No. 21-401

IN THE
Supreme Court of the United States

ZF AUTOMOTIVE US, INC., GERALD DEKKER, AND CHRISTOPHE MARNAT,

Petitioners,

v.

LUXSHARE, LTD.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF ASHISH VIRMANI AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae Ashish Virmani is one of the select few counsel entitled to file as an Advocate on Record before the Supreme Court of India. In the course of his legal practice spanning over a decade, he has appeared and argued in over 50 reported cases before Constitutional Courts in India, who have expressed their formal appreciation in their judgments for the efforts and assistance rendered by him. He has also previously assisted *amicus curiae* before the Supreme Court of India for improving the functioning of Debt Recovery Tribunals, a statutory tribunal in India. Some of the landmark decisions in which Ashish Virmani has appeared before the Constitutional Courts in India are *National Insurance Co. Ltd. v. Pranay Sethi & Ors.*, (2017) 16 SCC 680, *Gajendra Sharma v. Union of India*, 2020 SCC OnLine SC 963, *Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746, *Rajat Gupta v. Rupali Gupta*, II (2018) DMC 376 Del., and *Vinay Kumar Mittal v. Dewan Housing Finance Corporation Ltd.*, Civil Appeal No. 654-660 of 2020.

Mr. Virmani regularly advises on and appears in arbitration proceedings and publishes regarding arbitration. At present, he is pursuing his LL.M. at Columbia Law School and is a student editor of the American Review of International Arbitration

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[1] Pursuant to Rule 37.6, the undersigned hereby states that no counsel for a party to this action authored any part of this brief, in whole or in part, and no person other than *amicus curiae* or their counsel made any monetary contribution towards the preparation or submission of this brief. All parties have consented to the filing of this brief.

Journal. He is also an LL.M. board member of the Columbia International Arbitration Association. Since the outcome of the dispute pending before this Court has wide ramifications in the arena of international arbitration which would affect arbitration proceedings beyond the United States as well, the *amicus* has an interest in the outcome of this matter as a practitioner in the field of international arbitration.

SUMMARY OF ARGUMENT

28 U.S.C. § 1782 embodies rules of international cooperation in litigation which regulate both the performance of procedural acts abroad in aid of domestic litigation and the performance of procedural acts in the United States on behalf of foreign litigation. An international commercial arbitral tribunal may require the assistance of United States district courts in obtaining evidence under Section 1782, just like any other foreign or international tribunal.

However, in the context of an international commercial arbitral tribunal, under a good faith application of the tests laid down in *Intel v. Advanced Micro Devices*, 542 U.S. 241 (2004), an order under Section 1782 should only be issued by the district court to procedurally execute the request of the arbitral tribunal or the request of a party with the approval of the arbitral tribunal. Further, the district court should not independently substantively evaluate the scope of evidence and discovery to which a party may be entitled.

Such an application of Section 1782 would comport with federal policy in favor of arbitration, which applies with special force in the field of international commerce and which requires courts to enforce arbitration agreements according to their terms. It would also comport with the procedural assistance provided by competent courts of a state in taking evidence under Article 27 of the United Nations Commission on International Trade Law, Model Law on International Commercial Arbitration ("UNCITRAL Model Law"), as well as Article 5 of the UNCITRAL Model Law, which limits judicial intervention in arbitration proceedings.

These prescriptions will increase certainty in deciding applications for relief under Section 1782, respect party autonomy, grant necessary deference to arbitrators to control proceedings before them, ensure parity with similar procedures followed across the world, reduce cost, increase efficiency and fairness in the arbitration proceedings, all while ensuring that the objective of Section 1782 is met.

ARGUMENT

Before 2004, it was well settled that an international commercial arbitral tribunal did not fall within the scope of Section 1782. The Second Circuit in *NBC v. Bear Stearns & Co.*, 165 F.3d. 184 (2nd Cir. 1999) and the Fifth Circuit in *Republic of Kazakhstan v. Biedermann International*, 168 F.3d. 880 (5th Cir. 1999) unequivocally concluded that international commercial arbitral tribunals were beyond the statute's reach. However, after this Court's decision in

Intel v. Advanced Micro Devices, 542 U.S. 241 (2004) ("*Intel*"), courts have split on whether such arbitral tribunals fall within the definition of "foreign or international tribunal" under Section 1782. An observation of this Court in *Intel* suggests that even international commercial arbitral tribunals would be covered within the broad language of Section 1782. *Intel*, 542 U.S. at 258, citing Hans Smit, *International Litigation Under the United States Code*, 65 Colum. L.Rev. 1015, 1027 (1965), with approval.

