BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the Matter of Arbitration between:	:	
FREEPORT-MCMORAN INC.,	:	
Claimant,	:	Case No. ARB/20/8
v.	:	
REPUBLIC of PERÚ,	:	
Respondent.	:	
	x	Volume 1

HEARING ON JURISDICTION, MERITS, AND QUANTUM

Monday, May 1, 2023

The World Bank Group
1225 Connecticut Avenue, N.W.
Conference Room C1-450
Washington, D.C. 20003

The Hearing in the above-entitled matter came on at 9:30 a.m. before:

MS. INKA HANEFELD
President of the Tribunal

MR. GUIDO SANTIAGO TAWIL
Co-Arbitrator

MR. BERNARDO M. CREMADES
Co-Arbitrator

ALSO PRESENT:

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C O N T E N T S

P R O C E E D I N G S

PRESIDENT HANEFELD: Good morning. Is everyone ready to start? Court Reporters, are you fine?

REALTIME STENOGRAPHER: Yes. Thank you.

PRESIDENT HANEFELD: So, on behalf of the Tribunal, I'm very pleased to welcome all participants to this Hearing in the arbitration proceedings between Freeport-McMoRan as Claimant and the Republic of Perú as Respondent in this ICSID Case ARB/20/8.

Let us start with introducing the participants.

My name is Inka Hanefeld. I'm the presiding arbitrator in this Arbitration, and I'm here with my co-arbitrators. On my left, I have Professor Guido Tawil, and on my right I have Bernardo Cremades. I do not need to introduce those gentlemen. You are probably very familiar with them.

Then we have Ms. Marisa Planells Valero, our ICSID Counsel, and the Tribunal assistant, Charlotte Matthews, and furthermore, I welcome our Court Reporters and Interpreters and all IT support staff,

and everyone behind the walls and inside this room.

Let us now establish the presence of the Parties. The Secretariat has circulated an updated List of Participants yesterday, so I would propose that Claimant's Counsel introduces Claimant's Party Representative and Counsel, and then Respondent does the same.

So, Mr. Prager and Ms. Sinisterra, please, it's your floor.

MR. PRAGER: Thank you very much, Madam President and Members of the Tribunal. It's a great pleasure to be here and spend the next two weeks with you.

I have on my left side Dan Kravets from Freeport-McMoRan; he's the Vice President for Corporate Development and Exploration. And we have the team of Debevoise & Plimpton and Estudio Rodrigo here.

My name is Dietmar Prager. Next to me is my partner Laura Sinisterra, my colleague Nawi Ukabiala, my colleague Federico Fragachán, Michelle Huang, Sebastian Dutz. And then, from the team that you

can't see, but the most important team, which is our legal assistant team, which is led by Mary Grace McEvoy; they're in a room back there. And from Estudio Rodrigo here we have Luis Carlos Rodrigo, we have Francisco Cardenas Pantoja, Lourdes Castillo, José Govea, and Alejandro Tafur.

PRESIDENT HANEFELD: Thank you very much.

I turn to Respondent.

MS. HAWORTH McCANDLESS: Thank you, Madam President. On behalf of the Republic of Perú, we--our counsel team is here. I'm Jennifer Haworth McCandless. Our two Party Representatives, Vanessa Rivas Plata and Mijail Cienfuegos, are en route here. Their flight was canceled, unfortunately, last night, so they will arrive later on today, and they will participate in the Hearing.

To my left are Counsel for Sidley Austin, María Carolina Durán and Stanimir Alexandrov and Marinn Carlson, Courtney Hikawa, Gavin Cunningham, Angela Ting, Veronica Restrepo, Natalia Zuleta--let's see if it doesn't roll off my tongue--and then from Estudio Navarro we have Ricardo Puccio, and at the end

of the row, we have Ara Lee.

That constitutes the team from Respondent--for Counsel for Respondent.

PRESIDENT HANEFELD: Thank you very much.

And then we have also received a written submission of the United States as the Non-Disputing Party. We will hear the oral submissions tomorrow.

If I understand correctly, we have today Mr. Alvaro Peralta present, and then there are others who will participate remotely. Welcome to you, too.

So, with regard to our Hearing, we have this hybrid setting. I understand that all extra speakers on the Parties' sides, except for the witness, Mr. Isasi, participate in this Hearing in person, and, except for the witness Mr. Flury, I understand that ICSID has already shared all connectivity details, so everything should be smooth and work well.

With regard to the agenda of the Hearing, we discussed and heard the Parties on the hearing agenda in our prehearing organizational meeting on the 20th of March. Thereafter, we were informed that Mr. Flury's health conditions do not allow him to

participate in this Hearing. After that, a couple of communications were exchanged between this Party--between the Parties.

The Tribunal has taken note of the Parties' comments. We will decide on this witness testimony later, when necessary and appropriate in the course of these proceedings. I do not know whether the Parties have any additional comments, but for the Tribunal this issue has been briefed sufficiently.

So, we would like to come to the Hearing agenda as amended.

You have provided us with a jointly agreed amended Hearing agenda on the 27th of April. This will be our guideline for the next 10 Hearing days, subject to any modifications as may become necessary in the course of the Hearing.

Further details on the Hearing have been set out after hearing the Parties in our PO4, I think it's not necessary that we require the particularities.

As a final introductory remark, the Parties have filed a number of voluminous submissions to date, along with a large number of exhibits, as well as

expert reports and written statements. We had a lot of document production requests also recently, and our understanding is that now everything is on the record. We have also received, with thanks, the core Hearing Bundle, which we all have now on our desks in hard copy form and electronic form. Thank you very much for that.

We can assure you that we have carefully read and studied the submissions and documents. We will also have questions to the witnesses and experts, and also maybe to Counsel. All our remarks and questions will be on a without-prejudice basis. So, now, subject to any further developments, and also, when we use a specific terminology, it should not be understood as an endorsement of the Parties' positions. Let us see how we develop this case in the course of the next two weeks.

Do the Parties have any further issues to address at this stage?

Mr. Prager? Ms. Sinisterra?

MR. PRAGER: Nothing on behalf of Claimant at the moment. Thank you.

MS. HAWORTH McCANDLESS: Nothing on behalf of Respondent, either, Madam President.

PRESIDENT HANEFELD: My co-arbitrators, anything to add?

(Comments off microphone.)

PRESIDENT HANEFELD: Okay. Now, Mr. Tawil just said that the Opening Presentation of Claimant has not yet arrived. Would you be so kind to give us a handout?

(Comments off microphone.)

PRESIDENT HANEFELD: Ah. So, we also need it by email.

MS. SINISTERRA: So, I can confirm we have uploaded our presentation on Box.

ARBITRATOR TAWIL: By email?

MS. SINISTERRA: No. Unfortunately, it's too heavy to send via email, but perhaps Marisa can assist so that you can download it on your iPads.

(Comments off microphone.)

PRESIDENT HANEFELD: So, if there are no further comments, we have received--thank you very much--the Opening Presentation of Claimant, and then

can now start with Claimants' Opening Statement.

Please go ahead.

OPENING STATEMENT BY COUNSEL FOR CLAIMANT

MR. PRAGER: Good morning, Madam President, Members of the Tribunal. On behalf of Claimant Freeport-McMoRan, it's a pleasure to present our Opening.

Before I start, I wanted to mention and I forgot to mention a very important colleague of ours, Julio, who is here, and I just didn't want to be plagued by guilt for having missed him.

So, we're here today because of Freeport's failure to honor the promise of stability for a major expansion at the Cerro Verde mine that the Government had been seeking for decades.

In the early 1990s, when Perú passed through a major financial and security crisis, Perú reformed its Mining Law to attract much-needed foreign investment into its mining sector. And the keystone of that reform in 1991 was broad stability guarantees that the Government promised to investments made in concessions and in Mining Units.

The stability succeeded in attracting foreign investments that revived the economy and turned Perú into a leading mining jurisdiction. And one of the biggest investments was Cerro Verde's $850 million investment in a Concentrator Plant within its Cerro Verde Mining Unit, which is a world-class mining asset.

The Government had sought to build that Concentrator since the 1970s because it would prolong the life of the mine for decades and significantly increase the mine's output.

When the Government privatized Cerro Verde, pursuing the Concentrator investment was a key condition, and in exchange the Government promised stability. The $850 million investment in the Concentrator prolonged the life of the Cerro Verde mine for decades. It tripled its output, it tripled Cerro Verde's tax payments to Perú and the Province of Arequipa, and it created hundreds of new jobs. Now, by the time Cerro Verde committed to build the Concentrator, Perú's economy was faring much better and copper prices were on the rise, but at that point

the political tide had turned against stability agreements. And years after Cerro Verde made the investment, the Government reneged on its promise to grant stability and assessed royalties, plus exorbitant penalties and interest.

