

PCA Case No. 2012-12

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE AGREEMENT
BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF
AUSTRALIA FOR THE PROMOTION AND PROTECTION OF INVESTMENTS,
SIGNED ON 15 SEPTEMBER 1993 (THE “TREATY”)**

-and-

**THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW RULES OF
ARBITRATION AS REVISED IN 2010 (“UNCITRAL RULES”)**

-between-

PHILIP MORRIS ASIA LIMITED

(“Claimant”)

-and-

THE COMMONWEALTH OF AUSTRALIA

(“Respondent”, and together with the Claimant, the “Parties”)

**Final Award
Regarding Costs**

ARBITRAL TRIBUNAL

Professor Karl-Heinz Böckstiegel (President)
Professor Gabrielle Kaufmann-Kohler
Professor Donald M. McRae

REGISTRY

Dr. Dirk Pulkowski
Permanent Court of Arbitration

adopted, filed full submissions on the merits, together with all their evidence, including expert reports and witness statements.

103. In conclusion therefore, the Tribunal finds that the amounts claimed by the Respondent for its legal representation in a total of AU\$23,045,242.33 are reasonable.
104. The arbitration costs have to be added to this amount in application of subsections (a), (b), (c) and (f) of Article 40(2) of the 2010 UNCITRAL Rules which were found above to be EUR 1,329,202.14.

VI. CONCLUSION

105. Applying the Tribunal's conclusion at the end of Section IV above that the Claimant must bear 50% of the Respondent's cost claim insofar as found reasonable, this leads to the conclusion that the Claimant has to reimburse the Respondent:
- 50% of the Respondent's share of the arbitration costs according to subsections (a), (b), (c) and (f), which the Respondent paid into the deposit of the PCA: EUR 333,059.91;
 - 50% of the Respondent's costs according to subsections (d) and (e): AU\$11,522,621.17.

VII. INTEREST

106. The Respondent has claimed interest from the date of the Final Award on the costs it is awarded to be reimbursed.⁹⁷ In principle, this claim has not been objected to by the Claimant. Indeed, the jurisprudence relied on by the Respondent in this context affirms that such a claim can be raised, and the Tribunal sees no reason to depart from this approach.
107. Moreover, the Tribunal accepts Respondent's suggestion that the interest shall be calculated on a simple basis using the Australian cash rate as set by the Reserve Bank of Australia, at the rate of 1.50%, to accrue from the date of this Final Award.

⁹⁷ Australia's Submission on Costs dated 2 September 2016, paras 107-108.