WS2 para 9; Transcripts, Day 1, p. 401. 10-14.; p. 258 1. 24 l. to p. 271 l. 23; p. 294 1. 8-12.

[197] See Transcripts, Day l, p. 293 l. 8-11.

[198] Article 1160 of the Venezuelan Civil Code provides that *"Los contratos deben ejecutarse de buena fe y obligan no solamente a cumplir lo expresado en ellos, sino a todas la consecuencias que se derivan de los mismos contratos, según la equidad, el uso o la ley"* (CL-4 / RL-) ("Contracts should be performed in good faith and the parties are bound not only to comply with the language of the contracts, but also with all consequences derived from the contracts, based on principles of equity, custom and the law", according to Respondent's translation (Exh. RL-12),as endorsed by Claimants in CL Closing Statements, slide 52.

[199] CL Reply para 46 and footnote 88; Transcripts, Day 1, p. 42,l. 3-23; Exh. C-124.

(v) Finally, it cannot be ignored that no one, i.e. neither Maraven, PDVSA, the National Executive or the Congress, ever put into question the validity of the Petrozuata Side Letter before the initiation of this arbitration proceedings. In addition, there is also no indication that the signatory of the Petrozuata Side Letter, Mr. Abouhamad, has ever been asked to give explanations on the reasons and background for entering into the Petrozuata Side Letter in alleged contravention of the applicable procedure.

Based on the above considerations, the Arbitral Tribunal finds that it would be contrary to good faith for Respondent to draw any advantage from the alleged lack of conformity of the execution of the Petrozuata Side Letter with Article 5 of the Nationalization Law 1975.

204. Consequently, the Arbitral Tribunal considers that the Petrozuata Side Letter must be deemed to have been validly entered into by Maraven and Claimant 2.

(e) Scope of the Side Letter

205. As mentioned above (paras 150-152 and 161), as an alternative to its argument of extinction and/or invalidity of the Petrozuata Side Letter, Respondent challenges the scope of such Side Letter alleging that it does not cover the OPEC curtailments at stake in the present case.

206. Respondent bases its challenge on three main arguments: (i) the Petrozuata Side Letter has to be interpreted in the light of its original wording as contemplated in Section 13.04(c) of the draft Petrozuata Association Agreement of 1995, which only addressed production curtailments imposed on Maraven, (ii) it only covers 'restrictions in production' and not restrictions on export volumes, (iii) it only covers curtailments imposed on the entire Venezuelan oil industry and not curtailments imposed specifically on the Petrozuata project. Claimants reject this interpretation and contend that the Side Letter intended to protect the Project from any OPEC curtailments applicable to the Venezuelan oil industry, and irrespective of its final allocation among the various projects, and no difference was intended between export and production curtailments in view of the Project's specificities, i.e. the fact that the entire production is meant for export.

207. The Arbitral Tribunal shall interpret the scope and meaning of the Petrozuata Side Letter in the light of the general principles of contract interpretation contemplated in Article 12 of the Venezuelan Code of Civil Procedure, which provides as follows:

Original Spanish Version [200]	Claimants' Translation [201]	Respondent's Translation [202]
Los jueces tendrán por norte de sus actos la verdad, que procurarán conocer en los limites de su oficio.	As part of their activities, judges are responsible for the discovery of the truth within the boundaries of their	[no independent translation

[200] Exh. CL-46.
[201] Exh. CL-46.
[202] Exh. R-12.

En sus decisiones el Juez debe atenerse a las normas del derecho a menos que la Ley lo faculte para decidir arreglo a la equidad. Debe atenerse a lo alegado y probado en autos, sin poder sacar elementos de convicción fuera de estos, ni suplir excepciones o argumentos de hecho no alegados ni probados. El juez puede fundar su decisión en los conocimientos de hecho que se encuentren comprendidos en la experiencia común o máximas de experiencia. En la interpretación de contratos o actos que presenten oscuridad, ambigüedad o deficiencia, los jueces se atendrán al propósito y a la intención de las partes o de los otorgantes, teniendo en mira las exigencias de la ley, de la verdad y de la buena fe.	established duties. In their decisions, Judges are required to comply with the legal standards unless the Law authorizes them to decide based on principles of equity. They must base their decisions on the facts alleged and proved in the case record, and may not bring out elements of belief outside of those facts, nor provide defenses or factual arguments which have not been alleged or proven. The Judge may base his rulings on factual knowledge drawn from common experience or the maxims of experience. In the interpretation of contracts or acts that display uncertainty, ambiguity or deficiency judges will base their decisions on the purposes and intention of the parties or the grantors, keeping in mind the requirements of law, of truth and of good faith.	provided]

208. Based on these principles, the Arbitral Tribunal considers that Respondent's interpretation of the Petrozuata Side Letter does not stand for the following reasons:
(i) While the wording of Section 13.04(c) of the draft Petrozuata Association Agreement of 1995 refers indeed to the circumstance in which *"the Class A Privileged Shareholder* [i.e. Maraven] *is required to cut back on its crude oil production rates due to any external-to-the-Company imposed production restrictions",* it also arises from the wording of this clause that the situation anticipated was one of external, i.e. OPEC, curtailments and the intent of such undertaking was to protect the Joint Venture from the effects of the OPEC curtailments. As such, the wording of the former Section 13.04(c) is in itself not sufficient to justify restricting the scope of application of the later Side Letter to the wording of such Section, without further analyzing the wording and aim of the Side Letter itself.

(ii) The Petrozuata Side Letter refers to 'restriction in production', and Respondent makes the argument that the curtailments at stake aimed at restricting exports, and not production. First, these words cannot be interpreted in isolation from the context and specificities of the Project. Based on the Offtake Agreement, it is established that the entire production of the Petrozuata site was meant for export purposes. This would have to be taken into account when interpreting the relevant words. Second, it should be noted that many of the letters concerning the restrictions mentioned 'export restrictions' in the body of the letter, but referred to 'production cutbacks' *("recorte de production")* in their reference line.[203] Consequently, the Arbitral Tribunal does not consider the distinction drawn between export and production restrictions to be relevant.

[203] See Exh. C-96, 97, 104, 105. Concerning C-l08, the email mentions export restrictions, but it refers and is based on the previous correspondence, i.e. C-104, which includes references to both export and production restrictions.

(iii) The Petrozuata Side Letter refers to restrictions *"imposed on the Venezuelan petroleum industry",* though it is agreed that these terms referred mainly to OPEC curtailments. OPEC production curtailments are never directly enforceable in a specific country, but it is up to the relevant authorities of such country to determine how to allocate the total volume of curtailment among the various production sites and to implement this allocation through the appropriate legal instrument, be it a decree, a law or just by way of letter. Therefore, the use of the words *"imposed on the Venezuelan petroleum industry"* do not themselves exclude from the scope of the Petrozuata Side Letter project-specific cuts imposed in implementation of the OPEC curtailments. This is confirmed by the further wording of the Petrozuata Side Letter, which also refers to *"any requirement to decrease production that may be applicable to the Company".*

209. The aim of the Side Letter was to ensure at all times a minimum level of production in order to ensure the financial viability of the Project as well as the good functioning of the Upgrader. The main idea was thus that in case production cuts were imposed by the government in implementation of its OPEC commitments and affecting the level of production required by the Project, such cuts would be absorbed by the state-owned entity to the Project, i.e. Maraven, out of its own production.

210. Therefore, the core question is whether the curtailments for which Claimants are seeking indemnification (i.e. the curtailments imposed from January to May 2007) were of a nature to endanger the financial viability of the Project and/or good functioning of the Upgrader. While Respondent's challenges are mainly based on the wording of the Petrozuata Side Letter rather than on what the Letter was meant to achieve, Respondent does express certain objections concerning the relevance of the Petrozuata Side Letter with regard to ensuring suitable financing of the Project. However, to the extent that the Petrozuata Side Letter itself expressly contemplates as its main '*raison d'être'* the concern to ensure sufficient financing, and in the light of the Offtake Agreement and the way in which the Project was supposed to operate, it is difficult to deny the financial relevance of the object of this Side Letter. Whether and to what extent Claimants may or may not have used the Letter as such in their search for adequate financing is only secondary, the main point being that ensuring minimum production level at all times notwithstanding possible OPEC curtailments was essential to the viability of the Project from a financial and operational perspective.

211. Consequently, the Arbitral Tribunal finds that the production curtailments for which Claimants seek redress fall within the scope of the Petrozuata Side Letter.

(f) Non-Performance of the Petrozuata Side Letter and 'Hecho del Príncipe'

212. It is not disputed between the Parties that Maraven did not absorb the relevant production curtailments as provided for in the Petrozuata Side Letter. Respondent disputes the validity and scope of the Petrozuata Side Letter, and in the case the Arbitral Tribunal would nevertheless confirm such validity and consider it applicable, Respondent disputes Maraven's liability for any

non-performance thereunder.

213. In this regard, Respondent argues that the production curtailments ordered by the Venezuelan government were of a mandatory nature and could not be avoided by the Parties to the Project. Therefore, they constituted an *'hecho del príncipe'* i.e. an 'external non-imputable cause' *('causa extraña no imputable')* excusing any non-performance. In contrast, Claimants argue that the application of the principle of *'hecho del principe'* requires an absolute impossibility to perform due to an external and non-imputable cause at the time of due performance. Such requirement is not fulfilled in the present case given that until the promulgation of the Migration Law there were ways to ensure sufficient production level in the Petrozuata site, such as for example by transferring crude oil from other sites to the Petrozuata site. As to the promulgation of the Migration Law, it cannot serve as a basis to justify Maraven's non-performance, which occurred prior to such date.

214. First of all, it should be noted that there is a high burden of proof when establishing an *'hecho del príncipe'.* Without entering into all the details, the principle of *'hecho del príncipe'* constitutes one type of *'causa extraña non-imputable'* which may excuse performance under Article 1271 of the Venezuelan Civil Code.[204] However, the application of such principle requires - among others - an absolute impossibility of compliance, meaning that the non-compliance cannot be avoided, and, based on the principle of good faith, a lack of foreseeability of such impossibility when undertaking the relevant obligation.[205]Where nonperformance is avoidable or was foreseeable, such non-performance may not be excused.

215. In the present case, Respondent does not contend that any sort of protection from production curtailments would necessarily constitute a *'causa extraña no-imputable',* but this would be the case of the curtailments at stake because these curtailments were imposed on a 'projectspecific' basic and not generally to the entire industry. In other words, Respondent argues that absorption of the imposed curtailments by Maraven was impossible because the cuts were imposed on the project itself, and neither Maraven nor the other Joint Venture partners had therefore the leeway to maintain production rates notwithstanding such specific curtailment orders.

