Before the
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

BUBBLEWASH LICENSING SERVICES, INC., BUBBLEWASH AMERICAS, INC.,
Claiman

ts, v.

REPUBLIC OF ECUADOR,
Respondent.

ICSID CASE NO. ARB/24/67

Ecuador's Objections to Jurisdiction and Merits

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30 May 2025

I. Introduction

1. The 7 October 2024 Request for Arbitration ("Request for Arbitration") sows so much confusion about the identity of the parties, the alleged rights and investments in dispute and the claims alleged in this case that the Republic of Ecuador ("Ecuador") feels compelled to clarify these basic points. Ecuador's clarifications will demonstrate for the Tribunal that the present arbitration has no foundation and should be dismissed on the basis of the objections set forth herein, both based on the TPA that claimant invokes and the ICSID Convention.

2. The present case is an arbitration between Ecuador, on the one hand, and Bubblewash Licensing Services, Inc. and Bubblewash Americas, Inc. ("Claimants"), on the other. Ecuador is a sovereign State. Claimants, for their part, are members of "the Bubblewash group of companies" — which, according to the Request for Arbitration, "is the world's largest manufacturer of washing machine and clothing care products." Both Claimants are "wholly-owned subsidiaries of Bubblewash Corporation, a Korean incorporated company headquartered in Seoul, South Korea."

3. The first Claimant, Bubblewash Licensing Services, Inc. ("Bubblewash Licensing"), is incorporated in the U.S. State of Delaware. According to the Request for Arbitration, it is "the owner of the SPINWASH trademark in all countries outside of the United States," including Ecuador, where it is the registered owner of Trademark No. 435. Claimants contend that Bubblewash Licensing's "investment" consists of "intellectual property rights in the SPINWASH trademark.

4. The second Claimant, Bubblewash Americas, Inc. ("Bubblewash Americas"), is incorporated in the U.S. State of Colorado. Unlike the first Claimant, it does not appear to own any trademarks in Ecuador; it simply licenses the right "to sell, market, and distribute products under the BUBBLEWASH and SPINWASH trademarks in Ecuador and the Americas" from Bubblewash Corporation and Bubblewash Licensing, and then turns around and sub-licenses this right to various "subsidiaries," which then "manufacture, sell, distribute and market BUBBLEWASH and SPINWASH washing machines into different markets in the region." In Ecuador, for example, Bubblewash and Spinwash washing machines are sold to third party distributors through BWM — a Mexican entity whose full name is "Bubblewash Mexico. Claimants contend that these assets and activities constitute Bubblewash Americas' "investment."

5. The claims in this case arise out of the following sequence of events. On 4 February 2013, the Ecuadorian Trademark and Patent Office published an application by an entity called Ropasuave Intertrade, S.A. ("Ropasuave") for the registration of the FRESHWASH trademark. Because the Bubblewash group of companies "has a general policy of opposing washing machine

marks with . . . a 'WASH' suffix," Bubblewash Corporation (*i.e.*, Claimants' Korean parent company) and Claimant Bubblewash Licensing initiated a proceeding in the Ecuadorian courts, formally opposing registration of the FRESHWASH trademark. Claimant Bubblewash Americas was not a party to this proceeding.

6. Ropasuave defended its trademark registration application, and two other entities — U.S. company J.W.D. International and the Chinese company Washing Machine Group of Factories Ltd. ("Washing Machine Group") — participated as third-party interveners. On 21 July 2014, the opposition claim by the two Bubblewash entities was denied. Ropasuave and Washing Machine Group then filed a claim against Bubblewash Corporation and Bubblewash Licensing in a different Ecuadorian court, asserting that the trademark opposition proceedings initiated by Bubblewash had resulted in a loss of revenue in excess of USD 6,000,000. Once again, Bubblewash Americas was not a party to the proceeding.