Now, that's a story that's not uncommon with mining investments: A Government makes a commitment when it's in dire need to attract foreign investment in its mining sector and then reneges on the promise when times get better. We have all seen it before; different facts, but the theme is the same.

But what makes this case unique is the perfidy with which the Government sought to renege from its promises.

Faced with political pressure, the Government's Ministry of Energy and Mines crafted behind closed doors a new interpretation of the scope of stability guarantees that sought to exclude Cerro Verde's new Concentrator from its scope. That new interpretation ran counter to the text of the Mining Law and Regulations, the Ministry's own practice, and, frankly, made no commercial sense.

The Government then did not share this newly crafted interpretation with Cerro Verde. Instead, it extracted more than $365 million in so-called "voluntary payments" that Cerro Verde agreed to in the belief that the stability guarantees applied to its Concentrator.

And once the Concentrator Plant was built and entered into operation, the Government used its novel interpretation to assess Cerro Verde with almost $600 million in royalties and taxes that Cerro Verde did not owe.

Now, when Cerro Verde then challenged the tax assessments, the administrative review by the Peruvian Tax Administration was a sham. SUNAT decided all of--SUNAT, that's the tax authority, as you know--decided all of Cerro Verde's challenges to each of SUNAT's assessments based on a secret and unofficial report that SUNAT issued years before, allegedly in 2006, without hearing Cerro Verde, and the Tax Tribunal's precedent ensured that each of Cerro Verde's challenges to the assessments were rejected.

And, on top of it all, the Government arbitrarily assessed over $616 million in penalties and interest that, under Peruvian law and general principles of fairness, it had to waive.

So, the Government didn't just collect the royalties and taxes that Cerro Verde was protected from under the Stability Agreement. It collected triple that amount.

All told, the Government's assessments almost reached USD 1.2 billion.

And in this Arbitration, the Government now seeks to reverse-engineer its position on stability guarantees, trying to make a case that stability guarantees never applied to concessions and Mining Units, but instead always have been limited to a specific investment project.

That case, of course, flies in the face of the express terms of the Mining Law and Regulations, which do not even mention the term "investment project," and more than a decade of consistent Government practice applying stability guarantees to concessions and Mining Units.

But Perú's principal strategy in this case, from the outset, has been to keep you and us from seeing the contemporaneous record of how Perú applied stability guarantees.

Now, you will recall that Perú opposed requests for key contemporaneous documents, and, when ordered to do so, Perú failed to produce several key categories, such as documents concerning the drafting history of the Mining Law and Regulations.

Perú also delayed production of key documents until after written pleadings were done, and, in fact, produced many of them only last Thursday, as you know.

But, after all of these procedural battles, we now have a significant number of documents that show in no uncertain terms that the Government has consistently applied stability guarantees to concessions and Mining Units, and not to a specific "investment project," as Perú argues in this Arbitration.

The most striking examples are the numerous SUNAT assessments and resolutions showing how SUNAT

applied stability guarantees with regard to Milpo, Yanacocha, and Tintaya. As you are well aware, Perú delayed the production of these documents until the very last minute. And Perú did not fight tooth and nail to keep these documents from the record and produce them only in the very last minute because they are helpful to its case. Of course not.

I will address them later in the Opening.

But as far as the SUNAT documents of Milpo are concerned that Freeport submitted in the record, they show that, at Milpo, SUNAT applied stability guarantees to entire concessions and Mining Units, and not to specific investment projects, and it did so also with regard to new investments that were made after the initial investment that qualified these companies to access their stability guarantees.

But what's even more disturbing is that these Milpo documents show that Perú applied stability guarantees to concessions and Mining Units long after it had singled out Cerro Verde in response to political pressure and developed a new theory to exclude the Concentrator investment from Cerro Verde's

Stability Agreement. In fact, the Government applied stability guarantees to Milpo's entire Mining Units as recently as last year.

But it's not only the documentary evidence that is so compelling here. It's also the witness evidence. This is not your typical "he said-she said" case where the investor presents witnesses from the side of the investor and the Government presents Government representatives as witnesses and the two contradict each other. No. In this case, there are five key Government officials who are testifying on behalf of Claimant.

One of them, who you will meet in a couple of days, is María Chappuis, who participated in the drafting of the Mining Law reform in 1991, and then from 2002 to 2004 served as the Director General of Mining; that's the position in the MINEM responsible for stability agreements. There is Hans Flury, from whom you have heard, former Minister of Energy and Mines. There is Milagros Silva, who served as the Secretary-General of Minero Perú, who was the Government entity that owned Cerro Verde before the

privatization. There is Carlos Herrera, who on behalf of Perú negotiated the TPA, and Leonel Estrada, who served as a law clerk at the Tax Tribunal.

Now, our Opening Presentation this morning is going to have five parts. In the first, I will explain why the stability guarantees applied to the entire concessions and Mining Units, and hence also to Cerro Verde's Concentrator.

In the second one, my partner Laura Sinisterra will describe how the Government adopted a novel and restrictive interpretation of the Stability Agreement, failed to communicate it to Cerro Verde, violated Cerro Verde's due process rights in the SUNAT and Tax Tribunal proceedings, and then refused to waive exorbitant penalties and interest.

In the third part, Ms. Sinisterra will also explain why Perú breached the Minimum Standard of Treatment under Article 10.5 of the TPA, and why you should and need not give any reference to the Supreme Court decision in the 2008 Royalty Case.

In the fourth section, we will address Perú's jurisdictional objections. I will address the

statute of limitation objections, and my colleague Nawi Ukabiala will address the remaining four jurisdictional objections.

And, at the end, in the fifth section, Mr. Ukabiala will address the $942.4 million in damages that Cerro Verde suffered as a result of the Stability Agreement breaches and TPA breaches of the Republic.

I will now start with the first module and discuss why the stability guarantees extended to all investments within the Cerro Verde Mining Unit, including the Concentrator.

Let me start with the reform of the Mining Law in 1991. Now, you will surely recall that in the 1980s and early 1990s, Perú suffered a dire economic, financial, and security situation. There was hyperinflation that at one point reached more than 7,000 percent. There was a sharp decline in exports, a depletion of foreign Reserves.

And, to make matters worse, Perú was also facing a grave security crisis, with violent attacks of the Sendero Luminoso, the Shining Path, and the

Túpac Amaru terrorist groups that specifically targeted mining workers and mining infrastructure because of the importance to the economy.

Now, unsurprisingly, these extremely difficult conditions had a severe impact on the mining sector, which contracted in the 1980s.

Now, it was under these dire circumstances that, in 1991, the Government decided to reform the Mining Law to attract urgently needed foreign investment in the mining sector.

The new Mining Reform was passed as Legislative Decree 708. So, you're going to hear a lot about L.D. 708, and the very first article of that Mining Reform declared that: "The promotion of investments in mining activities is of national interest," "es de interés nacional."

And to promote investment in the mining sector, Perú had to persuade mining companies to invest in Perú instead of in any of the other mining jurisdictions with which Perú was competing at the time.

Now, you can see these jurisdictions on a

map here, in a region that included Chile and Argentina.

Now, in the early 1990s, Perú's financial and security situation was significantly worse than that in the majority of those other competing mining jurisdictions. Take, for instance, Chile, which was Perú's principal competitor.

So, Perú, therefore, had to offer a mining regime that was at least as favorable to investors than that of other jurisdictions, if not more so. Perú's witness Mr. César Polo, who was part of the drafting team of the Mining Reform, recognized that in his witness statements. He went to Chile to study Chile's mining regime and said that: "For us, it was important that the legal regime in Perú be no less favorable than Chile's, even more so considering the circumstances that Perú was in."

And stability guarantees were a key way of attracting mining investment.

Now, all these competing jurisdictions, except México, offered stability guarantees, and, as our expert Professor Otto explains, virtually all of

the competing mining jurisdictions applied stability guarantees to the entire mining operations, and not to specific investments or investment projects.

Now, the names vary depending on the jurisdictions. Sometimes they are called "mine," "a Mining Project," "a Production Unit." In Perú, they are called "Mining Units," or, in the formal name, "Economic-Administrative Units," but they all mean the same: An integrated mining operation which consists of a set of concessions, facilities, and equipment that is used to carry out mining activities.

Now, the specific components of such a Mining Unit can vary depending on the type of minerals that are being extracted, the location of the mine, the mining plan. But, in general, they will include exploration and drilling equipment; mine infrastructure, such as roads, power plants, water treatment; mining equipment; processing facilities, such as leaching or Concentrator Plants; and administrative facilities.