Here, the district court held *Intel* to be the "leading and controlling authority" on this issue. *Luxshare, Ltd. v. ZF Auto. US, Inc.*, No. 2:20-MC-51245, 2021 WL 2154700, at *3 (E.D. Mich. May 27, 2021). Therefore, taking *Intel* to be the controlling precedent, the true question before this Court is the scope of the powers which the district court may exercise while entertaining a request under Section 1782 in the context of an international commercial arbitral tribunal.

I. A District Court's Grant of Assistance to an International Commercial Arbitral Tribunal Under Section 1782 Issues Upon Meeting Certain Factors.

Section 1782 sets forth "rules of international cooperation in litigation which regulate both the performance of procedural acts abroad in aid of domestic litigation and the performance of procedural acts in the United States on behalf of foreign litigation[,]" unless its "interest in doing so outweighs its interest in promoting the administration of justice

on the international level." Hans Smit, *International Litigation Under the United States Code*, 65 Colum. L. Rev. 1015, 1017-18 (1965). Thus, the provision envisages grants of procedural assistance by the U.S. district courts in executing the requests of the foreign or international tribunal, rather than independently determining the scope of evidence that may be gathered or discovery that may be permitted. This applies *a fortiori* in the context of an international commercial arbitral tribunal.

Similar procedural assistance by courts is provided for under Article 27 of the UNCITRAL Model Law, which provides that "[t]he arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence" and that "[t]he court may execute the request within its competence and according to its rules on taking evidence." Article 27, United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006* (Vienna: United Nations, 2008). This is exactly the nature of procedural assistance to the international commercial arbitral tribunal for which Section 1782 was enacted: to execute the request of the arbitral tribunal at its request, or at the request of a party with the approval of the arbitral tribunal. This is the necessary corollary of this Court's holding in *Intel*, as applied in the context of an international commercial arbitral tribunal.

A. An "Interested Person" Entitled to Invoke Section 1782 Can Only Mean a Party or a Prospective Party to the Arbitration Proceedings.

In *Intel*, this Court held that an "interested person" entitled to invoke Section 1782 is not only a litigant before the foreign or international tribunal. *Intel*, 542 U.S. at 255. This Court accorded a wide interpretation to the term "interested person" in the context of a complainant who had initiated proceedings before the European Commission, and who sought discovery under Section 1782 before the district court. This Court held that although the applicant lacked a formal "party" or "litigant" status in proceedings before the Commission, the complainant had significant participation and procedural rights before the European Commission. *Intel*, 542 U.S. at 255, 257.

The European Commission differs in significant ways from the U.S. judicial system as it plays a more "inquisitorial" and active role in gathering evidence. *See Societe Nationale Industrielle Aerospatiale v. United States District Court for Southern District of Iowa,* 482 U.S. 522, 560 (1987) ("The civil-law system is inquisitional rather than adversarial and the judge normally questions the witness and prepares a written summary of the evidence"). Even interested third parties who can "show a sufficient interest in the outcome of the proceedings," may be admitted and participate in oral hearings in proceedings before the European Commission. Michael Albers, Jérémie Jourdan, *The Role of Hearing Officers in EU*

Competition Proceedings: A Historical and Practical Perspective, Journal of European Competition Law & Practice, Vol. 2, Issue 3, June 2011 at 185–200.

Thus, the context of the holding in *Intel* is critical: the term "interested person" as used in Section 1782 is not restricted to a litigant in the context of an investigation pending before the European Commission because "in addition to prompting an investigation, the complainant has the right to submit information for the DG-Competition's consideration, and may proceed to court if the Commission discontinues the investigation or dismisses the complaint." *Intel*, 542 U.S. at 256. This Court's holding in *Intel* was therefore premised on the complainant having sufficient participation rights triggering a reasonable interest in obtaining judicial assistance from a United States court pursuant to Section 1782.