7. The claim by Ropasuave and Washing Machine Group was rejected at the first instance and appellate court levels, but was eventually upheld by the Ecuadorian Supreme Court in a 28 May 2022 decision. The decision held Bubblewash Corporation and Bubblewash Licensing "jointly and severally liable" to Ropasuave and Washing Machine Group for USD 5 million in damages, plus USD 567,000 in attorney's fees. Together with a vague claim for damages from an anti-suit injunction by a different Ecuadorian court related to facts taking place in Bolivia, it is this May 2022 decision of the Ecuadorian Supreme Court that is at the center of Claimants' claims; Claimants contend that the decision violated Articles 10.3, 10.5, and 10.7 of the TPA, causing USD 19.5 million in damages to Claimants.

8. As discussed below, there are at least five reasons why the Tribunal cannot entertain these claims — two reasons that relate solely to Bubblewash Americas, two reasons that relate solely to Bubblewash Licensing, and one reason that relates to both Claimants.

II. Jurisdictional Bars Relating to Claimant Bubblewash Americas

9. There are two reasons why the Tribunal cannot entertain Bubblewash Americas' claims. *First*, Bubblewash Americas does not have a qualifying "investment." (Part A). *Second*, even assuming that Bubblewash Americas *did* have an investment, the present dispute does not arise directly out of that alleged investment, as required by the ICSID Convention (Part B).

A. Bubblewash Americas Does Not Have a Qualifying Investment

10. In investment arbitration, each Claimant must demonstrate that it has a qualifying investment — under both the ICSID Convention and the TPA. In their Request for Arbitration,

Claimants devoted virtually no attention to this basic threshold task. With respect to Bubblewash Americas, Claimants' argument is that the "investment" consists of: (1) washing machine sales (and profits from washing machine sales) in Ecuador, (2) "revenue-sharing and license rights in Ecuador," and (3) "intellectual property rights in Ecuador." This argument falls flat, for two reasons.

11. *First*, the TPA's definition of "investment," the drafting history of the ICSID Convention, and the case law on the objective meaning of the term "investment" are clear in that ordinary commercial transactions — like the cross-border sale of goods — do not qualify as "investments." Accordingly, neither the washing machine sales nor the profits derived therefrom can establish jurisdiction.

12. *Second*, the mere fact that Claimants have identified some "licenses" that confer limited "revenue sharing" and "intellectual property" rights upon Bubblewash Americas does not necessarily mean that Bubblewash Americas has an "investment." Licenses, revenue sharing contracts, and intellectual property rights certainly are among the "[f]orms [identified by the TPA] that an investment may take." The TPA, however, does not put form over substance. In fact, it states expressly that substance shall prevail over form. Accordingly, to satisfy their burden of proving that a qualifying investment exists, Claimants must show that the "revenue-sharing" and "intellectual property" rights that Bubblewash Americas allegedly derived from licenses meet the TPA's definition of "investment." As discussed below, Claimants cannot make this showing.

13. The "revenue-sharing" rights. As best Ecuador can discern, these rights consist of Bubblewash Americas' right under a 2023 sublicense agreement to a miniscule share of the "net sales value" of whatever washing machine products Bubblewash Mexico sells. It is not clear to Ecuador, however, how this right — which was created *after* the Ecuadorian Supreme Court decision here at issue — could possibly be deemed a relevant "investment." In fact, this right does not qualify as an "investment" at all, because the TPA expressly states that "claims to payment that are immediately due and result from the sale of goods or services are not investments."

14. The "intellectual property" rights. Because the TPA states that it is only the "asset[s] that an investor owns or controls" that qualify as an "investment" — and it is clear that Bubblewash Americas does not own or control either the BUBBLEWASH or SPINWASH trademarks — the only "intellectual property" rights that Bubblewash Americas could even *attempt* to style as an "investment" would be those that were created by means of the three trademark licensing agreements that Claimants had entered into. However, not even those rights qualify for protection under the TPA.

15. This is so because Chapter 10 only applies to investments located *in Ecuador*, and to

prove that rights derived from a license are located in Ecuador, Claimants must demonstrate that such rights exist under Ecuadorian domestic law. Article 10.29 makes this point expressly, stating that "[w]hether a particular type of license . . . has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has *under the law of the Party*. *Among the licenses . . . that do not have the characteristics of an investment are those that do not create any rights protected under domestic law*."