216. The Arbitral Tribunal is of the opinion that Respondent's arguments do not stand for the following reasons:
(i) As mentioned above (para 0(iii)), the fact that the curtailments were imposed on the project is the mere result of the implementation of an OPEC curtailment imposed on the entire Venezuelan industry. Relieving Maraven of obligations that it undertook under the Petrozuata Side Letter just because of the way the Venezuelan government chose to implement these curtailments would undermine the entire idea of the Petrozuata Side Letter.

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[204] Article 1271 of the Venezuelan Civil Code provides that "*El deudor será condenado al pago de los daños y perjuicios, tanto por inejecución de la obligación como par retardo en la ejecución, si no prueba que la inejecución o el retardo provienen de una causa extraña que no le sea imputable, aunque de su parte no haya habido mala fe"* ("[t]he debtor shall be ordered to pay damages for non or late performance, unless he proves that late or non-performance arises from a non-imputable external cause, even in the case when he did not act in bad faith", according to Respondent's translation (RL-12)), and "[t]he debtor will be ordered to pay damages, both for failure to comply with the obligation as well as for late performance, if the debtor is unable to prove that the non- compliance or late performance was the result of an external cause not attributable to the debtor, even if the debtor did not act in bad faith", according to Claimants' translation (CL-20).

[205] *See* Exh. CL-23, Eloy Maduro Luyando and Emilio Pittier Sucre, *Curso de Obligaciones, Derecho Civil III,* Universidad Católica Andrés Bello, Manuales de Derecho, Caracas, Venezuela, 2000 at 218 fol. ; see also Urdaneta Opinion of 10 May 2011 paras 10 fol. and references quoted therein.

(ii) Even if Respondent's argument was to be followed, Respondent has not established that the project-specific implementation of OPEC imposed curtailments was unforeseeable at the time of conclusion of the Petrozuata Side Letter.

(iii) Finally, even if the Joint Venture was prevented from maintaining certain production or export levels, it has not been established that the minimum required production and operational activities of the site could not have been ensured otherwise, for example by transferring crude oil from other projects of Maraven to the Petrozuata site.

217. Consequently, the Arbitral Tribunal finds that Respondent has failed to meet the burden of proof justifying the application of the principle of *'hecho del príncipe'* or *'external nonimputable cause'* to excuse any non-performance by Maraven of its obligations under the Petrozuata Side Letter.

3. PDVSA's Liability

(a) Legal Basis

218. Claimants base their claim on the Petrozuata PDVSA Guaranty concluded between PDVSA and Conoco Orinoco. The relevant part of the Petrozuata PDVSA Guaranty provides as follows (for the English translation, see above para 45):
ARTICULO 2. RECONOCIMIENTO Y APPROBACION: *Por el presente documento PDVSA declara conocer por completo el contenido, los términos y condiciones del Convenio de Asociación a ser suscrito por MARAVEN y CONOCO, así como también todos los Anexos que lo acompañan y todos los demás acuerdos complementarios a ser suscritos entre CONOCO y MARA VEN en relación con el Proyecto (dichos acuerdos complementarios en lo adelante referidos conjuntamente como los "Acuerdos").*

ARTICULO 3 GARANTIAS Y COMPROMISO DE INDEMNIZACION: *Por el presente documento, PDVSA garantiza a CONOCO: (a) que MARA VEN cumplirá fielmente con los términos, condiciones y compromisos establecidos en el Convenio de Asociación y en los Acuerdos que deban ser observados o ejecutados por MARA VEN; (b) que, en el caso de incumplimiento o inobservancia por parte de MARA VEN de cualquiera de los términos, condiciones y compromisos del Convenio de Asociación o de los prenombrados Acuerdos, PDVSA cumplirá, o hará que su cumplan iodos y cada uno de dichos términos, condiciones y compromisos, y (c) que, al ser requerida, pagará a CONOCO [...] el monto correspondiente a cualquier perdida o daño que CONOCO o que PETROZUATA puedan sufrir por causa de la inobservancia o incumplimiento, en todo o en parte, de alguno o de todos los referidos términos, condiciones y compromisos, de conformidad con lo previsto por el Convenio de Asociación o los Acuerdos."*

(b) Reminder of the Parties' Position

219. As a reminder (see above paras 142-144 and paras 150-153), the position of the Parties is in summary the following in relation to the Petrozuata Side Letter:

220. Claimants' position is that the PDVSA Petrozuata Guaranty is valid and covered by both Section 13.04(b) of the Petrozuata Association Agreement and the Seventeenth Condition of the Congressional Authorization. With regard to its scope, and based on its broad, clear and unambiguous wording, the PDVSA Petrozuata Guarantyfully covers all obligations of Maraven under all agreements concluded in connection with the Petrozuata Association Agreement, including the Petrozuata Side Letter. In contrast, Respondent argues that PDVSA may not have undertaken any guarantee obligation under the PDVSA Petrozuata Guaranty with regard to the Petrozuata Side Letter, given that this Side Letter would be invalid and even if considered valid it would not cover the relevant curtailments. Alternatively, in case the Arbitral Tribunal would consider the Side Letter to be valid and cover the relevant curtailments, a breach by Maraven of such Side Letter would not engage PDVSA's liability because the scope of the Side Letter was not within the scope of the obligations guaranteed under the terms of the PDVSA Petrozuata Guaranty.

221. Considering that the Arbitral Tribunal has already found that the Petrozuata Side Letter was validly entered into and did cover the relevant curtailments, and considering that the reasons for which the Arbitral Tribunal rejected Respondent's arguments relating to the extinguishing effect of the Migration Law also apply with regard to the PDVSA Petrozuata Guranty, the Arbitral Tribunal will deal in this section only with the arguments of the Parties relating to the scope of the obligations undertaken by PDVSA in the PDVSA Petrozuata Guaranty.

(c) Scope of the PDVSA Petrozuata Guaranty

222. Respondent's argument that the PDVSA Petrozuata Guaranty does not cover the obligations undertaken by Maraven under the Petrozuata Side Letter relies on the following main reasoning: The PDVSA Petrozuata Guaranty must be interpreted in application of the principle of interpretation of 'linked contracts' and therefore the wording and system of the relevant provisions of the Petrozuata Association Agreement and Congressional Authorization must be duly taken into account when determining the true meaning and scope of PDVSA's undertaking. In this regard, Section 13.04(b) of the Petrozuata Association Agreements refers to the 'Petrozuata Guaranty' and sets forth that such guarantee will be provided only with regard to obligations under the Petrozuata Association Agreement or any of its 'Business Contracts'. The PDVSA Petrozuata Guarantee in turn refers to 'ancillary agreement'. Since the Side Letter does not qualify as 'Business Contract' or 'ancillary agreement', it cannot be covered by the PDVSA Petrozuata Guarantee.

223. Claimants in summary argue that Respondent's interpretation is based on an extrapolation of specific terms used in different relevant contractual provisions, and in particular on artificial inconsistencies between Section 13.04(b) of the Petrozuata Association Agreement and the PDVSA Petrozuata Guaranty regarding in particular the agreements referred therein (e.g. 'Business Contract', 'ancillary agreement', etc.). According to Claimants, these terms should not be interpreted based on the principles of interpretation of linked contracts, but based on general principles of contract interpretation and in the light of the broad and unambiguous wording of the PDVSA Petrozuata Guaranty. In particular, the Arbitral Tribunal must take into account when interpreting the scope of the Guaranty that PDVSA is not a party to the Petrozuata Association Agreement and is

therefore free to grant a guarantee under different terms than those provided in Section 13.04(b) of the Petrozuata Association Agreement provided the scope of such guarantee does not exceed the obligations assumed by Maraven under the Petrozuata Side Letter, which it did not.

224. With regard to the principles of interpretation of linked contracts, the Arbitral Tribunal is not convinced that such principles should apply to the present case based on the following main reasons: (i) first, the signatory Parties to the various contractual documents were not identical and it should therefore not be concluded to easily that one party intends to be bound by the terms used in a contract it has not signed; (ii) second, the fact that had the Parties to the PDVSA Petrozuata Guaranty wished to use the same terms as in the Petrozuata Side Letter or the Petrozuata Association Agreement, they could have done so; instead they used a new wording without linking the new terms to previous agreements. Therefore, the Arbitral Tribunal will rely on the general principles of contract interpretation relying on the wording, aim and context of the relevant provision.

225. Looking at the wording of the PDVSA Petrozuata Guaranty, it is undeniable that such wording is very broad. It refers in Article 3 to *"full and proper observance and performance by MARA VEN of the terms, covenants and conditions in the* [Association Agreement] *and the Agreements which are to be observed or performed by it",* whereby the term "Agreements" is defined in Article 2 as *"all ancillary agreements between CONOCO and MARAVEN in furtherance of the Project"* (in Spanish: *"todos los demas acuerdos complementarios a ser suscritos entre CONOCO y MARA VEN en relación con el Proyecto").* Such broad wording and the specific terms used *('acuerdos complementarios')* do not indicate any intention of the Parties to limit PDVSA's Guaranty to a certain kind of obligations of Maraven or to obligations undertaken only in a specific kind of contractual documents. On the contrary, the broad wording of Article 3 in connection with PDVSA's express acknowledgment in Article 2 of all the terms and conditions of all ancillary agreements between CONOCO and MARAVEN in furtherance (or 'in relation') to the Projects, clearly expresses an intention to cover all obligations that MARAVEN may have undertaken in view of the execution and performance of the Project. Therefore, the terms 'ancillary agreements' must be understood as covering the Petrozuata Side Letter.

226. Looking at the context of the PDVSA Petrozuata Guaranty, it was executed together with the Petrozuata Association Agreement and the Petrozuata Side Letter, though the signatories to these agreements are different. While the signatory (on Venezuela's side) of the Petrozuata Association Agreement and Side Letter was Maraven, as party performing the project with Conoco, the PDVSA Petrozuata Guaranty was executed by PDVSA. Thus, since the parties to the various agreements are different, interpreting the term of one of these agreements in the light of the meaning of terms used in an agreement involving a different party should only be done if there exist any specific element justifying such approach. Considering that PDVSA was informed of all the terms and conditions of the Project and agreements, had PDVSA and Conoco intended to give to certain terms the same meaning as given to terms used in the Petrozuata Association Agreement, nothing prevented them from doing so. They could easily have used the same terms or cross-refer to terms used in the other agreements. However, this is not how the parties decided to proceed. Instead, they used different terms, which they defined autonomously and without reference to any terms defined in the Petrozuata Association Agreement.

227. Based on the above considerations, the Arbitral Tribunal sees no reason to limit the scope of the

PDVSA Petrozuata Guaranty as arising from its wording.