By contrast, an international commercial arbitration dispute is "fundamentally consensual in nature" and the international commercial arbitral tribunal decides issues which arise between parties to an arbitration agreement and can only bind those parties, unless under certain circumstances non-signatories may also participate in the arbitration and ultimately be bound by the award. Gary B. Born, International Arbitration: Law and Practice (2021) 1517. Thus, the nature of participation rights before an international commercial arbitral tribunal are very different and much more limited than the

participation rights of an "interested third party" before the European Commission.

This Court in *Intel* rejected a generalized limitation to the meaning of "interested person" under Section 1782, but did not exclude an "as applied" interpretation, depending on the nature of the rights which may be accorded to a person potentially interested in the proceedings. An international commercial arbitral tribunal is created by party consent to adjudicate disputes between the concerned parties. Therefore, in the context of an international commercial arbitral tribunal, an "interested person" entitled to invoke Section 1782 can only mean a party or a prospective party to the arbitration proceedings since no other person would be entitled to any participation rights before the international commercial arbitral tribunal.

B. A Foreign or International Tribunal Under *Intel* Standards Includes an International Commercial Arbitral Tribunal.

While coming to the conclusion that the European Commission was a "foreign or international tribunal" under Section 1782, this Court in *Intel* quoted with approval Professor Hans Smit, who had advocated that the term would cover administrative and quasi-judicial authorities as well. Hans Smit, *International Litigation under the United States Code*, 65 Colum. L.Rev. 1015, 1027 (1965). This Court also quoted the relevant part from the article of Professor Hans Smit which posited that arbitral tribunals are covered

within the breadth of the terms "foreign or international tribunal." There is no reason for this Court to deviate from this holding in *Intel*, since international commercial arbitral tribunals would require the assistance of U.S. courts in obtaining evidence, just like any other foreign or international tribunal. However, the extent of assistance extended must be to provide procedural assistance in executing the orders of the international commercial arbitral tribunal, rather than independently substantively evaluating the need and extent for discovery and evidence.

C. The Scope and Nature of Assistance to Be Granted Should Itself Be Determined Via Arbitration.

In *Intel*, this Court held that the "proceeding" for which assistance was sought under Section 1782 must be in reasonable contemplation of the parties, but did not need to be "pending" or "imminent." *Intel*, 542 U.S. at 259.

There is no bar under federal law for adjudication of the substantive issue of the scope of discovery or evidence to be provided to a party by the international commercial arbitral tribunal. Rather, there is a federal policy in favor of arbitration, which applies with special force in the field of international commerce and which "requires courts to enforce [arbitration agreements] according to their terms." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 616 (1985); *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010). Further, "as a matter

of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983).

Most dispute resolution clauses and institutional rules are widely worded to encompass within their scope all disputes arising under or in connection with the agreement. Such clauses would include within their scope the extent of discovery and evidence which a party may pursue, including mechanisms for obtaining determinations regarding the same. Further, the procedure for the conduct of arbitration is either agreed to between the parties, or left to the discretion of the arbitral tribunal. *See* Born at 2295 ("[o]ne of the most fundamental characteristics of international commercial arbitration is the parties' freedom to agree upon the arbitral procedure."); *See also* Article 19, United Nations Commission on International Trade Law, *UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006* (Vienna: United Nations, 2008).

If the parties as per the terms of their agreement have not agreed to foreign discovery facilitated by a district court, the district court would respect and abide by the terms of the subject agreement. 9 U.S.C. § 3 (with respect to any issue "referable to arbitration," the trial in a suit shall be stayed until "such arbitration has been had in accordance *with the terms of the agreement*") (emphasis added); 9 U.S.C. § 4 (in case of a failure, neglect or refusal of the party to

arbitrate, the court shall pass "an order directing that such arbitration proceed *in the manner provided for in such agreement*" and the Court "*shall* make an order directing the parties to proceed to arbitration in accordance *with the terms of the agreement*") (emphasis added).