16. The three licenses that Claimants have submitted as "evidence" of Bubblewash Americas' rights clearly fall into the category of licenses that "do not have the characteristics of an investment," as they "do not create any rights protected under [Ecuadorian] law." The first license is a 2011 "agreement to license trademarks" between (1) Bubblewash Licensing, and (2) an entity called "Bubblewash/Spinwash Americas Holding, Inc.," which was a predecessor of Bubblewash Americas. Claimants contend that this document "grant[ed] intellectual property rights to [Bubblewash/Spinwash Americas Holding, Inc.] over the SPINWASH mark in markets outside of the United States." However, all of the "revenue sharing," "license," and "intellectual property" rights described in this document were created under U.S. law, are expressly governed by U.S. law, and are performed under U.S. law. The document accordingly did not create any "revenue sharing," "license," or "intellectual property" rights protected under Ecuadorian domestic law.

17. The second license is a 2012 "trademark license agreement" between Bubblewash Corporation (i.e. the Korean parent company of Bubblewash Americas) and Bubblewash/Spinwash Americas Holding, Inc. (*i.e.*, Bubblewash Americas' predecessor). This agreement authorizes Bubblewash/Spinwash Americas Holding to use Bubblewash Corporation's trademarks "in relation to all Clothing Care Products *within the United States of America* . . . ; and the term 'Bubblewash' as part of a corporate name or trade name." This agreement is to "be construed and interpreted in accordance with *the laws of Korea*." Accordingly, this document also failed to create any rights protected under Ecuadorian domestic law.

18. The same is true of the third license, which is a 2023 "trademark sublicense agreement" between Bubblewash Americas Clothing Care Operations, LLC (an entity that Claimants describe as a "subsidiary" of Claimant Bubblewash Americas), and Bubblewash Mexico. Drawing on rights that Claimants' Korean parent company, Bubblewash Corporation, supposedly licensed to Bubblewash Americas Clothing Care Operations by means of a December 2011 license agreement that Claimants have not submitted, this agreement purports to authorize Bubblewash Mexico to use the Mexican trademarks owned Bubblewash Corporation "to manufacture Clothing Care Products in Mexico," and to sell them worldwide. Article 12.7 states that "[t]his Agreement shall be construed and interpreted in accordance with the laws of

Colorado."

19. It therefore is amply clear that Claimant Bubblewash Americas does not have a qualifying "investment."

B. Even If Bubblewash Americas *Did* Have an Investment (*Quod Non*), the Present Dispute Does Not "Aris[e] Directly Out Of" that Investment

20. Article 25(1) of the ICSID Convention limits the Tribunal's jurisdiction to "legal dispute[s] arising directly out of an investment…" Thus, even if Claimants somehow found a way to demonstrate that Bubblewash Americas has a qualifying investment, they still would have to prove that the present dispute "aris[es] directly out of [that] investment."

21. In their submissions, Claimants asserted that the claims brought in the Request in the present case arise directly out of their respective intellectual property rights in Ecuador. That cannot be so — at least, not with respect to Bubblewash Americas.

22. For a dispute to "aris[e] directly out of an investment" within the meaning of Article 25 of the ICSID Convention, there must be an "immediate 'cause and effect' between the actions of the host State and the effects of such actions on the protected investments." In other words, "one must be able to establish firsthand a causal link between the investment and the actions of the host State that produce the harm." For Bubblewash Americas, no such link exists.

23. To recall, the "claims . . . in this arbitration arise out of a Supreme Court decision of the Republic of Ecuador" that imposed a USD 6,567,000 penalty on Bubblewash Corporation and Bubblewash Licensing, which Bubblewash Licensing eventually chose to pay. The proceeding that gave rise to the Supreme Court decision was a lawsuit by an Ecuadorian entity and a Chinese entity for injuries that they sustained as a result of efforts by Bubblewash Corporation and Bubblewash Licensing to police the BUBBLEWASH and SPINWASH trademarks.