So, since Perú wanted to attract foreign investment in a mining sector, it could not offer

anything less than also extending stability guarantees to Mining Units, and it did not offer anything less. Actually, already before the reform, Perú applied stability guarantees to Mining Units, and it continued to do so after the Reform, only in a more structured and simple way. If stability were to apply only to investment projects, as Perú says now, that would have been fatal to Perú's intention to attract much-needed foreign investment, given the competitive environment.

Now, a second feature of the 1991 Mining Reform was that the Government sought to simplify the existing stability regime. It wanted to create what it called "administrative simplification."

The Government sought to eliminate to the furthest extent possible red tape and Government discretion. Now, importantly, there would be no negotiation with the Government about the terms, content, and scope of the Stability Agreements. There would be no discretion of Government officials in negotiating or implementing the Stability Agreements.

And the reason for that was that Perú wanted to eliminate delay and it wanted to eliminate the risk

of corruption. That was based on their previous experience.

Now, some of the key features to achieve this administrative simplification were that stability agreements now had fixed terms--the term was clearly delineated to 10 years or 15 years; that stability guarantees were extended to clearly define concessions and Mining Units, so there can be no government discretion in determining whether particular investments or activities are covered by stability guarantees or not, and making stability agreements adhesion contracts, form contracts that incorporate all the guarantees contained in the Mining Laws, so that all mining investors would have exactly the same stability agreements, because their terms could not be subject to negotiations.

Now, the Mining Reform was passed in 1991, as I mentioned, Legislative Decree 708. The reform did not replace, but added to the existing Mining Law, which was known as L.D. 109.

So, a year later, in 1992, the Government combined the existing Mining Law, the L.D. 109, with

the new Mining Reform 708 and made the Unified Mining Text, a task that was carried out by our expert witness María del Carmen Vega, and it's this Unified Text that the Parties have referred to here as the Mining Law.

Now, the Mining Law has subsequently been amended a number of times, and in Claimant's Authority Number 1, you see the Mining Law with all the amendments. But it's a little bit complicated to figure out now what's the original text and what's the text that was in force during the relevant time. So, the Parties have sat together and agreed on a relevant version as it existed on the 6th of May 1996. That's the date when the stability regime for the Cerro Verde Mining Unit was frozen. And that joint agreed version is Claimant's Authority 448. So, when you look at the Mining Law, you might find it more helpful to look at that version than CA-1.

Now, it is important to understand that, under the Mining Law, the basic unit under which all mining activities are carried out are concessions, and this is made clear in Article VII of the preliminary

title of the Mining Law and Article 7 of the Mining Law. Article 7 says the exploration, exploitation, beneficiation, and some other activities are carried out through the concession system. And the two types of concessions that are relevant here are the mining concession and the beneficiation concession.

Now, a mining concession grants a mining company the right to explore and exploit the minerals. It stretches over a certain geographic area and typically has a geometric scope.

There are no limitations as to the type of ore that a mining company can extract from the concession.

Now, typically, mining companies have several mining concessions, but at Cerro Verde, Cerro Verde has been extracting its ore from one single Mining Concession. That's called "Cerro Verde 1, 2, and 3."

Now, once the ore is extracted, the mining company typically will want to process that ore, and to do so, it needs a separate concession, a beneficiation concession, and that beneficiation

concession grants mining companies the right to build and operate plants to process minerals extracted from the mining concession.

Now, a beneficiation concession has two elements: It has a geographical area that covers the surface of the plant, and it sets a daily production capacity, a certain amount of metric tons per day.

Now, the Mining Law does not place any limits on the type of processing that can be done within a beneficiation concession. You can process by leaching; you can use a Concentrator or other technologies.

A beneficiation concession can, but must not--need not overlap geographically with the mining concession. In Cerro Verde, it was on top of the existing Mining Concession, for most part.

If a mining company has more than one processing plant in a Mining Unit, it can either operate both plants within the same beneficiation concession, as we see here--so, here, with the example of a Leaching Plant and a Concentrator that can be operated either within the same beneficiation

concession--or it can have a separate beneficiation concession for each processing plant.

Now, at Cerro Verde, it was Option 1: Both the Leaching Plant and the Concentrator were included within the same Beneficiation Concession. They always remained one single Beneficiation Concession.

Now, another related concept is one that I already alluded to, which is what the Mining Law formally calls the Economic-Administrative Unit. The short form of it is the EAU. And I mentioned that already when I explained that most major mining jurisdictions extended Stabilities to such Mining Units, which, in Perú, as I mentioned, are called Economic-Administrative Units.

Now, Article 82 of the Mining Law defines what an EAU is for purposes of stability agreements. The EAU "consists of a collection of mining concessions," it says, "processing plants, and other assets that, together, constitute a sole production unit because they share the same supply, administration, and services." So, it is an integrated mining operation.

So, "Mining Unit" is the same concept as a "Mining Project," and the terms "Mining Project," "EAU," "Production Unit," "Mining Unit" are often used interchangeably.

Now, a mining company can have one such Mining Unit or it can have several such Mining Units. In the case of Cerro Verde, it has a single Mining Unit, as the Ministry of Energy and Mines, MINEM, has repeatedly recognized.

Cerro Verde's Mining Unit consists of its Mining Concession that I mentioned, Cerro Verde 1, 2, and 3. It includes its Beneficiation Concession, and within those are its mining pits, its leaching plant, its Concentrator, all the other mining infrastructure, such as the leaching pads, Tailings Dam, mine offices, access roads, power lines, et cetera.

Now, some other mining companies--and we will discuss other ones--have more than one Mining Unit, because they have several separate mining operations. And in some instances they are separate because they are geographically in different regions of Perú, and in some instances these Mining Units

operate side by side. That's the case, for instance, with Yanacocha and Tintaya.

Now that we have looked at these important concepts, let's look at the stability guarantees.

Now, the Mining Law distinguishes between requirements to access the stability guarantees on the one hand, and, on the other hand, the scope of the stability guarantees.

The requirements you see here on the left side of the slide to qualify for a 15-year stability agreement, such as Cerro Verde's Stability Agreement, are set forth in Articles 82 and 83 of the Mining Law.

Now, if you read them together, the two articles show that, to qualify for a 15-year stability agreement, you have to meet two requirements: First, the Mining Project must have an initial increased capacity of at least 5,000 metric tons per day, and, second, the investor must present an Investment Program with at least 20 million, if you start operations, or at least 50 million, if the company is already operating.

And I'm always talking about the relevant

time period. Those change later on.

To show that this investment requirement is met, the Mining Titleholders must present a Feasibility Study with an Investment Program in it. And the function of that Investment Program is to prove that the Mining Titleholder meets the requirements to access Stability. So, we can think of these requirements as the key to access the stability guarantees. That's important. They do not define the scope of the stability guarantees.

Let's take a look at what the Mining Law says about the scope. Article 82 says that the titleholders that meet the 5,000 metric ton/day requirement shall enjoy tax stability that shall be guaranteed through a stability system for a term of 15 years. And then the article explains what, for purposes of the agreement--that is the stability agreement--an Economic-Administrative Unit is. So, the stability applies to an EAU, the Mining Unit.

The second definition of the scope of stability guarantees is found in the fourth paragraph of Article 83. Article 83 was added under the

L.D. 708. It provides that stability guarantees apply: "Exclusively to the activities of the mining company in whose favor the investment is made."

Now, this provision is as broad as it gets. Article 83 says the stability applies to the activities of the mining company, and it does not limit the mining activities. And what are those activities of the Mining Law? They are defined in Section VI of the Preamble, and they include what we mentioned: "Exploration, exploitation, and beneficiation."

And Article 7, as you will recall, says that those activities are carried out through the concession system.

Now, the only limit that Article 83 introduces is that these activities must be exclusively those of the mining company in whose favor the investment is made. So, if an investor has several mining companies, only the mining company that receives the investment qualifies for the stability guarantees. So, the stability guarantees only apply to the unit in whose favor the investment is made.

And that was an important addition in 1991 because Perú had several state-owned companies at the time that owned a number of mining companies; Centromín, for instance, was one of them. And the drafters wanted to avoid that the stability applied to the entire conglomerate, which had a number of mining companies and non-mining companies as well, and if somebody made an investment in one mine, they didn't want it to apply to all the other mines as well. So, that's why this qualification in Article 83 only "exclusively for the mining company in whose favor the investment is made."

Now, let's look what Articles 82 and 83, and, in fact, the entire Mining Law, does not say. The Mining Law does not say anywhere "investment project." The Mining Law does not say anywhere that the Investment Program set forth in the Feasibility Study defines the scope of the stability guarantees. And the Mining Law does not say that stability guarantees are limited to any subset of mining activities. Now, all these convoluted concepts were used for the first time 15 years after the Mining Law

was passed. Perú's new position based on these terms was first created in 2006 by a lawyer who served as MINEM's Director of Legal Affairs. I'm speaking of Mr. Isasi and his 2006 memo. And Mr. Isasi created this theory to find a fictitious legal basis to exclude Cerro Verde's Concentrator from the scope of Cerro Verde's Stability Agreements. And he did so in response to the strong political pressure that was bearing down on his boss, Mining Minister Glodomiro Sánchez Mejia.