The established strong federal policy in favor of arbitral dispute resolution applies with special force in the field of international commerce. Accordingly, a district court that issues an order independently fixing the scope of discovery under Section 1782 may be encroaching on party autonomy and the right of the parties and/or the international commercial arbitral tribunal to determine its procedure.

Accordingly, the issue of the extent of evidence and/or discovery that a party may be entitled to should be considered and decided by the international commercial arbitral tribunal. Consistent with the underlying policy of U.S. courts to provide procedural assistance for evidence gathering and discovery, any order made by the arbitral tribunal seeking assistance in obtaining evidence could then be procedurally enforced under Section 1782, rather than be routed as a request from a foreign court at the seat, which would only add time and complexity to the process. Therefore, a respondent in the Section 1782 proceeding should be permitted to request that the district court refer the determination substantive issue of the nature and scope of assistance to be issued to the arbitrator themself.

Even in the present dispute before the Court, the relevant dispute resolution clause provides that "[a]ll disputes arising under or in connection with [Master Purchase] Agreement" are to be resolved in arbitration. The plain language of this clause includes within its ambit an adjudication of the substantive nature and extent of discovery sought by Luxshare from the Petitioners, including from their directors and officers or from any other person. This flows from the power of the arbitral tribunal to determine its own procedure and to "examine fact witnesses other than those called by the parties." Clause 28.2, 2018 DIS Arbitration Rules. In view of the federal policy in favor of arbitration, the court would defer to the arbitral tribunal on this substantive issue.

D. Conditioning an Order Under Section 1782 on a Foreign Discoverability Requirement May Impinge Upon the Procedural Autonomy of the Arbitral Tribunal.

In *Intel*, this Court held there was no blanket "foreign-discoverability requirement" for the invocation of Section 1782. *Intel*, 542 U.S. at 260. However, this Court specifically held that "comity and parity concerns may be legitimate touchstones for a district court's exercise of discretion in particular cases." *Intel*, 542 U.S. at 261. Therefore, while Section 1782(a)'s text does not include a generally applicable foreign-discoverability rule, *Intel* leaves the door open for the district court to make such a determination on a case-to-case basis, taking into account comity and

parity concerns. However, such a determination is best left to the arbitrator in the first instance.

In the present dispute before this Court, the arbitration clause provides that the agreement "shall be governed by German law," and further provides that all disputes shall be "exclusively and finally settled" "in accordance with the Arbitration Rules of the German Institution of Arbitration e.V. (DIS) . . . without recourse to the ordinary courts of law." *Luxshare, Ltd. v. ZF Auto. US, Inc.*, No. 2:20-MC-51245, 2021 WL 2154700, at *8 (E.D. Mich. May 27, 2021). It also provides that "The place of the arbitration shall be Munich, Germany." *Id*.

The issue of foreign-discoverability comes into sharp focus in this case since "[c]ivil law jurisdictions [such as Germany] know no such thing as discovery[.]" Gabrielle Kaufmann-Kohler, Philippe Bartsch, *Discovery in international arbitration: How much is too much?* 1 German Arbitration Journal, 13, 16 (2004). Whereas, "[t]he United States Federal Rules of Civil Procedure provide for broad pre-trial discovery, one of the most important instruments of discovery being document production." *Id* at 15; s*ee also Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482 U.S. 522, 560 ("[e]ven in common-law countries no system of evidence-gathering resembles that of the United States").

This Court in *Intel* further held that "the foreign tribunal can place conditions on its acceptance of the information to maintain whatever measure of parity it concludes is appropriate." *Intel*, 542 U.S. at 262. As

a practical matter, however, once substantive discovery or deposition under Section 1782 is obtained and a party bases its pleadings or its case on such information, the arbitral tribunal may struggle to unscramble the scrambled egg: in other words, the arbitral tribunal may have no effective means to distinguish the information obtained through discovery from the other information available to a litigant, even if it wishes to exclude such evidence obtained through discovery.

