

1. The TPP was signed as Annex to the Treaty of Peace between Portugal and Spain of 6 February 1715, on the same date.

2. Pg. 8 of the case study says "On 20 April 1790, Del Campo wrote to Leeds that:

‘Having communicated to his Court the Duke’s Answer of the 26th of February to his Memorial, concerning the Detention in the Port of Nootka of the English Vessel called the **Prince of Wales**...’”

Whereas pg. 10 mentions, "The **Prince of Wales**, having been chartered to load Teas for the East-India Company, soon afterwards returned to England..."

In light of this, should we factor into account this geographical inconsistency or is there a possibility of it being a typing error?

This is not a typo but an accurate reflection of the contemporaneous documents. Similar situations arise in many arbitrations. It is part of the job of the lawyers to work with such conflicting information.

3. Are there certain authorities/sources of law that the arguments should be based on beside the attached documents? Or are the teams free to research in different sources? And is there a specific hierarchy for these authorities for the purpose of this moot?

The record of the “arbitration” consists of the document posted on the website.

4. Should the skeleton arguments be based solely on the arguments already there in the dispute part of the case study or can more arguments be added?

For purposes of the skeleton arguments - as well as during the oral presentations - participants should only address the issues identified in the Case-Study. However, participants are free (and encouraged) to determine which legal arguments best support their case with regard to each issue and present accordingly.

5. Since the skeleton arguments will be based on the respondent statement of defense and the claimant's reply to it, does this mean that the respondent will go first in the oral rounds?

Teams should confer with their respective opponents before each round to determine which side presents first. If the teams are able to reach agreement, this agreement will determine the order of pleadings. If the teams are unable to reach agreement, the arbitrators will determine the order of pleadings.

6. Has Catherine the Great, Empress of Russia died?

Yes.

7. Will the UNCITRAL Arbitration Rules of 1776 (as provided on the official FIAMC website in the "Case Study" section) apply or will the UNCITRAL Arbitration Rules of 1689 apply (as provided on the official FIAMC website in the "Case Study" section)?

Please refer to the Case Study and the documents posted on the website.

8. How many members of the team are allowed to speak during one round, two or three?

Under the FIAMC rules (which can be found on the website) **at least** two team members have to present arguments in each pleading.

9. The problem states- "Although the facts of the case and the proceedings take place in the 18th century, for the purpose of the Moot participants will assume treaties, customary public international law and case law are those of the 21st century." However it is silent regarding the the timeline that domestic laws must adhere to if they are required to be referred to by the participants under questions of international law.

Participants should not rely on national laws to the extent that such laws are not part of the record.

10. At page 59 of the case study, Spain's response is that: "Pursuant to Annex 9-B (1) an action or a series of actions by a Party which interfered with a tangible or intangible property right or property interest in an investment can constitute an expropriation.

Facts do not qualify as expropriation ..."

In this context, it is unclear to us what "Facts do not qualify as expropriation" is intended to mean. Does Spain simply mean that the facts do not support a finding of expropriation?

The organizers cannot provide guidance as to the interpretation of the Parties' legal arguments.

11. On Page 7 of the Mear's Memorial, the 5th line mentions that Captain Douglas "sailed **for** Nootka Sound". However, the preceding paragraphs have stated that he was already in Nootka Sound. Is this a typographical error or a contradiction the Memorial?

This is an accurate reflection of the text in Lieutenant Mear's Memorial.

12. On Page 63 of the Case Study, the second last line of the last paragraph reads as "(ii) Respondent is invited to comment on the **Respondent's** challenge". Shouldn't it be Claimant's challenge instead?

This is a typographical error. The relevant part of this sentence should read: "(ii) Respondent is invited to comment on Claimant's challenge and de Cambacères' comments within 15 days from receipt of the message."

13. In the Third issue (Respondent side), does this part refer to page 5 of Meares' Memorial (as it's written down) or should it be page 7 instead?

This is a typographical error. The relevant part of this sentence should read: “(see p. 7 of Lieutenant Mear’s Memorial).”

14. Article 9.26 of the Trade and Prosperity Pact mentions "Measures set out in *Annexure I or II*". However, there are no Annexures Numbered I and II. Should we consider it to be referring to Annexures 9-A and 9-B instead?

Only the excerpts published on the website are part of the record and potentially relevant for the Moot.