228. Regarding Respondent's further argument that a broad interpretation of the PDVSA Petrozuata Guarantee as suggested by Claimants would not fall under the scope of the Congressional Authorization, the Arbitral Tribunal finds this argument unfounded for the following reasons:
(i) Similarly to what has been said above in respect to the Petrozuata Side Letter (paras 191-196), the Arbitral Tribunal does not consider that the use by Congress of the term 'restrictively' *("taxativamente")* is in itself sufficient to require each undertaking of the parties to fall under the scope of one specific Condition. The question is rather whether the specific undertaking, here the PDVSA Petrozuata Guaranty, fits into the general framework established by the Conditions, or whether the spirit and/or object of the PDVSA Petrozuata Guaranty must be seen as contravening or exceeding such framework.

(ii) Even if subsumed under the Seventeenth Condition, this condition was drafted before the Petrozuata Association Agreement, and it would therefore not be appropriate to interpret the terms used in the Congressional Authorization so as to limit the scope of terms used later on. On the contrary, the Seventeenth Condition must be read as approving the principle of a guarantee and confirms that the PDVSA Petrozuata Guarantyis compatible with the general framework as approved by Congress.

(iii) Respondent's argument mainly lies on the assumption that the obligation undertaken by Maraven under the Petrozuata Side Letter went beyond the authorized scope of the project. To the extent that the Arbitral Tribunal considers the Petrozuata Side Letter and the obligations undertaken by Maraven therein to be in line with the general framework of the project as authorized by Congress (see above para 200), Respondent's argument loses its essence.

229. Consequently, the Arbitral Tribunal finds that the scope of the PDVSA Petrozuata Guarantee covers Maraven's obligations under the Petrozuata Side Letter.

(d) Determination of the Specific Obligations of PDVSA under the PDVSA Petrozuata Guarantee

230. As arises from the wording and scope of the PDVSA Petrozuata Guarantee (see above para 45), the guarantee obligation undertaken therein by PDVSA is threefold:
(i) It guaranteed *"the full and proper observance and performance by MARA VEN of the terms, covenants and conditions in the* [Association Agreement] *and the* [ancillary] *Agreements which are to be observed or performed by if.*

(ii) It guaranteed *"that upon breach by MARA VEN of any of the terms, covenants and conditions of said* [Association Agreement] *and the* [ancillary] *Agreements, PDVSA will perform, or cause to be performed, each and every one of said terms, covenants and conditions".*

(iii) It guaranteed "to pay upon demand to CONOCO [...] the amount of any loss or damage which CONOCO or Petrozuata may suffer by reason of MARAVEN's nonperformance or non-observance,

in whole or in part, of all or any of said terms covenants and conditions as provided by said[Association Agreement] or [ancillary] Agreements.

231. To the extent the Petrozuata Side Letter constitutes an 'ancillary agreement' in the sense of the PDVSA Petrozuata Guarantee (see above para 225), PDVSA's guaranty encompasses the full and proper performance by Maraven of its obligations under the Petrozuata Side Letter. Consequently, in case of breach of the Petrozuata Side Letter by Maraven, PDVSA undertook to either directly perform the relevant obligations of Maraven, or cause such performance, and further to compensate Conoco and/or Petrolera Zuata for any loss or damage caused by such non-performance.

232. The Arbitral Tribunal has already established that Maraven failed to fully perform its obligations under the Petrozuata Side Letter to the extent that it did not do anything to absorb from its own production the relevant curtailments imposed by the Venezuelan Government (see above para 212). It is undisputed that PDVSA did not itself perform or otherwise cause Maraven to perform such obligations. Rather, Respondent invokes the doctrines of *'hecho del principe'* and of 'external non-imputable cause' to excuse the non-performance of such obligations by both Maraven and PDVSA.

233. As explained above (see above paras 214-217), the Arbitral Tribunal is of the opinion that Respondent has failed to meet the burden of proof justifying the application of the principle of *'hecho del principe'* or *'external non-imputable cause'* to excuse any non-performance by Maraven of its obligations under the Petrozuata Side Letter. The same reasoning as laid out above applies with regard to PDVSA, who can also not be deemed excused from its nonperformance.

234. Consequently, PDVSA is liable under the PDVSA Petrozuata Guaranty for any damage or loss resulting from Maraven's failure to comply with its obligations under the Petrozuata Side Letter.

4. First Conclusion

235. Consequently, the Arbitral Tribunal finds that:
(i) The Petrozuata Side Letter was validly entered into and covers the production curtailments for which Claimant 2 seeks redress;

(ii) Claimant 2's right to raise claims under the Petrozuata PDVSA Guaranty in relation to such production curtailments has not extinguished;

(iii) Respondent has failed to meet the burden of proof justifying the application of the principle of *'hecho del príncipe'* or *'external non-imputable cause'* to excuse any non-performance by Maraven of its obligations under the Petrozuata Side Letter, and Maraven therefore remains liable for any such non-performance;

(iv) The PDVSA Petrozuata Guaranty covers Maraven's obligations under the Petrozuata Side Letter, and PDVSA is therefore liable for any damage or loss caused to Conoco by Maraven's failure to perform such obligations.

C. BASIS FOR CLAIMANTS' CLAIMS CONCERNING THE HAMACA PROJECT

1. Claimants' Claim and the Relevant Issues

236. As set out above (see above paras 142 and 147), Claimants request from Respondent the payment of USD 102,910,000.

237. In order to determine whether Claimants' claims are well-founded, it is firstly necessary to determine the following three issues:
(i) The possibility for Claimant to raise claims based on the PDVSA Hamaca Guaranty in connection with the Hamaca Association Agreement in view of Respondent's argument that any right or claim under these agreements has extinguished following the promulgation of the Migration Law;

(ii) If not extinguished, the scope of liability of PDVSA under this Guaranty with regard to Corpoguanipa's obligations under the Hamaca Association Agreement; and

(iii) The nature and scope of the obligations undertaken by Corpoguanipa with regard to production curtailments and whether or not Corpoguanipa breached any of these obligations and may therefore be held liable for any damage or loss arising from such breach.

After dealing with the first issue, the two last issues will be examined in a reversed order, i.e. starting with the issue of Corpoguanipa's scope of liability under the Hamaca Association Agreement (see below section 3), and followed by the issue of the scope of the PDVSA Hamaca Guaranty (see below section 4).

238. If the Arbitral Tribunal determined a liability of Corpoguanipa and PDVSA, it would then examine the issue of the claim for damages (see below section D).

2. Issue of Extinction of the Relevant Agreements

239. For the same reasons as mentioned above with regard to the Petrozuata Project (see paras 173-179), the Arbitral Tribunal is of the opinion that the Migration Law may not have extinguished claims arising under the Hamaca Association Agreement and the PDVSA Hamaca Guaranty before the promulgation of the Migration Law.

240. Consequently, claims having arisen under these agreements prior to the promulgation of the Migration Law have not extinguished.

3. Corpoguanipa's Liability

(a) Legal Basis

241. Claimants base their claim on Section 13 of the Hamaca Association Agreement, which provides as follows:

Original Spanish Version [206]	Official English Translation [207]
ARTICULO XIII REDUCCION DE PRODUCCION 13.1 Reducción de Producción. Las Partes, en su condición de participantes en la Asociación podrán ser requeridas a reducir la producción, como resultado de medidas gubernamentales adoptadas en ejecución de los compromisos internacionales de Venezuela. Cuando tales reducciones sean requeridas, el porcentaje de reducción de las Partes, en su condición de participantes en la Asociación, no excederá el nivel de porcentaje de reducción de producción requerido a las compañías petroleras que operen en Venezuela, en forma global, incluyendo a PDVSA y sus Filiales, y determinada en cada caso, sobre la base de la capacidad disponible de producción. A estos fines, la capacidad de producción disponible de las Partes, en su condición de participantes en la asociación para cualquier período determinado, se basaráa en la capacidad planificada, en ausencia de alguna reducción, para la producción de Crudo Extra Pesado establecida en el plan de negocios que cubra tal período, y será revisada en períodos subsecuentes con base a la capacidad planificada para tales periodos. Sin limitación de lo anterior, la capacidad disponible de las Partes, en su condición de participantes en la Asociación con respecto a cualquier período siguiente al comienzo de la operación de cualquier Mejorador, incluirá (en la medida en que las Partes, en su condición de participantes en la Asociación serían capaces, de producir tal producción en ausencia de reducción) el volumen de producción de Crudo Extra Pesado	ARTICLE XIII PRODUCTION CURTAILMENT 13.1 Curtailment : The Parties in their capacity as participants in the Association may be required to curtail production as a result of government measures adopted in furtherance of Venezuela's international commitments. Where such curtailments are required, the percentage curtailment of the Parties in their capacity as participants in the Association shall not exceed the percentage level of production curtailment required of oil companies operating in Venezuela taken as a whole, including PDVSA and its Affiliates, determined in each case on the basis of available production capacity. For this purpose, the available production capacity of the Parties in their capacity as participants in the Association for any relevant period shall be based on the planned capacity for such period, and shall be revised in subsequent periods based on planned capacity for such periods. Without limiting the foregoing, the available capacity of the Parties in their capacity as participants in the Association in respect of any period following the commencement of operation of any Upgrader shall include (to the extent the Parties, in their capacity as participants in the Association, would, in the absence of curtailment be capable of producing such production) the volume of ExtraHeavy Oil production necessary to operate such Upgrader in the manner contemplated by the business plan covering

[206] Exh. C-3.

[207] Exh. C-3.

necesario para operar el Mejorador de la manera contemplada por el plan de

negocios que cubra tal período. 13.2 Mitigación de los Efectos de la Reducción. (a) Durante los períodos de reducción de la producción, el Mejorador Inicial y el Segundo Mejorador, en cada caso en la medida en que hayan comenzado operaciones, serán operados de tal manera, que se maximicen los beneficios económicos totales de las Partes, en su condición de participantes en la Asociación, en cualquier producción. En este sentido, las Partes, en su condición de participantes en la Asociación podrán, sin limitación, obtener suministros de crudo, extra pesado o pesado, de cualquier Persona, procesar crudo en mejoradores de otras asociaciones, o vender crudos de mayor gravedad API, productos no terminados y productos terminados.

such period. 13.2 Mitigation of Effect of Curtailment.

(a) During periods of production curtailment, the Initial Upgrader and the Second Upgrader, in each case to the extent they have commenced operations, shall be operated in such manner as to maximize the aggregate economic benefit to the Parties as participants in the Association of any production. In this regard, the Parties in their capacity as participants in the Association may, without limitation, obtain extra-heavy or heavy crude supplies from any Person, process cure in other associations' upgraders, or sell higher API gravity crude oil, unfinished products and finished products. (b) Following any period of production curtailment, the Parties shall take such actions as the Board, acting pursuant to Article 4.8(b)(xi), deems appropriate to recapture the revenue loss resulting from production curtailment, including accelerating production in the field, processing crude in other associations' upgraders or selling blended crudes and lower gravity crude. Field production and shipments in excess of upgrader capacity shall be allowed, if approved by the Board pursuant to the stated term of this Agreement, the term of the Association will be extended by up to five (5) years to the extent necessary to allow production of the same volume that the Parties in their capacity as participants in the Association, failed to produce as a result of the production curtailment.