So, what Mr. Isasi essentially did, is he took the requirements to access a stability agreement and pretend that these access requirements also define the scope. In other words, he pretended that the key to access the stability guarantees was also the house to which it provided access.

But, as I have shown, the Law nowhere says that the stability guarantees are limited to the Investment Program set forth in the Feasibility Study. To the contrary, it amply applies stability guarantees to all mining activities that are carried out within the concession or Mining Unit.

Now, because Perú's novel theory does not have any textual support in the Mining Law, Perú had to rewrite the provisions of the Mining Law that deal with the 15-year stability agreement. They had to revise it, and they did so only in 2014. So, those revisions don't apply to this case, but they are illustrative.

And here is the original text of the fourth paragraph of Article 83 that we just discussed. And here is what the Government had to add in 2014 to implement the novel and restrictive interpretation that they had adopted in 2006.

The Government had to add the words "mentioned in the Investment Program contained in the Feasibility Study that is part of the Stability Agreement." Now, that language is not anywhere in the Mining Law that applies to this case, and because it is not there and because Article 83 did not mention it, it was necessary to put it in an amendment in 2014. It would have been completely unnecessary if the Mining Law had already provided that.

What's truly amazing, then, is that Perú had

to recognize that this restrictive interpretation doesn't quite work because it is so difficult to distinguish a particular Mining Project from other projects within the same Mining Unit and know where to draw the line. So, they had actually to add language that allowed mining companies to extend stability guarantees to certain additional investments within the same Mining Unit.

Now, this 2014 Amendment is also, by the way, the first time that the Mining Law mentions the word "investment project," 2014. Not applicable to our case.

Finally, I would like to remind you that we requested Perú to produce the full drafting history of Title Nine of the Mining Law and Regulations, and Perú agreed to do so, but then we received not a single document.

Now, this is not any law. It was an important piece of legislation. Mr. Polo explained at the SMM Hearing that a team of recognized mining lawyers, as well as the Mining Society and other representatives of the private sector, assisted MINEM

in preparing the legislation. So, surely Perú is in the possession of the legislative history. So, the Tribunal should draw negative inferences from Perú's failure to produce a single document.

Now, Articles 82 and 83 of the Mining Law are very clear, but the text of the Mining Regulations is even clearer, and they are Claimant Authority 432.

Now, the Mining Regulations, they implement and elaborate on the provisions of Title Nine of the Mining Law. Title Nine, that's the stability guarantee part of the Mining Law, so the regulations exclusively refer to stability guarantees. The Mining Regulations are binding and have been regularly relied on by SUNAT and the Tax Tribunal.

Now, what is also important is that the Mining Regulations were issued by MINEM in 1993, which is two years after the 1991 Reform, and they therefore also are important contemporaneous evidence how people at MINEM understood the Mining Law at that particular point in time because they had to implement the provisions. They couldn't go beyond them.

There are three key provisions in the Mining

Regulations, and those are Articles 1, 2, and 22. Let's start with Article 1. It says that stability guarantees are granted to "mining activity titleholders for the performance of their activities." That is what Article 83 of the Mining Law says.

Article 2 says, now, "that the provisions contained in Title Nine of the Mining Law shall apply as of right to all mining activity titleholders." And then it defines what mining activity titleholders are. It says: "The natural or legal persons that perform mining activities in a concession or in concessions grouped in an Economic-Administrative Unit." It could not be clearer. The stability guarantees apply to concessions and EAUs. And the last paragraph of Article 2 states that when a titleholder that entered into a stability agreement has several concessions or EAUs, then the stability agreement will only take effect to those concessions or Units that are supported by the stability agreement. Again, last paragraph could not be any clearer. Stability applies to EAUs, but only to the EAUs that are covered by the stability agreements, not to the other EAUs, if you

happen to have more than one.

Next, Article 22. Article 22 is also crystal clear that stability guarantees apply to concessions or Mining Units. The first paragraph says that: "Stability guarantees will benefit the mining activity titleholder exclusively for the investments that it makes in the concessions or Economic-Administrative Units." And the second paragraph says something similar as Article 2: "To determine the results of its operations, a mining activity titleholder that has other concessions or Economic-Administrative Units shall keep independent accounts and reflect them in separate earnings statements." So, stability applies to the EAU that is covered by the stability agreement. If you happen to have another one, you have to have separate accounts, but the difference is between Economic-Administrative Units, not investment project.

This applies, obviously, to mining companies that have two or more Mining Units, and in the case of Cerro Verde, there was just one.

Perú tries to argue that the first paragraph

of Article 22 says: "Stability guarantees apply exclusively to the investment set out in the Feasibility Study that the mining company makes in a specific concession or EAU." As you can see, that is not what it says. Plus, Article 22 refers to "investments" in the plural, and not "investment" in the singular, and it doesn't mention anywhere an "investment project." So, it doesn't distinguish between investment projects, but it distinguishes between EAUs. So, far from limiting stability guarantees to an investment project, Article 22 applies them to all investments in a concession or Mining Unit.

So, in sum, both the Mining Law and Regulations clearly establish that stability guarantees apply to concessions and Mining Units.

There are good reasons, actually, why that is so. A mine is not a static operation. A mine constantly evolves. And as the slide here shows, a mining company always has to make a multitude of additional investments in a mining operation after it submits its Feasibility Study that qualifies it for

stabilization.

So, if you were to limit stability to only an initial investment that is set out in a Feasibility Study, you would in every Mining Unit have subsequent investments that are not covered or may be subject to other stability agreements. So, you end up having two or more fiscal regimes within what is an integrated operation, and those investments would be very intertwined from an operational perspective, and it would be difficult, if not impossible, to disentangle them and find out which activity is subject to which particular stability regime. I'm going to give you a couple of examples. Image you have a mine--you see that on the slide--in which the truck is stabilized. The investor makes an investment, and, among others, in the truck, so the truck is stabilized. But the ore the truck transports from the mining pit is not stabilized. So, no stabilization for the mining pit--that was a different investment--only for the truck.

Now, under Perú's novel theory, is the ore stabilized because it is being transported by the

stabilized truck, or is it not stabilized because it was extracted from the nonstabilized mining pit?

I will give you another example. Imagine a mine where the mining pit and the truck are stabilized, but the leaching plant is not stabilized. Now, under Perú's novel theory, is the finish copper stabilized because it is extracted and transported from the mining pit which is stabilized, or is it not stabilized because it was processed in a nonstabilized plant?

Another example: Imagine a stabilized Concentrator. The mining company--what is stabilized is 10,000 metric tons per day. The mining company then makes some improvements and the Concentrator has then 12,000 metric tons per day. So, under Perú's novel theory, are the additional 2,000 metric tons stabilized because they form part of the stabilized Concentrator or not stabilized because the stabilized investment was the 10,000 metric ton Concentrator?

Now, I could go on and on and on and give you dozens of such examples, but the point I want to make is that the Administration will have to exercise

a lot of discretion to determine where to draw the line, what is stabilized, what is not stabilized?

But discretion is exactly what the 1991 Mining Reform sought to abolish. It sought administrative simplification and predictability, no more Government discretion. That's why it did not limit stability guarantees to specific investments, but to whole Mining Units, which are integrated operations, so the Government officials did not have to answer these questions that are posed to you.

Now, of course, the Government could reduce some of that discretion by having detailed rules on how costs are to be allocated, detailed accounting rules. But Perú did not have any such rules of dividing shared costs in a Mining Unit until 2019, and the reason there were no such rules before is that when the Mining Law and Mining Regulations were passed, they were not needed because it was clear that stability benefits apply to Mining Units.

Now, let's take a look how the Mining Law and Regulations were actually applied by the Government. And the record makes it abundantly clear

that the Government consistently applied stability guarantees to entire concessions and Mining Units. There is not a single document created before the Government's about-face in 2005 that shows stability guarantees were applied only to investment projects.

Now, let's start with the Ministry's practice, with MINEM's practice.

The record shows that MINEM consistently applied stability guarantees to entire concessions or Mining Units. This, for instance, is a 2001 resolution of the Mining Council regarding Parcoy. The Mining Council is part of MINEM, by the way, and it is the last administrative instance in mining matters, and its responsibility is to standardize administrative jurisprudence regarding mining issues. So, what the Mining Council has to say is important. And here the Mining Council clearly states that it was the Parcoy Mining Unit that was entitled to stability.