24. In the Request for Arbitration, Claimants contend that, "[a]s a consequence of the Supreme Court decision, and the penalty imposed therein, [Bubblewash Americas] and [Bubblewash Licensing] have suffered loss and damage in excess of USD 19,500,000." This figure supposedly corresponds to: (1) the "penalty" that the Supreme Court ordered Bubblewash Corporation and Bubblewash Licensing to pay, and (2) the "diminution of value of the SPINWASH and BUBBLEWASH trademarks" resulting from the fact that the Supreme Court decision allegedly "deprived [Bubblewash Licensing] and [Bubblewash Americas] [of] the ability to oppose confusingly similar trademark applications."

25. However, none of this has anything to do with Bubblewash Americas. Bubblewash

Americas was not a party to the Ecuadorian court proceedings, did not pay (and did not have any obligation to pay) the "penalty" mentioned above, did not own the BUBBLEWASH or SPINWASH trademarks, and did not have any authority to police such trademarks. At most, Bubblewash Americas had the right to "sell, market, and distribute products under the BUBBLEWASH and SPINWASH trademarks in Ecuador and the Americas." Claimants do not even attempt to explain how this right possibly could have been harmed by the Supreme Court decision. Accordingly, there is no direct link between the "investment" that Bubblewash Americas supposedly has, and the injury that Claimants allege. In these circumstances, the dispute cannot be said to "aris[e] directly out of an investment."

III. Jurisdictional Bars Relating to Claimant Bubblewash Licensing

26. The claims by Bubblewash Licensing also should be rejected for lack of jurisdiction. As discussed below in Part A, Bubblewash Licensing is wholly owned by Bubblewash Corporation, a Korean corporation, and does not have any discernible operations in the territory of the United States. It therefore cannot bring *any* claims on the basis of Chapter 10 of the TPA. In any event, as discussed below in Part B, the claims that Bubblewash Licensing has asserted amount to an abuse of process.

A. Bubblewash Licensing Is Not Entitled to the Benefits of TPA Chapter 10

27. Although Chapter 10 of the TPA offers protection to U.S. "investors," including "enterprises," who have made "investments" in Ecuador, the offer is subject to one important caveat, established in Article 10.12.2:

> Subject to Articles 18.3 (Notification and Provision of Information) and 20.4 (Consultations), *a Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantial business activities in the territory of the other Party, and persons of a non-Party, or of the denying Party, own or control the enterprise*.

If a Party to the TPA chooses to "deny the benefits of [Chapter 10] to an investor" — as Ecuador does, for the reasons set forth below — this has "the effect of depriving the Tribunal of jurisdiction."

28. As indicated by the plain language of Article 10.12.2, there are three substantive requirements that must be satisfied before a State can deny the benefits of Chapter 10 to an investor of the other Party: (1) the "investor of the other Party" must be an "enterprise of such other Party," (2) the enterprise must "ha[ve] no substantial business activities in the territory of the other Party," and (3) the enterprise must be "own[ed] or control[led]" by "persons of a non- Party, or of the

denying Party." The only procedural requirement for a denial of benefits is that the denying Party provide advance notice to the other Party to the TPA, to the maximum extent possible. The State is not required to provide advance notice to the claimant. Nor is it required to carry out a denial of benefits before the arbitration begins.

29. In the present case, all of the requirements are satisfied. Claimants themselves argue that Bubblewash Licensing is an "enterprise" of the United States, and that it is wholly- owned by Bubblewash Corporation (which, as a company incorporated in Korea, qualifies as a "person of a non-Party"). Ecuador additionally gave notice to the United States on 22 May 2017 of its intention to deny Bubblewash Licensing the benefits of Chapter 10. The only question that is not expressly answered in the Request for Arbitration is whether Bubblewash Licensing has "substantial business activities in the territory" of the United States.

30. There is no bright-line standard for determining whether an enterprise has "substantial business activities" in a particular country; any number of factors may be relevant to the analysis — the goal of which is to determine whether Bubblewash Licensing has an actual "'physical presence'" in the United States, or if it is "more akin to a shell company with no geographical location for its nominal, passive, limited and insubstantial activities." However, it *is* clear that the date of assessment is the date of the Request for Arbitration (in this case, 30 September 2023), and that only "substantial" business activities of *Bubblewash Licensing* itself will suffice.