(b) Reminder of the Parties' Position

242. As mentioned above (para 145), Claimants' main line of argument is to say that given the fact that Corpoguanipa exercised control over the Association, the liability for not complying with the terms of Sections 13.1 and 13.2 of the Association Agreement in the face of the OPEC Curtailments imposed on the Project is directly attributable to it. Contrary to what PDVSA has argued, Corpoguanipa did have a series of obligations that arose from Article 13 of the Hamaca Association Agreement, namely: (a) to ensure that the curtailments were established in a proportionate manner; and (b) to mitigate the effects produced by the OPEC Curtailments. [208]

Despite repeated requests from Claimant lto fulfill its responsibilities, including by mobilizing all members of the Petrolera Hamaca Board to take appropriate action, (b) Luego de cualquier período de reducción de producción, las Partes tomarán las acciones que la Junta Directiva, actuando

[208] CL Reply para 190; Transcripts, p. 352 1.4 to p. 358 1.9, and p. 370 1.9 to p. 371 1. 19.

conforme al Artíiculo 4.8(b) (xi), considere apropiadas para recuperar la perdida de ingresos resultante de la reducción de producción, incluyendo aceleración de la producción de campo, procesamiento de crudo en mejoradores de otras asociaciones o la venta de crudos mezclados y crudos de menor gravedad. La producción de campo y embarques que superen la capacidad del Mejorador serán permitidos si son aprobados por la Junta Directiva conforme a la oración que antecede, hasta que tales pérdidas sean recuperadas. Si tal pérdida no ha sido recuperada con anterioridad ai vencimiento del termino de este Convenio, el termino de la Asociación se extenderá hasta cinco (5) anos en la medida que sea necesario para permitir la producción de un volumen igual al que las Partes, en su condición de participantes en la Asociación, dejaron de producir como consecuencia de la reducción de la producción. Corpoguanipa never took any of the steps necessary to mitigate the economic impact of the OPEC Curtailments. [209]

243. As mentioned above (para 151), Respondent firstly contends that the Hamaca Association Agreement and any right or claim that Claimants may have derived therefrom have extinguished due to the promulgation of the Migration Law.

244. Alternatively, in case the Arbitral Tribunal found that the Hamaca Association Agreement was not extinguished, Respondent contends that the relevant Article of the Hamaca Association Agreement, i.e. Section 13, does not impose the obligations on Corpoguanipa that Claimant 1 is alleging in this case, a point which would be evident from a simple reading of its provisions. Nothing in this Section says anything about Corpoguanipa being responsible for absorbing the impact of production cutbacks or export restrictions, and nothing in this Section purports to impose upon Corpoguanipa any obligation to indemnify Claimant lfor losses it may suffer as a result of such governmental measures. Significantly, not a single document in the record supports Claimant l's allegedly distorted interpretation of Section 13, whereas all documents relating to the subject are consistent with the plain language of Section 13. For that reason, Claimant l is making up facts and invokes a series of inapposite legal theories to substitute for the absence of any such obligation of Corpoguanipa based on the actual language of Section 13. [210]

In addition, whatever the assessment of the legal obligations of Corpoguanipa under Sections 13.1 and 13.2 may be, there was actually no opportunity to make up for lost production as the curtailments remained in place until implementation of the Migration Law, at which point any re-allocation or mitigation became impossible. Therefore, in any case, Corpoguanipa would be excused from the performance of any obligation it may have had under the Agreement. [211]

In summary, to the extent that there was no obligation of Corpoguanipa with regard to these curtailments and that there was nothing Corpoguanipa could actually have done to prevent or otherwise remedy the consequences of these curtailments, no liability can arise on PDVSA's side from the PDVSA Hamaca Guarantee.

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[209] CL Reply para 206, Exh. C-93, C-101 and Lyon WS para 36.

[210] RSP Rejoinder para 115-116.

[211] RSP Rejoinder paras 135-136; Transcripts p. 1871. 18 to p. 188 1.25; p. 189 1. 2 to p. 192 1. 6.

(c) Reminder of the Relevant Facts

245. Between October 2006 and April 2007, Petrolera Ameriven received various letters from the government and/or PDVSA announcing the application of production and/or export curtailments imposed by the Venezuelan government (see above paras 78-94). These letters were either sent out by Mr. Rafael Ramírez, the Energy Minister but also and simultaneously the President of PDVSA (see paras 78, 80, 85, 92), by other members of the Ministry (see paras 82 and 87) or by staff of PDVSA itself (see para 90). They imposed specific caps in exports and/or production according to commitments undertaken by Venezuela as member of OPEC. It arises from these letters and communications, and in particular from the identity and positions of the senders of these letters, that there was a certain confusion of responsibilities between the Energy Ministry and PDVSA: Not only did members of the Energy Ministry hold concurrent positions with PDVSA, but communications which fell under the competence of the Ministry were actually made by PDVSA itself.

246. Each of these letters gave rise to protests from Mr. Roy Lyons, as President of ConocoPhillips Latin America and Director of Petrolera Zuata and Petrolera Ameriven, and addressed to Mr. Eulogio Del Pino, President of CVP and Director of Corpoguanipa and of PDVSA Petróleo, and to Mr. Rafael Ramírez, the Energy Minister and President of PDVSA,.

247. In its letters, Claimants at first stressed the fact that any disproportionate curtailment imposed on the Hamaca Project would fall under the responsibility of Corpoguanipa or of the relevant PDVSA's affiliate (see above para 81). However, these letters were not directed at Corpoguanipa itself, but at the Energy Ministry and PDVSA as the original senders of the letters.

248. As further curtailments were imposed, Mr. Lyons further requested "to discuss at the next Board of Directors Meeting of Petrolera Hamaca the actions that should be taken to mitigate the effects of cutbacks" (see above para 86) and continued to send protest letters highlighting the risks of thereto-relating production shutdowns and repeating similar claims to those raised in his previous letters (see above paras 87, 89, 93). It should however be noted that all these letters were still addressed to the Energy Ministry and PDVSA, and not to Corpoguanipa. The record does not show any formal request addressed to Corporguanipa to hold a Board meeting, although it arises from the record that such request were made orally. [212]

249. While the Energy Minister responded to the first of these letters by confirming its position (see above para 82), the record does not contain any further written response provided by the Ministry or PDVSA. With regard to Corpoguanipa, it cancelled the Board Meeting planned in February 2007 and did not convene any other Board Meeting. [213]

250. On l May 2007, PDVSA took over the operatorship of the Project according to Article 3 of the Nationalization Decree 5,200. Shortly after, i..e on 16 May 2007, the curtailments were lifted, and on 26 June 2007 Claimant 1 was completely forced out of the Joint Venture due to the failure to reach an agreement on the transition to *empresa mixta* and its interests in the Joint Venture were then assumed by CVP (see above para 91 and 16).

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[212] See Transcripts, p. 320 l. 4-13; see also p. 366 l. 8 to p. 370 l. 2, in particular p. 369 l. 3 to p. 370 l. 2.

[213] See Transcripts, p. 369 l. 3 to p. 370 l. 2.

251. On 8 October 2007, the Migration Law was promulgated imposing the conversion of all foreign associations into *empresas mixtasunder* the control of a state-owned company (see above para 99).

252. In conclusion, the record does not contain any formal claim raised by Claimant 1 against Corpoguanipa under Section 13 of the Hamaca Association Agreement (or any other contractual provision), or any formal claim made by Claimant 1 against PDVSA based on the PDVSA Hamaca Guaranty before the initiation of the present arbitration proceedings. When asked about the reasons why, Mr. Lyons stressed the fact that Claimant 1 had before the takeover of the Project by PDVSA still the hope that a recoupment of the losses was feasible and therefore preferred a business approach to the problem, rather than the raising of formal claims. To the questions why Claimant 1 did not raise any such claim after the takeover of the Project, Mr. Lyons was not in a position to answer. [214]

(d) Scope of Section 13 of the Hamaca Association Agreement

253. The question of the scope of Section 13 of the Hamaca Association Agreement must be determined in accordance with the general principles of contract interpretation as deriving from Article 12 of the Venezuelan Code of Civil Procedure (see above para 207).

254. Based on the wording and spirit of Sections 13.land 13.2 of the Hamaca Association Agreement, neither of them appears to aim at creating any specific obligation of Corpoguanipa or any other participant to the Hamaca Association. The aim of these two provisions seems to have been more to design a system of proportionate re-allocation of any imposed production curtailments within the participants, as well as a mechanism to allow the mitigation of any negative impact of such curtailments.

255. The only part which may be read as creating a certain obligation is Section 13.2 which provides that "the Parties shall take such actions as the Board, acting pursuant to Article 4.8(b)(xi), deems appropriate to recapture the revenue loss resulting from production curtailment". Thus, the wording of this provision indicates an obligation to take certain actions. However, the addressees of this obligation are "the Parties" in general, and not one specific participant. In addition, this obligation is subject to a decision of the Board regarding the kind and scope of appropriate mitigation measures to be taken. As such, even if Section 13.2 were interpreted as creating a certain obligation, such obligation would in any case not have been directly enforceable against any specific participant to the Project.

256. Consequently, Sections 13.1 and 13.2 cannot be read as creating any specific obligation on part of Corpoguanipa.

257. However, to the extent that Corpoguanipa cancelled the Board Meeting of 22 February 2007 and failed to call for another Board Meeting before the Project operatorship was taken over by PDVSA, it did *de facto* undermine any possibility to reach a decision regarding mitigation measures. The question thus arises whether this behavior must be considered in breach of the Hamaca Association Agreement or any other legal principle, which would justify holding Corpoguanipa liable for any

[214] Transcripts, p. 321 1.20 to p. 322 1. 15.

damages arising therefrom.

258. The Arbitral Tribunal is of the opinion that this question can remain open for the following main reasons: In order to succeed with its claim, Claimant 1 would need to establish that it is in fact the breach of Section 13.2, i.e. the lack of Board Meeting, which caused the claimed loss. The Arbitral Tribunal is of the opinion that Claimant 1 has failed to sufficiently establish such causal link.
(i) First, a causal link may only exist assuming that a Board Meeting would necessarily have led to the adoption of appropriate mitigation measures. Given the obligation set forth in Section 13.2, the Arbitral Tribunal is inclined to admit that the participants would have had the obligation to provide for mitigation measures.