Tintaya is another example of MINEM's consistent application of stability agreements to entire concessions or Mining Units. The Directorate General of Mines and the Mining Council--the

Directorate General of Mines is within MINEM, the body responsible for stability agreements, and the Mining Council is the body to which you appeal the decisions of the Directorate General of Mines. They held that Tintaya could not include previously stabilized concessions into a new stability agreement because they were subject of a stability agreement and had been benefiting from stability guarantees. So, clearly, again, thinking about concessions.

Next, in the 2006 Mining Council Resolution issue--sorry, in 2006, the Mining Council issued a resolution confirming that the stability agreement from Southern Copper applied to all of the mining concessions that formed its EAU. Now, you will have seen that in Perú's last written submissions and in its letter regarding Mr. Flury, Perú has tried to argue that Southern Copper's stability agreement only applies to an investment project. Now, the Southern EAU is very complex, and Perú tries to take advantage of that to create confusion here. But none of the documents actually support their case. And, as you can see, in 2006, which was long after the documents

that Perú is using, in 2006 the Mining Council--that's the body responsible for standardizing administrative jurisprudence regarding mining issues--said very clearly that the Southern Stability Agreement should--very clearly that the Southern Stability Agreement applied to Mining Units and not to investment projects.

And then there's the April 2005 MINEM Report by Perú's witness Mr. Isasi, the same one who a year later coined a new theory. Now, in that Report, Mr. Isasi repeatedly wrote that stability guarantees applied to entire concessions or Mining Units. Mr. Isasi wrote that "it is not the Mining titleholder who will be exempt from the payment of royalties comprehensively as a company, but the mining concessions of which it is a titleholder."

Now, that's the same Mr. Isasi, again, who a year later created Perú's novel theory, and on his direct examination in the SMM Arbitration, Mr. Isasi again affirmed that statement and called it the "gist" of the 2005 April memo.

Now, notwithstanding the clear language of

the Report, Perú has argued in this Arbitration that Mr. Isasi's Report says something different than what it says. You can read it yourself, but that's--you should know that that is not what actually Perú thinks. To start with, Perú was fighting tooth and nail to keep the Report from Cerro Verde. As we have seen with other documents, that's a very strong indication that it is not helpful to Perú's case.

Now, Cerro Verde managed to obtain the 2005 Isasi memo as a result of disclosure under Perú's transparency laws that provide all Peruvians with the right to access Government documents. In those transparency proceedings, MINEM refused to hand over the document.

So, the Transparency Tribunal actually ruled, "MINEM, you have to hand over the 2005 Isasi memo." And in its reasoning, the Transparency Tribunal disclosed the advice by Perú's Counsel in this Arbitration that disclosure of Mr. Isasi's April 2005 memo: "Could negatively impact the arbitration proceedings."

And Perú's Special Commission that

represents the Government in this Arbitration warned the Transparency Tribunal that disclosure of Mr. Isasi's memo: "Would put Perú's legal defense at risk and would lead to international liability for breach of international investment treaties." That's what Perú really thinks, and quite right--they were quite right about that.

So, in sum, all of the MINEM documents confirm that stability guarantees apply to Mining Units. I will now come to SUNAT and Tax Tribunal documents, and here we will discuss Protected Information that is subject to the confidentiality protections.

Do we have to wait?

SECRETARY PLANELLS VALERO: Yes.

Mr. Parelta, could you leave the room, please?

(Mr. Parelta exits the room.)

SECRETARY PLANELLS VALERO: We can proceed.

MR. PRAGER: Can I start again?

(End of open session.)

CONFIDENTIAL BUSINESS SESSION

SECRETARY PLANELLS VALERO: Yes.

MR. PRAGER: Okay. Great.

So, the two things that are remarkable about those new documents, the first is that SUNAT and the Tax Tribunal applied stability guarantees to concessions and Mining Units, and not to individualized investment projects, and they do so in clear and unequivocal terms.

The second is that most of these documents were issued after the Government made its about-face with regard to Cerro Verde.

As you can see on the timeline here, many of them were issued after June 2006, when Mr. Isasi wrote his memo in which he developed his novel theory that stability guarantees are limited to the investment project set forth in a Feasibility Study, and SUNAT allegedly wrote its June 2006 Internal Report.

And in the case of Milpo, SUNAT and the Tax Tribunal issued resolutions applying stability guarantees to Mining Units long after 2009, until as late as September '22. That's September last year. So, for more than a decade, SUNAT and the Tax Tribunal

applied Cerro Verde's stability guarantees only to a specific investment project and not to a Mining Unit, while at the same time applying stability guarantees to Milpo's Mining Units, including new investments.

So, these documents, they show that Cerro Verde was singled out and clearly treated differently and more detrimentally than other mining companies.

Let me now discuss the three mining companies individually, and I'll start with Milpo.

Now, Milpo is a Peruvian mining company that produces zinc, copper, and lead concentrates. At the relevant time, Milpo had three Mining Units in Perú: One was the El Porvenir Mining Project--that's located in the central region of Perú; another one was the Chapi Exploration Project in the south; and the Cerro Lindo Mining Project located in Ica, which is a third, different region.

Here are the three EAUs.

In 2002, Milpo signed one stability agreement for the El Porvenir EAU and another one for the Cerro Lindo EAU.

So, the SUNAT documents confirm that SUNAT

applied the El Porvenir Stability Agreement to the El Porvenir Mining Unit in its entirety. Here we have a table that is from the June 2009 Income Tax Resolution regarding Milpo, and that's for Fiscal Year 2003. So, they had a stability agreement for El Porvenir.

And what you see on this table is that SUNAT distinguished here between the El Porvenir Unit, which was stabilized, as the footnote makes clear, and the other units, which in Fiscal Year 2003 were not stabilized, because the Cerro Lindo, while they had a stability agreement, the regime had not yet entered into force. As you can see from the footnote, SUNAT applied the stabilized 20 percent income rate to the stabilized El Porvenir Mining Unit, and it applied the nonstabilized 27 percent income tax rate to the other Mining Units. Now, you will immediately notice that is exactly what Articles 2 and 22 of the Regulations say, if you have one Mining Unit that is stabilized, you have to separate it from the other Mining Units that are not stabilized. So, to apply the stabilized regime to El Porvenir but not to the other units. No

word about investment projects here. Now, after executing its stability agreements for El Porvenir and Cerro Lindo, in 2002 Milpo made, of course, various additional investments, as all mining companies do. And SUNAT treated these new investments as stabilized because they formed part of the new stabilized Mining Units.

Now, here you can see a 2014 SUNAT Income Tax Resolution for the 2010 Fiscal Year, and it shows some of Milpo's investments.

Now, in the 2010 Fiscal Year, Milpo had two stabilized Mining Units, the El Porvenir and Cerro Lindo. There the stability regime had already entered into force. And you can see on this table taken from the SUNAT resolution a list of assets for purposes of depreciation. Some of these were major investments made after the respective Investment Programs were completed. So, they could not have been part of the original investment programs. Look at El Porvenir, for instance; there's a SOL 2,686,000 Tailings Dam that was built, or there's a SOL 15.7 million investment at Cerro Lindo that--in a plant expansion

that increased the output by 10,000 metric tons per day.

Now, under Perú's theory they would not be entitled to stability because they do not form part of the "investment project set forth in the Feasibility Study." Yet, SUNAT treated them as stabilized. As the footnote to the table makes clear, the 3 percent and 5 percent depreciation rates reflected the provisions of the relevant stability agreements. For SUNAT, the new investments formed part of the stabilized Mining Units and, hence, they were entitled to stability. But with regard to Cerro Verde, SUNAT took an entirely different approach and arbitrarily determined that the Concentrator, as a new investment in the same Mining Unit, was not covered by stability.

Now, there are at least five other resolutions showing that SUNAT applied stability guarantees to Milpo's Mining Units and not to specific investment projects. The resolutions date from 2005 to 2019. SUNAT consistently applied each of Milpo's two stability agreements to entire Mining Units, including to new investments Milpo made in its Mining

Units, even though they were not part of the qualifying Investment Program.

But that's not all. There are also two Tax Tribunal resolutions in which the Tax Tribunal applied Milpo's stability agreements to its El Porvenir and Cerro Lindo Mining Units and not to individual investment projects.

That's the most recent one that was issued eight months ago, in September 2022. Now, in that resolution, the Tax Tribunal concluded that Milpo's stability agreements apply to each of these units. It says that "with respect to the Cerro Lindo Economic-Administrative Unit," the Peruvian State guaranteed tax stability, and that the unit "is subject to the tax regime in force the day after the approval date of the Feasibility Study." And then it says the same thing with regard to the El Porvenir Economic-Administrative Unit.