31. To determine whether Bubblewash Licensing has an actual "'physical presence'" in the United States, or if it is "more akin to a shell company with no geographical location for its nominal, passive, limited and insubstantial activities," Ecuador consulted a broad range of databases, including corporate directories, domestic and international litigation reporters, business news sources, trade journals, and trademark registration databases. However, only a handful of these databases even had entries for Bubblewash Licensing, and none of those entries indicates that Bubblewash Licensing has *any* business activities in the United States.

32. As best Ecuador can discern, Bubblewash Licensing is precisely the type of "shell company" that the Parties intended to exclude from TPA protection. Despite having been incorporated in the United States, Bubblewash Licensing:

a. does not appear to own any assets (or registered trademarks) in the United States,
b. has issued 1,000 shares which have a par value of zero,
c. does not appear in publicly-available documents depicting the corporate structure of the Bubblewash family of companies,
d. was not mentioned in Bubblewash Corporation's public 2023 Annual Reports

("Operational Review" and "Financial Review"), and

e. has virtually no presence in the public databases (including corporate directories, litigation databases, and business news services) that typically would yield results for companies with substantial business activities in the United States.

33. Moreover, Claimants' evidence that Bubblewash Licensing "ha[d] taken all necessary internal actions to authorize the request [for arbitration]" was apparently signed and notarized in Korea.

34. Bubblewash Licensing does list an official business address in the United States. However, this address is the exact same one used by Bubblewash Americas as its "headquarters," and other Bubblewash entities appear to use this address as well. It is not clear whether Bubblewash Licensing — as distinguished from all of the other Bubblewash entities that use this address — has any employees who actually work at this address.

35. In sum, it appears that Bubblewash Licensing has no business activities at *all* in the United States, let alone the "substantial business activities" needed to survive a denial of benefits objection. The Tribunal should therefore decline jurisdiction over all of the claims by Bubblewash Licensing.

B. Bubblewash Licensing's Claims Amount to an Abuse of Process

36. As several investment tribunals have held, if a jurisdictional defect exists at the time a dispute arises, a claimant cannot simply take matters into its own hands and "fix" the defect unilaterally by manipulating its own nationality, the nationality of the investment, or the nationality of the claim. It is widely considered an abuse of process for a claimant to proceed in that manner. Yet, that is precisely what Bubblewash Licensing has done here.

37. As Claimants have explained on multiple occasions, the claims in this case arise out of a May 2022 decision by the Supreme Court of Ecuador which deemed two entities — Bubblewash Corporation and Bubblewash Licensing — "jointly and severally liable" to Ropasuave and Washing Machine Group for USD 6,567,000. Although Claimants have not yet staked out a position on when precisely the dispute arose, it would be difficult for them to argue that the dispute arose later than 2023, given that Claimants' own exhibits indicate: (1) that "the Bubblewash family of companies" was contemplating an investment treaty claim against Ecuador in February 2023, (2) that Claimants' counsel raised a "potential investor state arbitration" matter with the Ecuadorian ambassador to the United States in March 2023, and (3) Claimants submitted a formal Notice of Intent on 30 September 2023.

38. In 2023 (and for much of 2024), no clear jurisdictional path was available for investment treaty claims based on the Supreme Court proceeding and decision. As noted above,

only two Bubblewash entities were parties in that proceeding, and subject to that decision: (1) Bubblewash Corporation, and (2) Bubblewash Licensing. Bubblewash Corporation, as a Korean entity, did not have any investment treaty to invoke. Bubblewash Licensing, for its part, had a major obstacle in its way: in order to submit a claim under the TPA, Bubblewash Licensing would have to be able to show that it had "incurred loss or damage" as a result of the "decision by the Supreme Court of Ecuador that Bubblewash should pay millions of dollars in damages to a Ecuadorian company." However, the amount contemplated in the Supreme Court decision had not been paid, and the question of which Bubblewash entity would incur "loss or damage" as a result of the "USD 6,567,000 in damages and fees that were ordered by the Supreme Court" still remained. "Bubblewash" was therefore at a crossroads.