(ii) Second, Claimant 1 would need to establish that the mitigation measures caused the claimed damage. In this respect, the lack of mitigation measures may not be seen as the cause of the damages incurred by curtailments. It could only be seen as having caused the damage, which could have been recouped through appropriate mitigation measures. In this respect however, it is uncertain how the Board would have decided with regard to the time, nature and scope of these measures, which are all important factors when determining the causality between the lack of such measures and the damage. Claimants are however claiming for the entire damage caused by the curtailments, and not just for those damages which could have been recouped through appropriate mitigation measures (see below section D)..

(iii) Third, curtailments started in October 2006 and continued until 15 May 2007, at which point the operation of the Hamaca Project had already been taken over by PDVSA. Therefore, even if a Board Meeting had been held and assuming the participants would have agreed on adequate mitigation measures, such mitigation measures could not have been implemented on time. Therefore, any potential causal link between the lack of Board Meeting and damages caused by the lack of mitigation measures would have been broken by the implementation of the Nationalization Law 1975.

(iv) Finally, with regard to the question whether mitigation measures would have been possible before May 2007, as alleged by Claimant 1 who contends that mitigation measures could have been implemented within the framework of the curtailments,[215] Claimants have failed to sufficiently establish this fact. In particular, the record does not show any letter in which Claimant I would have requested such mitigation measures after each specific curtailment period. The record shows only one letter addressed to PDVSA and the Energy Ministry of 8 February 2007 (see above para 89).[216] Claimant I has also not sufficiently substantiated what specific mitigation measures could have been taken, and its contentions are based on the general assumption that certain kinds of mitigation measures would generally have been possible.

259. Consequently, the Arbitral Tribunal is of the opinion that Claimant 1 has failed to establish a sufficient causal link between the claimed breach of the Hamaca Association Agreement by Corpoguanipa and the damages claimed by Claimant 1, so that Corpoguanipa may not be held liable for such damage.

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[215] See Transcripts, p. 361 l. 20 to p. 362 l. 13.

[216] Exh. C-101.

4. PDVSA's Liability

(a) Legal Basis

260. Claimants base their claim on the PDVSA Hamaca Guaranty concluded between PDVSA and Phillips Venezuela, Arco, and Texaco. The relevant part of the PDVSA Hamaca Guarantee provides as follows (for the English translation, see above para 66):
"4. El Fiador, como fiador solidario y principal pagador, adicionalmente garantiza irrevocable e incondicionalmente a cada una de las Partes Extranjeras el debido y puntual cumplimiento de todas las obligaciones de [Corpoguanipa] conforme al Convenio y los Convenios Relacionados. Si [Corpoguanipa] deja de cumplir cualesquiera de tales obligaciones en la forma y en el plazo requeridos por el Convenio o el Convenio Relacionado correspondiente, el Fiador cumplirá o hará cumplir tales obligaciones inmediatamente al serle solicitado por cualquier Parte Extranjera. El Fiador, por medio de la presente Fianza, expresamente conviene en cumplir o hacer cumplir dicha obligación al serle solicitado por cualquier Parte Extranjera actuando individualmente, independientemente de que las otras Partes Extranjeras se adhieran a tal solicitud.

[...]

7. Las obligaciones del Fiador estarán limitadas a una garantía de: (i) el pago por [Corpoguanipa] de cualesquiera Aportes al Proyecto que a ésta le corresponda hacer y otros pagos que deban ser hechos exclusivamente por [Corpoguanipa] (y no conjuntamente por las Partes) conforme al Convenio (incluyendo [...]) y los Convenios Relacionados, (ii) el cumplimiento de ***[Corpoguanipa] de las obligaciones de acuerdo con el Convenio y los Convenios Relacionados que correspondan exclusivamente a [Corpoguanipa/ (en contraposición a las obligaciones conjuntas de las Partes),*** *(iii) el pago de la cuotaparte de [Corpoguanipa], según se determine conforme al Convenio o al Convenio Relacionado correspondiente, de todos los pagos que a las Partes les pueda corresponder hacer conjuntamente de acuerdo al Convenio o a cualquier Convenio Relacionado, (iv) el cumplimiento, y el pago de los daños resultantes del incumplimiento, por parte de [Corpoguanipa], de su cuotaparte de cualesquiera obligaciones conjuntas de las Partes de acuerdo con el Convenio o cualquier Convenio Relacionado, y (v) el pago de la cuotaparte de [Corpoguanipa], según se determine conforme al Convenio o al Convenio Relacionado correspondiente, de cualesquiera danos resultantes del incumplimiento por las Partes de obligaciones conjuntas de las Partes de acuerdo con el Convenio o cualquier Convenio Relacionado."*(emphasis added)

(b) Reminder of the Parties' Position

261. Claimants contend that, to the extent that PDVSA failed to step into the shoes of Corpoguanipa and ensure the proportionate allocation of the curtailments and/or the mitigation of the disproportionate impact of such allocation, it breached Section *4* of the PDVSA Hamaca Guaranty and is thereby liable for any damages resulting from such breach and suffered by Claimant 1.

262. Respondent's position is largely based on the argument that Section 13 of the Hamaca Association

Agreement did not impose any obligation on Corpoguanipa itself. Respondent does not contest that in case Corpoguanipa is held liable under Section 13 of the Hamaca Association Agreement, this would trigger PDVSA's liability under the PDVSA Hamaca Guaranty.

(c) Scope of the PDVSA Hamaca Guaranty

263. Section 7 of the PDVSA Hamaca Guaranty limits PDVSA's liability to 'obligations specific to Corpoguanipa'. Thus, given that neither Section 13.1 nor Section 13.2 imposes a specific obligation on Corpoguanipa, no guarantee obligation of PDVSA can arise from these Sections 13.1 and 13.2.

264. Further, although the duty to call a Board Meeting was an obligation specific to Corpoguanipa, the Arbitral Tribunal however considered that the link between the lack of Board Meeting and the damages claimed by Claimant 1 was insufficiently established, so that Corpoguanipa could not be held liable for the damages claimed. Consequently, the failure to hold a Board Meeting may also not trigger PDVSA's liability to compensate Claimant 1 for such damages.

5. *Second Conclusion*

265. Consequently, the Arbitral Tribunal finds that
(i) Claimant l's right to raise claims under the PDVSA Hamaca Guaranty in relation to the damages incurred through the production curtailments has not extinguished;

(ii) Corpoguanipa is not liable for the damages claimed by Claimant 1, and PDVSA is therefore also not liable for any such damage under the PDVSA Hamaca Guaranty;

(iii) Claimant 1's claim for payment of USD 102,910,000 is hereby rejected.

D. CALCULATION OF DAMAGES

266. As set out above (see above paras 142 and 147), Claimants request from Respondent the payment of USD 62,280,000 with regard to the Petrozuata Project and of USD 102,910,000 with regard to the Hamaca Project.

267. In view of the Arbitral Tribunal's above conclusion that PDVSA may not be held liable for the damages claimed by Claimant 1 (see above paras 259 and 263-265), Claimant's 1 claim for damages of USD 102,910,000 may not be sustained and must therefore be rejected.

268. The present section will therefore deal only on damages claimed with regard to the Petrozuata Project.

1. Claimants' Claims for Damages

269. Claimants contend that, due to PDVSA's failure to comply with its obligation under the PDVSA Petrozuata Guaranty, they received substantially less income than they were entitled to receive under the terms of the Petrozuata Side Letter and the PDVSA Petrozuata Guaranty. By depriving them of these funds, Claimants have missed opportunities to invest them, while PDVSA realized income by investing money properly belonging to the Claimants, Claimants are therefore claiming for compensation of this lost income and request pre- and post-Award compound interest at a commercially reasonable rate. [217]

270. This lost income and the appropriate compound interest is calculated and presented in two Reports prepared by Mr. Manuel Abdala on behalf of Claimants, the first one dated 10 December 2010 (hereinafter "CL Damage Report I"), and the second one dated 10 August 2011 (hereinafter "CL Damage Report II"). Mr. Manuel Abdala gave also further oral testimony during the Hearing. [218]

271. In summary, the aim of Mr. Manuel Abdala's analysis was "to assess the quantum of damages associated with their losses suffered due to the crude oil production and sales curtailments imposed on the Petrozuata and Hamaca Projects between 1 November 2006 and 15 May 2007 as a result of Venezuela's membership in OPEC". [219]

272. In doing so, Mr. Manuel Abdala adopted the following method: [220]

> *"2. For the purposes of this analysis, I have first quantified the size of extraheavy crude oil (EHCO) production reductions and the differential export volumes of syncrude that would have been sold in the absence of OPEC mandates notified by the Venezuelan Ministry of Energy and Petroleum (MENPET). I have obtained the volumes of the curtailed syncrude oil sales, and then have valued such volumes from November 2006 through May 15, 2007 by looking at the average monthly prices at which the curtailed volumes could have been sold in the marketplace* [-'Nominal Lost Profits']. *Next, I have subtracted all relevant incremental costs, royalties and taxes that could have applied to the curtailed sales to obtain a figure of Claimants' lost profits for the Petrozuata and Hamaca Projects. Finally, to compute damages, I have taken into account Claimants' respective shareholdings in the Petrozuata (50.1%) and Hamaca (40%) Projects to allocate the amount of lost profits accruing to each Claimant* [- 'Computed Nominal Lost Profits'].
>
> Mr. Manuel Abdala then updated the Computed Nominal Losses in each of the Projects to 31 July 2011 (= 'Actualized Nominal Lost Profits') by applying the corresponding Project's cost of equity; such rate representing the opportunity cost to shareholders for the lost profits not collected by Claimants. In determining the appropriate cost of equity Mr. Manuel Abdala used the Capital Asset Pricing Method and concluded to a cost of equity of 10.55% for the Petrozuata Project. [221]

273. Based on Mr. Manuel Abdala's calculations, the damages suffered by Claimants including compound

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[217] CL Damage Report I para l.

[218] Transcripts p. 418 l. 20 to p. 495 l.4.

[219] CL Damage Report l paras 2-4.

[220] CL Damage Report I paras 2-4.

[221] CL Damage Report I paras 44-45 and Appendix A.

interest amount to USD 59,710,000 as of 30 July 2011. [222]

274. This amount was further updated by Claimants to 31 December 2011 reaching USD 62,280,000, using the cost of equity of 10.55% determined by Mr. Manuel Abdala. [223]

275. In addition, Claimants are claiming pre-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, between the time of the latest damages update and the time of the award, and post-award compound interest, at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, until the date the compensation is paid (see above para 142).