So, the Tax Tribunal clearly recognized that stability guarantees apply to Mining Units. It nowhere says that they are limited to an investment project. But what's shocking is that it's the same

Tax Tribunal, of course, that in its resolutions regarding Cerro Verde adopted the Government's novel position that stability guarantees only apply to the specific investment project, the leaching plant, and not to Cerro Verde's Concentrator, which form part of its Mining Unit.

Now, let's turn to the next mine, Yanacocha. Today, it's the fourth-largest gold mining complex in the world and controlled by Newmont. Now, Yanacocha has several mining pits and operations extending over various mining concessions in Perú's Cajamarca Region, and each of them forms a separate Mining Unit. The four relevant EAUs are here on the screen. They are the Chaupiloma Sur, the Carachugo Sur, the La Quinua, and the Maqui Maqui." And Yanacocha signed stability agreements for each of these Mining Units.

Now, Perú has argued that there are a couple of mining concessions that extend over two EAUs, and it concocted a theory out of that to create confusion that that means that they apply to investment projects. But if you actually look at the relevant stability agreements, they clearly delineate the

mining concessions between the Units. There is not a single yard of mining concession that overlaps.

Now, as with Milpo, the SUNAT resolutions confirm that SUNAT applied a different stabilized regime to each of Yanacocha's [redacted], as it was required to do under Article 22 of the Regulations.

As you can see on the slide, there are five SUNAT resolutions in the record that confirm this in clear and unequivocal terms. Let me give you one example. This is a SUNAT resolution from December 2008 regarding the fiscal years 2002 and 2003.

As you can see, the resolution says that "the calculation of income tax prepayments must be made separately for each concession or Economic-Administrative Unit for which a tax stability agreement has been entered into." That's exactly what Article 22 says. And as in Milpo, the resolution contains a table. So, that table lists on the left column the four EAUs, the Mining Units, and then in

columns 2 and 3 the respective stability agreement covering those EAUs, the referential name, term, and signing date. Column 4 has the Feasibility Study approval date, that's the date on which the stabilized regime entered into force.

Now, for [redacted], the stability regime was not yet in force at that time. And on the right-hand column, SUNAT identifies the applicable stabilized regime for each of the EAUs. So, again, different stabilized regimes for each Mining Unit. SUNAT nowhere applies here different stability regimes to investment projects.

And as in Milpo and as in any other mining company, Yanacocha of course made new investments in the Mining Units after executing its stability agreements. [redacted].

For instance, [redacted], Yanacocha purchased in 2001 [redacted] in fixed assets that were not contemplated by the underlying Feasibility Study. And, as with Cerro Verde's additional investments prior to the Concentrator, SUNAT applied

Yanacocha's stabilized regime to the entire Mining Unit, [redacted].

Now, the third one is Tintaya. Tintaya is a copper mine in the Cusco Province in the south of Perú, and at the time was owned by BHP Billiton.

Tintaya operated a concentrator in its Tintaya EAU, and signed in 1995 a 15-year stability agreement for the Tintaya Mining Unit. But then Tintaya wanted to build a leaching plant. The leaching plant would process oxide ore that Tintaya had stockpiled. So, not ore that was extracted from the mine, but that was already stockpiled.

Now, unlike Cerro Verde, Tintaya obtained a separate beneficiation concession for its leaching plant--you remember, you have the choice: You either put your new plant into an existing beneficiation concession or into--you create your own separate one--and decided to have a separate Mining Unit for that plant that they called the "Oxides Mining Unit."

In 2003, Tintaya signed a 15-year stability

agreement for the new Oxide Mining Units. Now, the Oxide Mining Unit only comprises the leaching beneficiation concession. It did not have a mining concession, didn't need any, because the ore was stockpiled.

Now, Perú argues that SUNAT applied Tintaya's stability agreements only to the investment project that qualified Tintaya for those stability agreements. But that's, again, plainly contradicted by the record.

You will recall I already mentioned the resolutions of the DGM and the Mining Council that make it clear that the Tintaya stability agreements apply to each of Tintaya's respective Mining Units. And the SUNAT resolutions unequivocally confirm that SUNAT applied each of Tintaya's stability agreements to an entire Mining Unit. There are four SUNAT resolutions in the record that confirm that.

For example, in 2006, SUNAT distinguished between the stabilized [redacted], both of which were subject to different stability agreements, [redacted]

[redacted]. SUNAT explained that the calculation of taxes must be done separately for each Economic-Administrative Unit for which the Mining Titleholder has entered into a tax stability agreement.

Now, it was only later that SUNAT started to implement the Government's novel position also to Tintaya and started to state that: "The benefit will only reach the investments made that were foreseen in the Feasibility Study."

In the SMM Arbitration, Perú showed the May 2009 Tintaya Resolution as a supposed evidence of the Government's consistent practice. But it is not. It only shows that by that time, May 2009, SUNAT had already started to apply its novel position also with regard to Tintaya.

So, in sum, while in the Counter-Memorial Perú was telling you that Tintaya, Yanacocha, and Milpo confirm that SUNAT applied stability guarantees to investment projects and not to the Mining Units--but please don't look at our mining

resolutions, the SUNAT resolutions--the unredacted SUNAT resolutions that we have now confirm exactly the opposite. SUNAT applied all the stability agreements to Mining Units.

(End of Confidential business session.)

OPEN SESSION

MR. PRAGER: So, I have now completed the section that discusses the protected information, and we can invite the U.S. representative back in.

SECRETARY PLANELLS VALERO: I will let them know, but you can continue. Thank you.

(Mr. Parelta re-enters the room.)

MR. PRAGER: Okay. What's truly amazing, speaking about SUNAT still, is that three years after SUNAT issued its first royalty assessment against Cerro Verde, SUNAT prepared an opinion that addressed the scope of mining stability agreements--mining stability guarantees. The report repeatedly and unequivocally confirmed that the stability guarantees applied to entire concessions or Mining Units, as you can see from the quotes on the slide.

Now, at the SMM Hearing, Perú attempted to discount the relevance of that Report by arguing that SUNAT was answering a specific question on whether tax losses from one or more EAUs can be offset against the profits of the others.

But that specific question involved the

scope of stability guarantees, and SUNAT repeatedly concluded in the opinion that stability guarantees apply to concessions and Mining Units, the same SUNAT that at the same time was issuing assessments against Cerro Verde, that said it applied to investment projects.

Now, in light of this overwhelming record showing that Perú consistently applied stability guarantees to Mining Units, there were really no documents that support Perú's position. And in fact, Perú did not produce a single document that supports its position. So, somewhat predictably, Perú has sought to overcome the complete lack of evidence by trying to create confusion.

So, when Perú gives its opening, there are a few things that you should look out for. First, is the date of the documents. Now, Perú has relied on documents regarding Cerro Verde's Stability Agreement that date from late 2005 and 2006, well after Cerro Verde invested in a Concentrator and began its construction. But these documents do not support Perú's claim that it consistently applied stability

guarantees to specific investment projects.

What those documents, instead, show is that Perú made an about-face in late 2005 with the purpose of excluding Cerro Verde's Concentrator from the stability guarantees as a result of political pressure.

Second thing to look out for is the term "Mining Project" or "Project." Perú has relied on a number of documents using the term "Mining Projects," and then it asserts that, oh, they mean "investment projects set forth in the Feasibility Study."

Well, that's not right. As I have already explained, they say "Mining Project" and not "investment project set forth in the Feasibility Study," and as we have shown in our submissions, there are many records that show that MINEM consistently applied the term "Mining Project" to refer to a "Mining Unit." Here is one of them.

It's a page of the MINEM's 2009 Annual Report, and it says it's a map of the principal Mining Projects. And when you look, for example, at Cerro Verde, the Mining Project is "Cerro Verde," the Mining

Unit. Same is true with all the other Mining Projects.

It doesn't say the Concentrator Project or another investment project. And in the other Mining Projects, it also refers to the names of the Units and not to a specific investment project.

Third thing to look out for, the phrase: "Investments that are the subject matter of the agreement." Now, that phrase appears in a small number of documents. Perú alleges that it shows that the scope of the stability agreement is limited to the qualifying investment project. Well, that's wrong, because the phrase originates from Article 24 of the Regulations, and it refers to the qualifying investments.

And it says that the investments are subject matter of the agreement because the Model Contract for 15-year Stability Agreement contains several provisions, including Clause 4, 5, 6 that discuss the qualifying investment. So, the Contract has--devotes a significant part to the qualifying investment, and the reason it does is because stability agreements are

typically concluded when the qualifying investment is approved, but they only enter into force when the qualifying investment is complete.

So, what the stability agreements do is they contain provisions that seek to ensure that the qualifying investment is made in compliance with the parameters set forth in the Feasibility Study, so that the stability guarantees then can kick in.

Finally, security filings regarding the Royalty Law. Now, Perú likes to rely on documents such as Phelps Dodge's 2006 and 2005 10-K Reports, and it then argues that the company did not know what--it quotes from the reports: "What, if any, effect the new Royalty Law will have on operations at Cerro Verde."