39. If Bubblewash *Corporation* made the payment (which would have been logical, since Bubblewash Licensing is a shell company with no discernible assets of its own) then Bubblewash *Licensing* would not be able to style the payment as "loss or damage." But that would mean that *no* Bubblewash entity could bring investment treaty claims. If, on the other hand, Bubblewash *Licensing* made the payment, it would be in a better position to claim "loss or damage."

40. As Claimants explain in their Request for Arbitration, on 19 August 2024, Bubblewash Licensing "paid the damages award to Ropasuave and [Washing Machine Group]." In doing so, Bubblewash Licensing committed an abuse of process: it attempted to manipulate the nationality of the claim after the dispute had already materialized, in an attempt to create a basis for jurisdiction where none otherwise existed.

41. In these circumstances, the Tribunal should not hesitate to decline jurisdiction.

IV. Jurisdictional Bars Relating to Both Claimants

42. At the conclusion of the Request for Arbitration, Claimants seek "an award . . . [o]rdering Ecuador to pay an amount in excess of USD 19,500,000 in damages." As Claimants explain, "[t]his sum includes the US$ 6,567,000 in damages and fees that were ordered by the Supreme Court, as well as an estimate of the loss that has been and will be incurred by [Bubblewash Licensing] and [Bubblewash Americas] as a result of the decision." The claim for USD 6,567,000 should be rejected for the reasons discussed above. The claim for the remaining USD 14 million dollars, based on the "loss" that supposedly "has been and will be incurred," is addressed herein, including the claim for the anti-suit injunctions related to the Bolivian proceedings.

43. In the Request for Arbitration, Claimants contend that "[s]uch . . . loss arises from a number of inter-related factors," including the fact that "the decision of the Ecuadorian Supreme

Court may be followed in other Latin American countries," and the possibility that the Ecuadorian Supreme Court decision will lead to "more trademark applications that are similar and confusingly similar to the Bubblewash mark, both in Ecuador and elsewhere in Latin America." There is no jurisdictional basis for these claims.

44. Consent of the respondent host state to investor/state arbitration in the investment treaty is the most important condition for the vesting of adjudicative power in the tribunal. Absent such consent, an investor has no right to sue a State directly in an international forum, and an investment tribunal has no authority to act. For purposes of this case, the parties' consent to arbitration is established in Article 10.17, which states that "[e]ach Party" — meaning each State Party to the TPA "consents to the submission of a claim to arbitration under this Section in accordance with this Agreement."

45. To determine what "the submission of a claim to arbitration under this Section in accordance with this Agreement" entails, one must advert to the other parts of Chapter 10. For present purposes, the most relevant parts of Chapter 10 are the following passages from Articles 10.1 and 10.16:

> **Article 10.1**
>
> This Chapter applies to measures adopted or maintained ***by a Party***
>
> **Article 10.16**
>
> [A] claimant.....may submit to arbitration under this Section a claim (i) that ***the respondent*** has breached (A) an obligation under Section A [*i.e.*, Articles 10.1 to 10.14] and (ii) that the claimant has incurred loss or damage by reason of, or arising out of that breach…

46. These passages leave no room for doubt. The only claims that the Tribunal has jurisdiction to entertain are claims that Ecuador allegedly has breached the TPA, through "measures" that *Ecuador* has "adopted or maintained." The Tribunal cannot entertain claims based on the hypothetical actions of other States, as Claimants ask it to do.

47. This conclusion is consistent with two basic principles of international law: (1) "that each State is responsible for its *own* conduct in respect of its *own* international obligations," and (2) that a tribunal cannot adjudicate any claim where "the vital issue to be settled concerns the international responsibility of a third State. The same conclusion applies here, and the same result

should obtain.