2. Respondent's Position

276. Respondent contends that there is only one provision in the Petrozuata Association Agreement which provided for compensation in case of production curtailments and which could therefore have given rise to a related guaranty obligations of PDVSA, i.e. Section 9.07. However, not only has CPZ not relied upon those provisions, but it fails even to mention them. The reason is that the compensation mechanism set forth in Section 9.07 of the Petrozuata Association Agreement would not have given rise to any compensation obligation on the part of Maraven and, therefore, PDVSA would have had no obligations under the Petrozuata Guaranty.

277. This position is further confirmed and substantiated in two reports prepared by Mr. Vladimir Brailovsky, the first one dated 10 May 2011 (RSP Damage Report I) and the second one dated 10 November 2011 (RSP Damage Report II). Mr. Vladimir Brailovsky gave also further oral testimony during the Hearing. [224]

278. In summary, the aim of Mr. Vladimir Brailovsky's reports was to: [225]

"(i) Calculate the amount of compensation, if any, that would have been payable by Maraven for the claimed discriminatory curtailments imposed on the Petrozuata Project, applying the provisions in Section 9.07 of the Petrozuata Association Agreement.

(ii) Calculate the amount of compensation, if any, that would have been payable by Corpoguanipa for the claimed discriminatory curtailments imposed on the Hamaca Project, applying the provisions in Article XIV of the Hamaca Association Agreement. "

279. The methods of calculation used by Mr. Vladimir Brailovsky were those set forth in Sections 9.07(b) and (c) of the Petrozuata Association Agreement and led him to the conclusion that a compensation would only be payable under the following circumstances: [226]

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[222] CL Damage Report II par 5.
[223] CL Closing Statement, slide 66.
[224] Transcripts p, 497 l. 7 to p. 526 l. 5.
[225] RSP Damage Report I para 3.
[226] RSP Damage Report I paras 10-13, in particular para 12.

"(i) Compensation was payable only in respect of economic damage suffered as a result of an action by the Venezuelan Government that constituted a "Discriminatory Action. "

(ii) If the economic damage from the Discriminatory Action was less than US$6.5 million (in 1994 dollars) in the fiscal year in question, no compensation would be payable.

(iii) If the economic damage from the Discriminatory Action was greater than US$6.5 million (in 1994 dollars) but less than US$75 million (in 1994 dollars) and the price of Brent crude oil was less than US$25 per barrel (in 1994 dollars) in the fiscal year in question, then the compensation payable would be the amount calculated in accordance with the sliding scale formula set forth in Section 9.07(b) of the Petrozuata Association Agreement.

(iv) If the economic damage from the Discriminatory Action was greater than US$75 million (in 1994 dollars) and the price of Brent crude oil was less than US$25 per barrel (in 1994 dollars) in the fiscal year in question, then the compensation payable would be the greater of the amount calculated in accordance with the sliding scale formula set forth in Section 9.07(b) of the Petrozuata Association Agreement and 25% of the actual economic damage.

(v) If the economic damage from the Discriminatory Action was greater than US$6.5 million (in 1994 dollars) but less than US$75 million (in 1994 dollars) and the price of Brent crude oil was equal to or greater than US$25 per barrel (in 1994 dollars) in the fiscal year in question, no compensation would be payable.

(vi) If the economic damage from the Discriminatory Action was greater than US$75 million (in 1994 dollars) and the price of Brent crude oil was equal to or greater than US$25 per barrel (in 1994 dollars) in the fiscal year in question, compensation would be limited to 25% of the actual economic damage."

280. Based thereon, Mr. Valdimir Brailovsky concluded that under the compensation provisions of the Petrozuata Association Agreement, CPZ would not have been entitled to compensation from Maraven for the damages it claims in this Arbitration as a result of the curtailments. [227]

3. Relevant Issues and Analysis

(a) Main Damages

281. First of all, it is important to note and stress that the reports submitted by each side's experts regarding the calculation of compensation for damages each rely on different assumptions and therefore also on a different basis for assessment:
(i) The assessment made by Mr. Manuel Abdala is based on the assumption that PDVSA is liable for the total value of any losses incurred by the Claimants due to the crude oil curtailments resulting from Venezuela's membership in OPEC. [228] It is therefore not linked to any particular provision of

[227] RSP Damage Report I paras 14-18; RSP Damage Report II para 4.

the Petrozuata Association Agreement.

(ii) The assessment made by Mr. Vladimir Brailovsky is based solely on Section 9.07 of the Petrozuata Association Agreement, which applies to the case where a foreign party to the Joint Venture, e.g. Claimant 2, suffers "Significant Economic Damage" as a result of Discriminatory Actions in a particular fiscal year. [229]

Both experts have acknowledged the difference in their assumptions and basis for assessment. [230]

282. The Arbitral Tribunal has concluded that PDVSA was to be held liable under the PDVSA Petrozuata Guaranty for any damage or loss resulting from Maraven's failure to comply with its obligations under the Petrozuata Side Letter, in particular the obligation to absorb the relevant production curtailments (see above para 235 as well as paras 212-217, 229 and 234). Such liability was established based on the PDVSA Petrozuata Guaranty in connection with a breach by Maraven of the Petrozuata Side Letter, and is not established or otherwise related to Section 9.07 of the Petrozuata Association Agreement.

283. Consequently, the assessment and calculations made by Mr. Vladimir Brailovsky, which are based on Section 9.07 of the Petrozuata Association Agreement and relate to Discriminatory Actions, are irrelevant to the determination of the adequate compensation to be paid in the present case.

284. However, Mr. Vladimir Brailovsky has expressed in his reports certain criticism concerning the methodology used by Mr. Manuel Abdala. To the extent that such criticism applies to the calculation of damages conducted by Mr. Manuel Abdala for the Petrozuata Project, it should be examined by the Arbitral Tribunal. [231]

285. It appears that Mr. Vladimir Brailovsky's criticism and other main differences between Claimants' expert and Respondent's expert with regard to the Petrozuata Project concern the following aspects: (i) Mr. Manuel Abdala has computed production volumes in the absence of the crude oil curtailments, in the sense that he has relied on the difference between the maximum volume of production allowed under the curtailments and the production volume forecasted in Petrolera Zuata's business plan, without accounting for a pro rata application of the OPEC quota reductions. [232] According to Mr. Vladimir Brailovsky, this would be inappropriate as curtailments at certain levels would not have constituted Discriminatory Actions under the Petrozuata Association Agreement and, therefore, the volumes represented by those percentage reductions should not be included

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[228] RSP Damage Report I para 15;

[229] See Transcripts p. 515 l. 13-18, and further until p. 517 l. 12.

[230] In CL Damage Report II, Mr. Manuel Abdala stated that "[t]he *fundamental difference between my assessment of damages and Mr. Brailovsky's assessment of compensation is that each of us has been instructed differently as to the source of liability"* (para 3, see also para 7) (see further Transcripts p. 439 l. 10-12), and in RSP Damage Report ll, Mr. Vladimir Brailovsky stated that *"Mr. Abdala points out that the instructions he received from Counsel to Claimants were different from those that I received from Counsel to Respondent. He was instructed to undertake his analysis disregarding the compensation provisions in Article XIV of the association agreement relating to the Hamaca Project (the "Hamaca Association Agreement") and Section 9.07 of the association agreement relating to the Petrozuata Project (the "Petrozuata Association Agreement," and, together with the Hamaca Association Agreement, the "Association Agreements")"* (para 3) (see also Transcripts p. 515 l. 13 to p. 517 l. 12).

[231] Criticism which is directed only at the calculation of damages in the Hamaca Project will not be addressed, given that the Arbitral Tribunal concluded that PDVSA may not be held liable for any such damages (see above para 265).

[232] RSP Damage Report para 16 footnote 12; see also Transcripts p. 435 1. 22 to p. 440 l. 12. See further CL Damage Report II para 4 lit. a.

in the calculation of economic damage for purposes of determining compensation under the Petrozuata Association Agreement. [233]

(ii) Mr. Vladimir Brailovsky contends that Mr. Manuel Abdala's assessment fails to account for the fact that production of December 2006, which was free from crude oil curtailments, has compensated Claimants for the effects of the crude oil curtailments effective during the previous month of November 2006. [234]

(iii) While Mr. Brailovsky takes into account production volumes and curtailment data for the full calendar year of 2007, Mr. Manuel Abdala has taken into account production volumes only until 15 May 2007, when the operations were taken over by PDVSA, and has further relied on monthly production profiles instead of using the average daily production of each year. [235]

286. The Arbitral Tribunal will deal with each of these criticisms separately:
(i) *With regard to Mr. Manuel Abdala's reliance on computed production volumes in the absence of the crude oil curtailments:* To the extent that the Arbitral Tribunal has concluded that Maraven was liable for the totality of the curtailments based on the Petrozuata Side Letter, there is no ground for distinguishing between discriminatory and non-discriminatory curtailments and Claimants are therefore entitled to rely on the difference between forecasted production volumes and maximum production volumes allowed under the curtailments.

(ii) *With regard to the possibility of recouping production losses in December 2006:* The Arbitral Tribunal agrees with Mr. Manuel Abdala's reply to Mr. Vladimimr Brailovsky's criticism, [236] i.e. that there is no evidence in the record indicating that production losses could and actually had been recouped in December 2006. Consequently, Claimants did not have to take any such recoupment into consideration in their damage calculation.

(iii) *With regard to the period to be taken into consideration to calculate relevant production volumes:* The Arbitral Tribunal considers that when calculating losses suffered by Claimants due to production curtailments, these calculations may only take into account relevant data concerning actual and/or but for production volumes from the first relevant curtailments (i.e. November 2006) until the takeover by PDVSA of the Petrozuata Project (i.e. 15 May 2007). Indeed, the Arbitral Tribunal sees no reason why production levels achieved after the take-over of the Project should be taken into account by Claimants when calculating the loss incurred before such take-over. This would be all the more inappropriate as curtailments were lifted on 16 May 2007, i.e. immediately after the take-over, and following production volumes would be in no relation to production volumes achieved before the take-over.

287. Consequently, regarding the above mentioned points, the Arbitral Tribunal sees no reason to depart from the data relied upon by Mr. Manuel Abdala in his reports.

288. The Arbitral Tribunal will therefore rely on the nominal value of losses determined by Mr. Manuel

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[233] RSP Damage Report para 16 footnote 12.
[234] RSP Damage Report para 16 footnote 12; see also CL Damage Report II para 4 lit. b.
[235] CL Damage Report ll para 4 lit. c, paras 11-13 and 19.
[236] CL Damage Report ll para 4 lit. b, paras 14-16.