Determination whether a foreign discoverability requirement is desirable or not becomes even more difficult when the arbitral tribunal has not yet been constituted, as is the case in the present dispute. The district court held that "[w]ithout authoritative proof that the DIS would reject Section 1782 discovery, and given Masser's declaration that 'German Courts Admit Evidence Obtained By Way Of U.S. Discovery Applications[,]' and the above-cited DIS Rules, the Undersigned assumes that the DIS would receive it if it were obtained and presented." *Luxshare, Ltd. v. ZF Auto. US, Inc.*, No. 2:20-MC-51245, 2021 WL 2154700, at *5 (E.D. Mich. May 27, 2021) (internal citations omitted). However, no opposition from the arbitral tribunal could have been forthcoming in the absence of the tribunal having been constituted.

In the context of an international commercial arbitral tribunal, imposition of an independent foreign discoverability requirement as a condition of relief under Section 1782 may impinge upon the procedural autonomy of the arbitral tribunal.

Therefore, the determination of the scope of evidence and discovery is best left to the arbitral tribunal.

II. The Applicability of the *Intel* Tests in the Context of International Commercial Arbitral Tribunals.

In *Intel*, this Court interpreted Section 1782 in the context a complaint pending before the European Commission. The dynamics of the application of the provision change when the nature of the tribunal involved is an international commercial arbitral tribunal.

A. The First *Intel* Factor – The District Court Should Not Substantively Re-Examine the Issue of the Nature and Extent of Discovery to be Granted to an Interested Person.

In *Intel*, this Court held that the district court is required to consider whether the person from whom discovery is sought is a participant in the foreign proceeding. This Court included this requirement since non-participants in the foreign proceeding may be outside the foreign tribunal's jurisdictional reach, and Section 1782 could be utilized to obtain such evidence. This Court reasoned that "nonparticipants in the foreign proceeding may be outside the foreign tribunal's jurisdictional reach; hence, their evidence, available in the United States, may be unobtainable" absent relief under Section 1782. *Intel*, 542 U.S. at 264. By contrast, "A foreign tribunal has jurisdiction

over those appearing before it, and can itself order them to produce evidence." *Id.*

Arbitral tribunals have wide powers to examine not only parties, but also witnesses who may not be parties or participants to the dispute. In the present case, Rule 28.2 of the DIS Rules, which even apply to expedited proceedings by virtue of Rule 1.4, permit the arbitral tribunal to "examine fact witnesses other than those called by the parties, and order any party to produce or make available any documents or electronically stored data." With the availability of Section 1782 to arbitral tribunals, any such order of the arbitral tribunal may be procedurally enforced under that provision, while the substantive determination of the nature and extent of the permitted evidence may still be evaluated by the arbitral tribunal. This would also obviate the need for the district court to make an independent substantive determination, while continuing to be available to procedurally execute the orders in conformance with Section 1782.

B. The Second *Intel* Factor – The Order of the Arbitral Tribunal with Respect to the Extent of Discovery Must Not Be Re-Evaluated by the District Court.

The second *Intel* factor requires examination of the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to federal court judicial assistance. *Intel*, 542 U.S. at 264.

As noted above, an international commercial arbitral tribunal is a creature of contract and is fundamentally consensual in nature. Party autonomy is at the heart of international commercial arbitration. As to the character of the proceedings, the arbitral tribunal does not carry out public functions, but rather is a private dispute resolution body.

There are also no formal ways to gauge the receptivity of the arbitral tribunal to a discovery request, as *Intel* gave district courts no guidelines for evaluating foreign tribunals' receptivity to discovery acquired in the United States. Marat A. Massen, *Discovery for Foreign Proceedings After* Intel v. Advanced Micro Devices*: A Critical Analysis of 28 U.S.C. § 1782 Jurisprudence*, 83 S. Cal. L.Rev. 875 (2010). The only appropriate way to gain knowledge of the arbitral tribunal's receptivity is through its formal orders. In the absence of a formal order from the tribunal, any attempt to glean its intent would be speculative at best.

There are other policy considerations for deferring to the arbitral tribunal with respect to taking evidence and permitting discovery, such as reduced cost, efficiency and the arbitrators' ability to control discovery. *See* Anna Conley, *A New World of Discovery: The Ramifications of Two Recent Federal Courts' Decisions Granting Judicial Assistance to Arbitral Tribunals Pursuant to 28 U.S.C.* § *1782*, 17 Am. Rev. Int'l Arb. 45 (2006).