V. The Substantive Claims and Damages Arguments are Entirely Without Merit

48. The claims on the merits brought forward by Claimants are also meritless, just as the allegations about ICSID jurisdiction under the TPA are. Claimants have erred in the forum, as the claims they are proposing should be brought elsewhere at courts that have proper jurisdiction over trademark disputes. To burden an ICSID tribunal with these issues is a flagrant abuse of process, and we will support the tribunal in defending the international legal order established by the international trademark rules and international investment rules, making clear that trademark law cannot be commingled with investment law. The following paragraphs summarize Ecuador's position as to the merits. These arguments are easily inferable from the factual summaries that already exist before the arbitral tribunal:

A. Expropriation

4. Ecuador rejects any claim that the facts of this case show an expropriation pursuant to the TPA.

B. Fair and Equitable Treatment

5. Ecuador rejects any claim that the facts of this case show a lack of fair and equitable treatment pursuant to the TPA.

C. National Treatment and MFN

6. Ecuador rejects any claim that the facts of this case show a breach of the national and most favored nation treatment standards pursuant to the TPA.

D. Claimants have not suffered any Damages

7. The $5 million penalty that Ecuador's Supreme Court imposed upon Bubblewash, after a long and extensive proceeding before three different judicial levels of review, cannot be qualified as a "damage" suffered by Claimants. The penalty was assessed by an independent tribunal and the state cannot now be held responsible for the reasoned and explained acts of its judiciary. International responsibility for judicial acts requires a high burden of proof. At least, this high burden needs to be reflected in the way damages are assessed to avoid excessive damages that do not take in mind the overall situation of the case and the presumption of legitimacy with which the courts of the country operate.

Otherwise, international investment arbitration would end up operating as an appeals instance to any judicial proceeding involving foreign parties.

8. As to the calculation of the remaining damages amount of $14,000,000, the Claimants' assessment of the impact of the Ecuadorian injunction is wrong, at least for two reasons:

9. First, the damage Claimants allege was not produced by Ecuador. The Ecuadorian courts exercised their legitimate jurisdiction by considering the rights and obligations of its national's company, in this case Ropasuave. That is different from the fact that Claimants were bringing their trademark action before the Bolivian courts. Those are the ones that should have decided the matter in a definitive way, granting Claimants requests, if there were merit to them. The injunction in and of itself cannot produce damages attributable to Ecuador.

10. Second, even if the consequences in Bolivia of the injunction were somehow attributable to Ecuador, Claimants admit that Bubblewash initially did not comply with the order, and continued delivery of the washing machines to the new malls. However, after 2015 it ceased exporting washing machines to Bolivia, allegedly due to the impact of the 2013 injunction. However, Bubblewash did so due to economic reasons. In 2015, Bolivia started to have a strong convertibility crisis of its local currency, which led to restricting imports to avoid the flight of foreign currency. Hence it apparently became unprofitable for Bubblewash to export to Bolivia, prompting the abandoning of that market.

11. In conclusion, Ecuador has not been in breach of the TPA and has not caused any damages that Claimants could validly claim in this proceeding.

VI. Proposed Calendar

49. Ecuador proposes the following submission schedule:

a.	Claimants' Response:	March 5, 2026
b.	Ecuador's Reply:	March 11, 2026
c.	Claimants' Rejoinder:	March 12, 2026
d.	Two-Day Oral Hearing:	April 3 and 4, 2026

50. In view of the time limits contemplated in Article 10.20.5 of the TPA, and the time needed to prepare adequately for a hearing, Ecuador suggests that the hearing be held on two contiguous weekdays during the first week in April 2026 (*i.e.*, April 2-4, 2026).

VII. Conclusion

51. For all of the reasons articulated above, Ecuador respectfully requests:

a. that, in accordance with Article 10.20.5 of the TPA, the Tribunal evaluate the objections articulated herein on an expedited basis, using the calendar proposed in Section V; and

b. that the Tribunal issue an award dismissing the case in its entirety for lack of jurisdiction, ordering Claimants jointly and severally to bear all costs of the arbitration, and awarding Ecuador full recovery of all of its costs and expenses (including attorneys' fees and expenses), with interest thereon at the rate of six-month LIBOR plus 2% per annum from the date of the award to the date of payment.