But these statements do not refer to any doubt about the scope of the Stability Agreement. Instead, they refer to the lingering uncertainty resulting from Congressional attempts in Perú to impose royalties on all mining companies, even those that had stability contracts in force. Those efforts lasted well into 2016.

With that, I now turn to my next point, and that's how, consistent with the Mining Law and Regulations that we have seen, Cerro Verde's Stability Agreement also applied to Mining Units and to the Concentrator.

Now, it's undisputed in this arbitration that stability agreements, including Cerro Verde's Stability Agreement, must implement the provisions of the Mining Law and the Mining Regulations. And there's a specific Article in the Mining Law, which is Article 86, that clearly states that stability agreements are adhesion contracts that have to incorporate all the guarantees established in Title IX of the Mining Law, no more and no less.

Now, Article 86 required MINEM to create a form stability agreement that incorporates all those guarantees, and the mining companies that qualify for stability then sign that form contract.

So, as I already mentioned, all mining companies have the same stability agreement. They cannot negotiate different terms with the Government. They have to accept the terms as they are. And

that's, as I have explained, was a key feature of the 1991 Mining Reform administrative simplification. Having stability agreements as form contracts eliminated government discretion and the risk for corruption and special deals.

Now, unsurprisingly, Perú's experts and witnesses, including Mr. César Polo, agreed that the purpose of having form contracts was to eliminate any negotiations and discretions. You can see that on the Slide.

Now, this here is the form contract prepared by MINEM. It's Exhibit 778. As you will see, it only includes a few places where the investor can insert the referential name of the Mining Unit.

Because stability agreements are form contracts, the scope of the stability guarantees and the content is not up for negotiation.

So, an investor cannot ask for more or for less than what is provided in the Mining Law and Regulations. It can't pick and choose the guarantees that it would like. It can't say I want to have to a shorter time-limit. It can't say I want to have less

or more scope than what is under the Mining Law.

And, again, Perú's own witnesses and experts agree that the stability agreements fully implement the stability guarantees under the Mining Law and the Regulations, and that mining companies cannot negotiate a different scope. And, again, we have here a selection.

I just mentioned it, Mr. Polo himself conceded this, and Professor Eguiguren, Respondent's expert, agreed that: "If the Mining Law says that the scope of the stability guarantees is X, the Parties could not, then, negotiate that the scope of the stability benefits be something different."

Now, at the SMM Hearing, Perú raised for the first time a new theory that the Mining Law and Regulations set the "outer boundaries" of the stability guarantees, but particular stability agreements limited those guarantees to the specific investment project that's described in the Feasibility Study and identified in the agreement. That's Perú's attempt to circumvent the fact that the Mining Law and Regulations clearly say that stability agreements

apply to concessions or Mining Units.

But with all respect, that theory is completely contrary to what Perú's own witnesses and experts have said and testified on; that is, that the stability guarantee scope of the Stability Agreement must be the same as the stability guarantee scope in the Mining Law and Regulations.

Now, what does this mean for the interpretation of the Stability Agreement? Now, because the Stability Agreement, as a form contract, implements the Mining Law and the Regulations, any interpretation of the Stability Agreement must ensure that it's consistent and gives effect to what is provided in the Mining Law and Regulations. It can't be something different.

Perú's expert Professor Morales agrees that the interpretation closest to what is provided in the Mining Law must be preferred over one that deviates from said law. And since the Mining Law and Regulations provide that stability guarantees apply to concessions or Mining Units, the Stability Agreement cannot be interpreted to have a different scope.

Now, let's look at our Stability Agreement here. As in every other stability agreement, Clause 3 of the Cerro Verde Stability Agreement defines the scope of the stability guarantees. It explains to which concessions and Mining Units the stability guarantees extends.

The provision implements Articles 82 and 83 of the Mining Law, and Articles 2 and 22 of the Regulations. So, you will see it's entitled "of the mining rights," and it's undisputed that mining rights are concessions that form part of the Mining Unit.

And the first paragraph states that the Agreement is circumscribed to the Concessions related in Annex 1, with the corresponding areas. This means it has, within its limits, circumscribed within its limits, the Concessions, it applies to concessions.

Now, Annex 1, or Exhibit 1 as it's called in that translation, lists the Mining Concession and the Beneficiation Concession that, together, form Cerro Verde's Mining Unit.

Now, the second paragraph allowed Cerro Verde to incorporate other mining rights, that is,

other concessions into the Agreement. It did not provide a mechanism to incorporate "other investment projects" because it didn't apply to investment projects.

Now, let's take a look at Clause 1.1. It's entitled "background information," and it gives an account of the request to be granted stability guarantees and reflects, as it states, the provisions of Article 82 of the Mining Law.

Now, the form contract leaves a blank space in which the investor fills in a referential title for the Economic-Administrative Unit that is covered by the Agreement. You see it here. And the referential title that Cerro Verde chose for its only EAU is the "Cerro Verde Leaching Project." You see here the form contract expressly mentions Economic-Administrative Unit, and shows us that the title is meant to refer to an Economic-Administrative Unit.

Now, Perú argues that the reference in Clause 1.1 to the "Leaching Project" defined the scope of the Stability Agreement, but that's obviously wrong, for a number of reasons.

First of all, as I have already said, the Mining Law and Regulations say that the scope of the stability defined the scope, and say that the scope applies to Mining Units, and because mining stability agreements implement what the Mining Law says, the scope under a stability agreement cannot be different than the one under the Mining Law and Regulations.

That was adhesion contracts, so Clause 1.1 must be read to conform with what the law says, and refer to Economic-Administrative Units.

Second, the Model Contract that I just showed you leaves a blank space in which the investor fills in the referential title for the Economic-Administrative Unit. It does--makes clear that this is the name for the Economic-Administrative Unit. Cerro Verde just has one.

A mining company can choose any referential name for any EAU. So, nothing turns on the name that is being used here. That is clear if we look at other stability agreements. So, let's take a look at other ones. That's the 1994 Stability Agreement of Cerro Verde itself. There, the referential title is the

Cerro Verde Project.

Now, if Perú is right that the referential title defines the scope, then it would have to admit that the 1994 Agreement would have applied to the entire Cerro Verde Project, as it did, but that would be totally inconsistent with its argument that the Stability Agreement only applied to the investment project, because the investment project in the 1994 Stability Agreement that qualified Cerro Verde to enter into it was a 2.2 million investment on some minor improvements to the existing facilities and some used equipment, such as a tractor and a loader.

So, if Perú were right, then the referential title of the 1994 Stability Agreement would have been something like the Caterpillar and Loader Project.

Now, here I show you a list of the mining companies with stability agreements that MINEM sent to SUNAT in 2005, pursuant to the Royalty Regulations. That was attached to Mr. Isasi's April 2005 memo. And it shows the referential names that other stability agreements have used in their Clause 1.1.

And take a look. I mean, take, for

instance, Number 2 and 3, Minera Toromocho and Minera Yauricocha. They used the name Centromín Perú, but Centromín Perú was the big state-owned company that owned both Minera Toromocho and Yauricocha, and the stability agreement could not have possibly applied to the entire Centromín company.

Those agreements just used Centromín as a referential title in their Clause 1. There would have been----if it had applied to Centromín, completely contrary to the language in 83, remember, exclusively to the mining company in which the investment was made.

Other used geographical areas, other used names of investments, other--business names of the mining company. It's all over the place.

And in the SMM arbitration, Ms. Chappuis, who was the Director, as the Director General of Mining in charge of the Stability Agreement, she was asked about those titles, and she testified the titles: "Didn't have any type of importance," and that she would have rather "put a series of numbers," if she could.

Now, there's a third reason to why Clause 1.1 cannot possibly be read to limit the scope of stability guarantees to the Leaching Project only. Even if investors could negotiate the scope of stability agreements, which they clearly can't, but even if they could, it would make absolutely no sense for Cerro Verde to agree to a narrow scope of stability guarantees than the one granted in the Mining Law and the Regulations.

I mean, look at the historical context. You would have read about that in our papers. When Cyprus acquired Cerro Verde in 1994 during that big crisis in Perú, the Government insisted that Cerro Verde build a Concentrator that would prolong the life of the mine by decades and give additional tax income and chops. In exchange, the Government promised Cerro Verde stability, and, for Cyprus, legal stability was crucial--a crucial factor in making its investments in this very difficult environment in Perú at that time.

And it would not make any sense if only four years later, Cyprus suddenly would agree to forego its right under the Mining Law and Regulations

to have the Concentrator investment covered by stability, and choose to limit stability to the Leaching Facilities only. The record suggests exactly the opposite.