Abdala, i.e. USD 38,500,000.[237]

(b) Pre-Award Interests up to 31 December 2011

289. There is a further point of major disagreement between the Parties, which concerns the applicable interest. While Mr. Manuel Abdala chose to apply a rate of 10.55% corresponding to the equity cost of the relevant funds, Respondent contends that any damage payable to Claimants may only be subject to interests at LIBOR rate. Respondent bases its position on the argument that the LIBOR rate is the rate, which was specifically envisaged by the Parties in Section 9.07 of the Association Agreement (even though it was envisaged with regard to Discriminatory Actions).[238]

290. In determining the cost of equity, Mr. Manuel Abdala relies on the Capital Asset Pricing Method ("CAPM") and using data from US capital markets.[239]According to the CAPM, the cost of equity (Ke) is calculated according to the following formula *Ke=Rf +β* x *[E(rm)-rf],* where:

- rf is the risk-free rate of return;

- *E(rm)* is the expected rate of return on the overall market portfolio;

- *E(rm)-rf is* the market risk premium;

- β is the systematic risk of the equity (beta).

291. Applying this method, Mr. Manuel Abdala concluded to the following cost of equity using a lambda value of 0,553 for weighting project exposure to country risk in the cost of equity calculation:

Table 1: Cost of Equity Estimates

	Hamaca	Petrozuata
Coat of Equity as of 2007		
Risk Free Rate	**4.63%**	**4.63%**
Market Risk Premium	**4.91%**	**4.91%**
Project Beta: Based on 5-year Betas	**0.63**	**0.63**
Unlevered & Adjusted US Beta	**0.54**	**0.54**
Project D/E (Sams as US)	**36.0%**	**36.0%**

[237] CL Damage Report l para 30, CLEX-001. See also CL Closing Statement, slide 66.

[238] RSP SoD para 60 footnote 121 and RSP Rejoinder para 134 footnote 319. See also Transcripts p. 491 l. 2 to p. 494 l. 7.

[239] CL Damage Report I, Appendix A, paras 2-3.

Project Tax Rate	**50.0%**	**50.5%**
Project Country Mak Exposure	**2.81%**	**2.81%**
5-year EMBI Vz Spread	**507.6**	**507.6**
Country Risk Exposure Factor (Larribda)	**0.55**	**0.55**
Coat of Equity	**10.56%**	**10.55%**

Source: LECG Loss Model (LECG-002)

292. Updating the nominal value of losses of USD 38,500,000 (see above para 288) by applying this cost of equity at 10.55% and applying an annual compounding method, Mr. Manuel Abdala concludes to a total value of losses of USD 56,330,000 as of 31 December 2010 and of USD 59,710,000 as of 31 July 2011.[240] During their Closing Statements at the Hearing, Claimants' have further updated the amount of USD 59,710,000 to USD 62,280,000 as of 31 December 2011, based on a *"straight forward application of the costs of equity".*[241]

293. Respondent's main argument has been to say that Claimants are not entitled to any compensation under the Petrozuata Association Agreement, in particular not under the indemnity provisions of the Agreement, i.e. Section 9.07 (see above para 276). It has further raised concerns as to the high level of interest, i.e. 10.55%, to which Mr. Manuel Abdala arrives, and stressed the fact that a rate similar to the LIBOR rate should apply.[242] However, neither Respondent nor its expert Mr. Vladimir Brailovsky have challenged the specific formula or the specific components thereof used by Mr. Manuel Abdala.

294. The first question is thus whether the Arbitral Tribunal should apply the cost of equity as suggested by Claimants' experts, or rather rely on the LIBOR Rate as argued by Respondent.

295. As mentioned above (para 286(i)), the Arbitral Tribunal concluded to Maraven's liability based on the Petrozuata Side Letter, and not on the provisions of the Petrozuata Association Agreement relating to Discriminatory Actions. Consequently, the LIBOR rate retained in Section 9.07 of the Agreement does not directly apply to the present claim for damages. Although this was subject to discussions among the Arbitral Tribunal, the majority is not convinced by Respondent's arguments regarding the appropriateness of the LIBOR rate for the following reasons:
(i) First, the scope of Section 9.07 of the Petrozuata Association Agreement as well as the reference to the LIBOR rate are both limited to indemnity for Discriminatory Actions. As such, it would not be appropriate to extend any principles or rates referred therein to compensation schemes granted under different provisions of the Agreement or under the further contractual documents related thereto. Other provisions referring to rates (Article IV) only address failures to fund the project and are therefore also not appropriate to address a damage resulting out of a contractual breach.

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[240] See CLEX-001.

[241] Transcripts p. 661 l. 6-25 ; CL Closing Statement, p. 66.

[242] See RSP SoD para 60 footnote 212; RSP Rejoinder para l34 footnote 319; Transcripts p. 49l l. 2 to p. 494l. 7, and p. 7621. 14-25.

(ii) Second, while interest rates may serve different purposes, the purpose of such rates with regard to compensation of damages for contractual breach is generally to ensure full compensation of a claimant by restoring it to the position it would have enjoyed if the contractual breach he suffered had not occurred. In the present case, Claimant 2 is a supplier of capital for a project from which it expected to receive certain cash flows, from which it also expected to obtain a rate of return. Under such circumstances, the interest rate to be applied should measure the opportunity cost of capital, i.e. the cash flows Claimant 2 was deprived of as a result of Respondent's contractual breach which, had they been timely received by Claimant 2, it would have had the opportunity to apply them to the Project or some alternative productive use. On the contrary, the principle of full compensation would not be satisfied.

(iii) Third, relying on the cost of equity as well as the 'Discounted Cash Flow' method and the CAPM methods is a widely recognized method of determining the opportunity cost of the lost cash flows or incomes. [243]

(iv) Finally, while Respondent has criticized Mr. Manuel Abdala's reliance on the cost of equity method, it has not challenged or otherwise provided alternatives to Mr. Manuel Abdala's bases for the calculation of the 10.55% interest rate or the mathematics of such calculation. For that reason, the majority of the Arbitral Tribunal therefore sees no reason to deviate from the calculations provided by Mr. Manuel Abdala.

296. The last issue is to determine whether the Arbitral Tribunal should apply simple or compound interest.

297. Claimants have requested the application of compound interests based on the main reasons that only compound interest would be in accordance with the principle of full compensation of damages, and that failure to grant compound interest would represent an unwarranted departure from current arbitral practice. In addition, neither Venezuelan law nor the ICC Rules would in any way fetter the Arbitral Tribunal's discretion in this regard. [244]

298. Respondent has not challenged Claimants' request for compound interests, nor has it objected to Claimant's calculation of such compound interest.

299. Based on the valuation model used by Mr. Manuel Abdala it appears that he has compounded the cost of equity on annual basis from October 2006 to July 2011, [245]

300. After discussing the appropriateness of compound interest as calculated by Mr. Manuel Abdala, the majority of the Arbitral Tribunal found no justifiable reason to depart from the calculation method he adopted.

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[243] Arthur Rovine, Damages in Investor-State Arbitration, in Contemporary Issues in International Arbitration and Mediation, pp. 78-80; Mark Kantor, Valuation for Arbitration, Kluwer 2008, Chapter l;Anthony Charlton, Discounter Cash Flows - Part 2, valuation and the financial crisis, available on http://kluwerarbitrationblog.com/blog/2012/01/26discounted-cash-flows-%E2%80%93-part-2-valuation-and-the-financial-crisis/.

[244] CL SoC paras 133-136; CL Reply para 239.

[245] See CLEX-001,

301. The Arbitral Tribunal will therefore rely on the updated value of losses determined by Claimants as of 31 December 2011, i.e. USD 62,280,000.

(c) Pre-Award Interests from 1 January 2012 to Date of this Award

302. In their Reply, Claimants raised a request for pre-award compound interest to be awarded at a commercially reasonable rate, which is the cost of equity for each of the Petrozuata and Hamaca Projects, between the time of the latest damages update and the time of the award (see above para 142).

303. The majority of the Arbitral Tribunal sees no reason to treat pre-award interests from 1 January 2012 to the date of this award differently from interests granted for the period prior to 1 January 2012.

304. Consequently, relying on the updated value of losses determined by Claimants, i.e. USD 62,280,000 as of 31 December 2011, the updated amount as of 15 September 2012 is of USD 66,876,773.81. [246]

(d) Post-Award Interests

305. With regard to post-award interests, the question arises whether there are any grounds for diverging from the method and rates applied to pre-award interests.

306. The damage incurred by the passing of time is largely the same after the issuance of the award or before its issuance. However, through the issuance of the award, the dispute concerning the liability and the amount of the damage is resolved. As such, the amount granted in the award is fully due. While Claimants have requested post-award compound interests, they have not specified the period for compounding (see above paras 142 and 302). As to Respondent, it has not raised any specific objection towards any sort of interest compounding (see above para 298). Consequently, while the Arbitral Tribunal sees no reason to adopt a different rate than for the pre-award interests, its majority considers that it is appropriate to compound the interests on a quarterly basis.

307. The Arbitral Tribunal will therefore apply an interest of 10.55%, as of the date of receipt by the Parties of this Award, compounded on a quarterly basis.

4. Third Conclusion

308. Consequently, the Arbitral Tribunal finds that
(i) The nominal value of losses incurred by Claimant 2 is fixed at USD 38,500,000, and the updated value of such losses as of 15 September 2012 is fixed at USD 66,876,773.81;

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[246] The formula used is the following: M= P(1 + i)n, in which P = principal amount (i.e. 62,280,000), i = interest rate (i.e. 10.55%) and n = number of years (i.e. 0.71, resulting from the number of days from 1 January 2012 to 15 September 2012 = 258, divided by 365). In summary, 62,280,000 (1 +0.1055)^0.71= 66,876,773.81.

(ii) Respondent is ordered to pay to Claimant 2 an amount of USD 66,876,773.81, plus interests of 10.55 % compounded on a quarterly basis as from the date of receipt of the present Award and until date of payment.

E. TAX ISSUES

1. The Parties' Position

309. With regard to the Petrozuata Project, Claimants have requested *"appropriate protection from double taxation"* (see above para 142 lit. h). During the Hearing, Claimants further clarified this request to mean the following: [247]

> *"* [..] *we are effectively seeking an order from this tribunal that, in the event CPZ is taxed with respect to its share of the award, then PDESA must either pay the tax on CPZ's behalf, or indemnify CPZ for any taxes it is required to pay at the same time. "*

310. The reason for such request is the following: In its damage computation, Mr. Manuel Abdala already took into account and deducted taxes payable by CPZ in Venezuela, in particular the ITAX. [248] In other words, the amount of damages claimed by Claimants for the Petrozuata Project is already net of taxes. Therefore, in case for any reason the Venezuelan government decided to apply any tax on the compensation granted to Claimants under this award, this would constitute a sort of double taxation against which Claimants should be protected. [249]

311. Respondent has not raised any specific objection to this request with regard to the Petrozuata Project. [250]

2. Relevant Issues and Analysis

312. The question is whether the Arbitral Tribunal should take into account taxes, which may potentially apply to the payment by Respondent of the compensation afforded to Claimants under this award.