Therefore, with respect to international commercial arbitral tribunals, district courts must take the

receptivity of the tribunal as set forth in a ruling or order to be dispositive, and in the absence of any indication regarding receptivity, decide against granting any request under Section 1782.

C. The Third *Intel* Factor – An Exhaustion Requirement Should Be Imposed as A Condition of The District Court Entertaining A Section 1782 Request.

In *Intel*, this Court held that "a district court could consider whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States." *Intel*, 542 U.S. at 265.

Imposing an exhaustion requirement -- i.e., requiring the party seeking discovery for use in an international commercial arbitration to first move the request before that tribunal, before filing a Section 1782 petition -- would provide a litmus test on the issue whether the arbitral tribunal is amenable to such request and whether it would in fact permit such a request for discovery. Some courts have applied an exhaustion rule while applying the tests laid down in *Intel*. *See In re Digitechnic*, 2007 U.S. Dist. LEXIS 33708, at *9-10 (W.D. Wash. May 8, 2007). Other foreign courts have held that the power of the district court to provide judicial assistance could also be abused if the party seeking such assistance did so in contravention of the agreed procedure or the directions of the arbitral tribunal. *See ALC v. ALF, High Court, Singapore,* [2010] SGHC 231 (a party which applied for issuance of a subpoena to compel the

person named to disclose documents or answer questions on documents after an arbitral tribunal had earlier rejected such a request was found to have abused the process of the court).

Even in the present case, counsel for Luxshare candidly admitted that "[i]t's unlikely we'd be able to get this level of discovery in the DIS, which is exactly why we're seeking it here[.]" *Luxshare, Ltd. v. ZF Auto. US, Inc.*, No. 2:20-MC-51245, 2021 WL 2154700, at *7 (E.D. Mich. May 27, 2021). However, this is not a situation where Section 1782 may be used to assist a party in gathering evidence by circumventing the discovery rules which the arbitral tribunal may apply.

D. The Fourth *Intel* Factor – "Trimming" of Discovery Requests Would Not Be Appropriate in The Context of An International Commercial Arbitral Tribunal.

This Court in *Intel* held that "unduly intrusive or burdensome requests may be rejected or trimmed" by the district court. *Intel*, 542 U.S. at 265. This test requires and relates to the burden imposed by the discovery request, which may not be relevant in view of the previous discussion that a party must first approach the international commercial arbitral tribunal with its request for discovery. Of course, the district court may still deny such a request if the request in not in compliance with law or the interest of the United States in doing so outweighs its interest in promoting the administration of justice on the international level.

III. This Proposed Construction and Application of Section 1782 Would in Fact Limit Judicial Intervention in International Commercial Arbitrations, and Favor Arbitration.

The policy to limit judicial intervention in arbitral proceedings aligns with the federal policy in favor of arbitration and that "as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem. Hosp.*, 460 U.S. at 24-25. Therefore, an interpretation of Section 1782 that permits for the execution of the orders of the tribunal at the request of an interested person would appropriately leave the substantive issue of nature and extent of evidence / discovery to be resolved via arbitration, and would in general favor arbitration.

Article 5 of the UNCITRAL Model Law similarly prescribes that "no court shall intervene except where so provided in this Law." Read in consonance with Article 27, the courts of a state would remain available to procedurally execute the requests of the arbitral tribunal to assist it in obtaining evidence and discovery. While the UNCITRAL Model Law is not binding, it constitutes a guide for national legislation, and one which has been adopted by countries around the world with varying degrees of alteration. Dan C. Hulea, *Contracting to Expand the Scope of Review of Foreign Arbitral Awards: An American Perspective*, 29 Brook. J. Int'l L. 313, 342 (2003). Thus, a construction of Section 1782 making relief available to

international commercial arbitrations would in fact favor and strengthen arbitration, consistent with the emerging worldwide consensus.

CONCLUSION

For the foregoing reasons, the amicus supports the Respondents in the matter to the extent that Section 1782 would extend to an international commercial arbitral tribunal, but advocates for restrictive use of Section 1782 for procedural assistance to the international commercial arbitral tribunal only.

Respectfully submitted,

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