15. Where is the seat of arbitration in the present case?

The seat of the arbitration is without relevance for the purposes of the Moot. Please also note clarification no. 9, which states that “Participants should not rely on national laws to the extent that such laws are not part of the record.”

16. P56 of the case study, 4th paragraph. It says that Manuel Pereira is fascinated by the idea of suing Britain and that he recalls the TPP. However, Carvalho is not suing Britain he is submitting his claims to arbitration against Spain and the TPP is between Spain and Portugal. Could this be an error or did Pereira assume that Britain would be involved?

This is not an error. This is what Mr. Pereira’s employee understood from Mr. Carvalho’s drunken tirade in the bar. Mr. Pereira was under the wrong impression that Britain was a member state to TPP. It is only a guarantor under the Treaty of Peace of 1715.

17. First defense of the respondent, stating that “Many of the alleged actions giving rise to the purported claim took place well before the three and a half year time period referred to in Chapter 9 Article 9.21.1 of TPP expired”. Does this argument seem to be of no import because in any event the actions would have happened before the period expired, or even started? For the sake of clarification, does it mean that Spain claims that the period should start from the date on which the alleged actions happened?

The organizers cannot provide guidance as to the interpretation of the Parties’ legal arguments.

18. Regarding the sentence on the 56. page of the case study " What about his claims, his entitlements, his damage?", on what calims Juan Carvalho is referring to?

Please refer to the Case-Study.

19. On pg.58 on point two Jurisdiction Ratione Consensus [sic!], Respondent stated on "Letter of 16 May". While it is stated on the pg.56 that letter received on 18 September. Should these two dates interpreted as the period time when the letter was delivered and send, or it is simply let open for interpretation.

Please refer to the Case-Study.

20. Was the Treaty of Peace between Britain and Spain a Bilateral Investment Treaty? If the Treaty of Peace between Britain and Spain was a Bilateral Investment Treaty, what standards of protection did it provide for?

Please refer to the Case-Study and the documents published on the Moot's website.

21. TPP in para. 3 Article 9.24: Transparency of Arbitral Proceedings refers to "... Article 29.2 (Security Exceptions) or Article 29.7 (Disclosure of Information)". These Articles are not within Chapter 9 of TPP. Shall we treat those Articles as "not reproduced" for the purposes of the moot?

Only the excerpts published on the website are part of the record and potentially relevant for the Moot.

22. Is it necessary to draw a distinction between British nationality (as respondent alleges in point 6 ne bis in idem) and British subject (as the respondent alleges in point 3 ratione personae)?

The organizers cannot provide guidance as to the interpretation of the Parties' legal arguments.

23. In the fifth paragraph of page 57 of the case study, "In the Notice of Arbitration, Braga appoints Jean Jacques Régis de Cambacérès as arbitrator (a formidable lawyer and is not Spain at war with France ?)." What does it mean "is not Spain at war with France ?"

Please refer to the Case-Study.

24. What was the treaty of 1670 that was subsisting between Britain and Spain?

Please refer to the Case-Study. Only the documents published on the website are relevant for the Moot.

25. At page 64 of the Nootka Fact Sheet, the third paragraph from the bottom of the page states that: "Claimant receives Respondent's comments when he is about to embark for Europe for the hearing. He, his counsel and his letter all arrive in London on 10 March 1798 when the letter is hand-delivered by a messenger on the same day to the President as well as to Respondent's embassy." Could we clarify what this "letter" is? Is this the claimant's response to the respondent's comments on the challenge of Cambaceres?

Please refer to the Case-Study.

26. Do the “[d]ocuments stemming from the secret bilateral negotiations between Their Catholic and Britannic Majesties” (p 59 of the case study) refer to the collection of letters between British government officials as reflected on pp 46 to 52 of the case study?

Please refer to the Case-Study.

27. Was there any arrangement made for the transfer of title from Carvalho to the partnership?

Please refer to the Case-Study.

28. Was Carvalho born in Bombay? If not, did his family reside in Bombay?

Please refer to the Case-Study.

29. Does England recognise Carvalho as its citizen?

Please refer to the Case-Study.

30. Mr de Cambacérès was “closely involved with the peace negotiations...” (p 63). Did he play a specific role in these negotiations (e.g., brokered the deal, acted as counsel for France)?

Please refer to the Case-Study.

31. Did Mr de Cambacérès submit a comment on his challenge?

Please refer to the Case-Study. No further information is available.