313. The Arbitral Tribunal considers that the issue of potential taxes is relevant to the extent that such taxes may adversely affect the amount received by Claimants. Given that the amount claimed by Claimants is already net of taxes, any additional taxes applying to the amount granted under this award would undermine the principle of full compensation of the damage incurred.

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[247] Transcripts p. 669 l. 13-20.

[248] CL Damage Report I paras 28-30 ; CL Closing Statement, slide 69.

[249] Transcripts p. 666 l. 2 to p. 669 l. 20.

[250] Respondent did object to the pre-tax assessment made by Mr. Abdala with regard to the Hamaca Project (see e.g. RSP Damage Report I para 35), but it is not disputed that the damages assessed for the Petrozuata Project are post-tax and that Respondent has not raised any particular objection to Claimants' request for protection from 'double taxation' with regard to the Petrozuata Project.

314. In view thereof, and given that Respondent has not raised any specific objection to Claimants' request for adequate protection from double taxation, the Arbitral Tribunal considers it justified to take measures ensuring that the amount effectively received by Claimants under this award corresponds to the amount of compensation granted, and that any taxes applying to the payment of such compensation by Respondent be borne by the latter.

315. The amount of compensation granted to Claimants under this award shall therefore be granted on a "net of taxes" basis and any taxes applying under Venezuelan law to the payment of such net amount shall be borne by Respondent.

3. Fourth Conclusion

316. Consequently, the Arbitral Tribunal finds that the amount of compensation granted hereunder is granted on a 'net of taxes' basis and that any taxes applying under Venezuelan law to the payment of such net amount shall be borne by Respondent so that the amount effectively received by Claimants after deduction of all applicable taxes corresponds to the full amount granted hereunder.

F. ARBITRATION COST

1. The Parties' Position

317. Claimants and Respondent conclude that the costs should be borne by the opposing side and claim compensation for their arbitration and legal costs. In this regard, the Parties' requests for relief are as follows:
(i) Claimants have requested to be awarded *"the costs of the arbitration and all of the Claimants' reasonable legal fees, expenses and other costs incurred in connection with the arbitration and any related litigation, including internal costs"* (see above para 142).

(ii) Respondent has requested that *"Claimants be required to pay all costs of these proceedings"* (see above para 149).

318. In their Statement of Costs (see above para 126), Claimants have filed a total amount of USD 5,698,290.65, split as follows:
(i) USD 4,910,723.66 for legal and other external expert fees; [251]

(ii) USD 377,566.99 for disbursements, travel and other charges; [252]

[251] This item includes the total amount of legal fees of USD 4,186,341.88 - the LECG / Compass Lexecon fees of USD 724,381.78 (= USD 4,910,723.66).
[252] This item includes USD 200,003.80 (Freshfields Disbursements) + USD 77,287.90 (Macleod Dixon / Norton Roes Disbursements) + USD 59,812.98 FTI Consulting Graphics and Technology) + USD 40,462.31 (Claimants' expenses relating to the hearing in January 2012) (= USD 377,566.99).

(iii) USD 410,000 for arbitrators' fees and expenses and ICC administrative costs.

319. In its Statement of Costs (see above para 126), Respondent has filed a total amount of USD 4,691,217.18, split as follows:
(i) USD 4,005,550.25 for legal and other external expert fees;

(ii) USD 275,666.93 for disbursements, travel and other charges;

(iii) USD 410,000 for arbitrators' fees and expenses and ICC administrative costs.

2. The Relevant Issues and Analysis

320. The principle concerning the determination and the allocation of the costs is contemplated in Article 31 of the ICC Rules, which provide as follows:
"*1*

The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force al the time of the commencement of the arbitral proceedings, as well as the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

[...]

3

The final Award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties."

321. In summary, the 'costs of the arbitration' in a broad sense are composed of the 'arbitration costs' *stricto sensu,* which include the administrative expenses of the ICC Court as well as the fees and expenses of the arbitral tribunal, the 'legal costs', including the fees and expenses relating to the legal representation of the Parties and their participation in the proceedings.

322. Based on Article 31 of the ICC Rules and established practice, the arbitration costs *stricto sensu* are fixed by the ICC Court according to the applicable costs schedule and relevant provisions and principles. In contrast, the ICC Rules do not provide detailed rules or guidelines with regard to the parties' legal fees and merely contemplate the principle that such legal fees must be 'reasonable'.

323. With regard to the allocation of these costs, the ICC Rules do not provide for any specific allocation tests and leave such allocation to the wide discretion of the Arbitral Tribunal, which may take into account all relevant circumstances of the case. [253]

[253] See e.g. Eric Schwartz, The ICC Arbitral Process-Part IV: The Costs of ICC Arbitration, in ICC International Court of Arbitration Bulletin Vol. 4 (1993) No. 1, pp. 8 following (Section IV); Bernard Hanotiau, The Parties' Costs of Arbitration, in Dossier of the ICC Institute of World

324. The Arbitral Tribunal will deal with the arbitration costs *stricto sensu* and the legal fees separately.

(a) Arbitration Costs 'Stricto Sensu'

325. After approving this Award, pursuant to Article 31 of the Rules, the ICC Court fixed the amount of the arbitration costs at USD 820,000.

Administrative Expenses	USD 88 800
Arbitrators' Fees	USD 685800
Expenses of the Arbitral Tribunal	USD 45,400
TOTAL	USD 820,000

326. As mentioned above (para 323), pursuant to Article 31 ICC Rules, the Arbitral Tribunal enjoys a wide discretion in this matter and has to take into account all circumstances of the case. It is not bound by any strict rules, although it is generally admitted that it shall give due regard to the outcome of the proceedings.

327. In the present case, the Arbitral Tribunal considers the following circumstances to be relevant in the allocation of the arbitration costs:
(i) *With regard to the Parties' requests for relief.* While the Arbitral Tribunal has granted Claimants' claims with regard to the Petrozuata Project, it has rejected their claims with regard to the Hamaca Project. Notwithstanding the differences in the specific amounts claimed in relation to each of these Projects, the examination of the relevant issues were of considerable and similar complexity, so that the Arbitral Tribunal finds it appropriate to allocate the same weight to the two sets of claims.

(ii) *With regard to the Parties' conduct* : The Arbitral Tribunal is of the opinion that both Parties conducted themselves in a cooperative and constructive manner, and that their respective submissions were of high quality and value.

328. In view of these considerations, the Arbitral Tribunal finds that the arbitration costs shall be allocated on an equal basis and borne by each side on a 50% / 50% basis.

(b) Legal Costs

329. Claimants' legal costs and expenses amount to USD 5,288,2960.65 [254], whereas Respondent's legal costs and expenses amount to USD 4,281,217.18 [255].

Business Law: Evaluation of Damages in International Arbitration (2006), pp. 213 fol., p. 220-221; Julian Lew/ Loukas Mistelis / Stefan Kroll, Comparative International Commercial Arbitration, paras 24-78 fol.

[254] This item includes the total amount of legal and other external expert fees of USD 4,910,723.66 + the total amount of disbursements, travel and other charges of USD 377,566.99 (- USD 5,288,290.65).

330. The Arbitral Tribunal considers both of these costs to be reasonable in view of the amount in dispute, the complexity of the case and the work involved therein. In addition, there is no substantial difference in scope between the costs incurred by Claimants and those incurred by Respondent, and the existing differences can be explained by the different roles of each side in the current proceedings.

331. For the same reasons as mentioned above (para 326), the Arbitral Tribunal finds that Claimants and Respondent shall each bear their own legal costs.

3. Fifth Conclusion

332. Consequently, the Arbitral Tribunal finds that
(i) The arbitration costs are fixed at USD 820,000.

(ii) The arbitration costs shall be borne on equal basis by each side, i.e. Claimants shall jointly bear 50% of the arbitration costs and Respondent shall bear the other 50 %.

(iii) Claimants and Respondent shall each bear their own legal costs.

III. DECISION OF THE ARBITRAL TRIBUNAL

333. In consideration of the above, the Arbitral Tribunal finds and decides as follows:

1. With regard to the claims relating to the Petrozuata Project:

(i) The Petrozuata Side Letter was validly entered into and covers the production curtailments for which Claimant 2 seeks redress in the present arbitration proceedings;

(ii) Claimant 2's right to raise claims under the Petrozuata PDVSA Guaranty in relation to such production curtailments has not extinguished;

(iii) Respondent has failed to meet the burden of proof justifying the application of the principle of 'hecho del príncipe' or 'external non-imputable cause' to excuse any non-performance by Maraven of its obligations under the Petrozuata Side Letter, and Maraven therefore remains liable for any such non-performance;

(iv) The PDVSA Petrozuata Guaranty covers Maraven's obligations under the Petrozuata Side Letter, and PDVSA is therefore liable for any damage or loss caused to Conoco by Maraven's failure to perform such obligations;

(v) The nominal value of losses incurred by Claimant 2 is fixed at USD 38,500,000, and the updated value of such losses as of 15 September 2012 is fixed at USD 66,876,773.81;

[255] This item includes the total amount of legal and other external expert fees of USD 4,005,550.25 + the total amount of disbursements, travel and other charges of USD 275,666.93 (= USD 4,281,217.18)

(vi) Respondent is ordered to pay to Claimant 2 an amount of USD 66,876,773.81, plus interests of 10.55 % compounded on a quarterly basis as from the date of receipt of the present Award and until date of payment.

(vii) The amount of compensation granted in item (vi) above is granted on a 'net of taxes' basis and any taxes applying under Venezuelan law to the payment of such net amount shall be borne by Respondent so that the amount effectively received by Claimants after deduction of all applicable taxes corresponds to the full amount granted in item (vi), including awarded interests.

2. With regard to the claims relating to the Hamaca Project:

(i) Claimant's 1 right to raise claims under the PDVSA Hamaca Guaranty in relation to the damages incurred through the production curtailments has not extinguished;

(ii) Corpoguanipa is not liable for the damages claimed by Claimant 1, and PDVSA is therefore also not liable for any such damage under the PDVSA Hamaca Guaranty;

(iii) Claimant 1's claim for payment of USD 102,910,000 is hereby rejected.

3. With regard to the costs of the arbitration:

(i) The arbitration costs are fixed at USD 820,000.

(ii) The arbitration costs shall be borne on equal basis by each side, i.e. Claimants shalljointly bear 50% of the arbitration costs and Respondent shall bear the other 50 %.

(iii) Claimants and Respondent shall each bear their own legal costs.

4. All other requests and claims are rejected.