So, in sum, the Stability Agreement, like all other stability agreements in Perú, clearly implements the Mining Law and Regulation's mandate, that stability guarantees apply to mining concessions and Units.

Now, this is important here: The Stability Agreement applied, if you look at what the Stability Agreement applied to, according to what I have just mentioned, to Cerro Verde's Mining Concession and its Beneficiation Concession. They were covered under Clause 3, and you can see them here on the Slide.

So, all the ore that was extracted from Cerro Verde was stabilized because the Mining Concession formed part of the Agreement.

The Leaching Plant, you see it in there too, was part of the Beneficiation Concession. You see it in there. So, it was covered by the Stability Agreement. It was inside the box. The box here is

the Stability Agreement scope.

So, for the Concentrator, once Cerro Verde wanted to have the Concentrator, the question was, would it form part of the existing Beneficiation Concession to which the Stability Agreement applied, or would it require a separate new beneficiation concession, like we have seen in Tintaya, for instance?

Now, if the Concentrator was included in the Beneficiation Concession--you see it here--it would form part of the Stability Agreement because the Beneficiation Concession is part of the Stability Agreement. It's inside the box. So, once the Concentrator is included in an expanded Beneficiation Concession, it's inside the box, it's covered by stability.

If the Concentrator required a separate beneficiation concession, it would have been not covered by the Stability Agreement. It would be outside the box. So, for Cerro Verde, it was a logical choice that the Concentrator would form part of the existing Beneficiation Concession, and hence be

covered by the Stability Agreement because it formed part of the same Mining Unit.

It received its ore from the same mining pit as the Leaching Plant. It would share a number of the facilities, it would be located, geographically, on top of the existing Mining Concession. So, it was a logical choice for the Concentrator to form part of the Beneficiation Concession.

Now, let's look what happened at the--at that time. At the time that Cerro Verde planned to make the $850 million investment in a Concentrator--and we are now in mid--2004--as I had mentioned, public opinion had turned against stability agreements. In June of that year, Congress had just passed the Royalty Law against the opposition of the Government, including the opposition of the Ministry itself.

And the political opposition--Congress passed that Mining Law. And the political opposition argued that royalties should apply regardless of whether a company was protected by stability agreements.

Now, given that charged political context, Phelps Dodge, that was facing--wanted to make an $850 million investments, wanted to have a confirmation from the Government that the Concentrator would be covered by the Stability Agreement and protected by royalty payments.

So, Cerro Verde, thus, met several times with MINEM's Directorate General of Mining, and explained that the Concentrator would form part--an integral part of the existing Cerro Verde Mining Unit.

So, one of the Options that Cerro Verde initially explored was to have, like, a separate beneficiation concession for the Concentrator, and then ask the Directorate General to incorporate it into the Stability Agreement under Clause 3, second paragraph, we said where we can incorporate additional mining rights.

That would have resulted, like, in an addendum, and the addendum would have said their Concentrator is hereby included--Concentrator Concession is hereby included in the Stability Agreement.

But, the Ministry, the DGM, understood that the Concentrator would form part of the same Mining Unit, and they said, well, you don't have to go take this two-step process here.

So, the team of the DGM suggested there was a much simpler solution, the one that I showed you before: Cerro Verde could simply ask for the Concentrator to be included in the existing, already-covered stabilized Beneficiation Concession. So, just put it in the box that already exists, make it part of the existing Beneficiation Concession and it would, then, be covered.

And the DGM expressly confirmed to Cerro Verde that the Concentrator would be covered by the Stability Agreement, once it would be included in the stabilized Concession. Now, that was not a surprising statement, because it was entirely consistent with the Mining Law and Regulations, but also with the previous practice that I've showed you of the Directorate and the Mining Council.

The DGM has consistently taken the position that, in accordance with the Mining Law and

Regulations, Stability Agreement applied to concessions or Mining Units, and the Beneficiation Concession was covered by the Stability Agreement. So, if you put the Concentrator in there, it would be covered by stability.

It was also entirely consistent with previous practice, because a few years before, in 2002, Cerro Verde already was in that situation. It made a new investment, a 15 million investment in a new Leaching Pad. So, again the question arose: Is it going to be covered by stability? And the Leaching Pad was included in the existing Beneficiation Concession.

And because it was included in the existing Beneficiation Concession, which was expanded to both in geographical scope and in the output to include the Leaching Plant, it was covered by the--it was covered by the Stability Agreement, and even though that investment did not appear in the 1996 Feasibility Study, that new Leaching Pad, the Government always treated it as stabilized.

No question about it, because it was part of

the Beneficiation Concession now, that formed part of the Stability Agreement.

So, what in 2004, the Government suggested was the practice of the Ministry was always like that. So, as the DGM had suggested on 27 August 2004, Cerro Verde requested that the stabilized Beneficiation Concession be expanded to include the Concentrator.

And on 26 October, MINEM approved that the expansion of the stabilized Beneficiation Concession, approved the expansion of the stabilized Beneficiation Concession, and granted Cerro Verde the authority to build the Concentrator within that expanded, stabilized Beneficiation Concession. Specifically, MINEM expanded the daily production limit by 39,000 metric tons to 147,000--from 39,000 metric tons to 147,000 metric tons, to include the Concentrator.

Now, the inclusion of the Concentrator in the stabilized Beneficiation Concession confirmed it was covered by the Stability Agreement.

And there are several contemporaneous documents from Phelps Dodge in the record that confirm Phelps Dodge understood that, by including the

Concentrator in the already stabilized Beneficiation Concession, the Concentrator would be covered, and that inclusion of the Concentrator into the stabilized Beneficiation Concession was actually a condition for Phelps Dodge to make the $850 million investment.

Now, with the Concentrator forming part of the stabilized Beneficiation Concession, Phelps Dodge and Cerro Verde had, as this presentation here shows, certainty to make the 850 million dollar investment decision in the Concentrator. Now, in October 2004, Perú's own President made a public statement assuring that the Concentrator would enjoy stability. And that was when Perú's President met with the then-President of Phelps Dodge to discuss the Concentrator investment.

And Perú's President celebrated the Concentrator investment, which Perú had so long wanted since the 1970s, as a "new conquest of an investment for Perú," and thanked Cerro Verde of trusting Perú, and referring to the new Concentrator investment, the President of Perú said that: "We will fulfill our responsibility to maintain economic and legal

stability."

And that concludes my presentation, and with the permission of the Tribunal, unless you have any questions, I will give the word to my partner, Laura Sinisterra.

PRESIDENT HANEFELD: Thank you very much.

Would this be an appropriate time for a short break. Yes?

MS. SINISTERRA: Absolutely. We are in your hands.

PRESIDENT HANEFELD: I would suggest till--how many minutes do we want? 15?

SECRETARY PLANELLS VALERO: Yes.

PRESIDENT HANEFELD: Okay. 15 minutes' break. And then--thank you.

(Brief recess.)

PRESIDENT HANEFELD: Ms. Sinisterra, I think we can continue.

MS. SINISTERRA: Madam President, Professor Tawil, Dr. Cremades, I'm Laura Sinisterra. I'm delighted to continue Claimant's presentation.

Before the break, my partner Dr. Prager

explained that the Mining Law and Regulations, the Stability Agreement, and Government's consistent practice and specific assurances to SMCV all made clear that the Concentrator was entitled to stability guarantees.

I will now show that, once Perú recovered from its deep financial crisis of the late 1980s, once it attracted much-needed foreign investment, and once it secured the multimillion-dollar investment for the Concentrator that it longed for, it reversed course.

In the wake of intense political pressure, honoring its contractual obligations was no longer in the Government's agenda.

So, the Government devised a novel and restrictive interpretation of stability guarantees to arbitrarily deny coverage to the Concentrator, deceiving SMCV and violating its due process rights along the way.

Perú reversed course in four steps.

First, the Government succumbed to intense political pressure, including from Perú's Congress, to impose royalties on the Concentrator investment. To

do just that, the Government devised a novel and restrictive interpretation of the scope of stability guarantees.

Second, the Government was not transparent about its remarkable volte-face regarding the scope of stability guarantees.

Third, when SMCV challenged the Government's assessments, both SUNAT officials and Tax Tribunal officials interfered to ensure that the Government would prevail, violating SMCV's due process rights.

And, finally, the Government arbitrarily and unreasonably refused to waive exorbitant penalties and interest, in violation of Peruvian law and fundamental principles of fairness.

Turning to my first point, I will begin with an undisputed fact. In the early 2000s, the Government came under intense political pressure to increase revenue collections from the mining sector, and, in particular, from Cerro Verde, one of Perú's largest mines at the time.

Frankly speaking, that the Government faced political pressure to extract more revenue from the

mining industry is not terribly surprising. 10 years after President Fujimori's reforms, Perú was a new country. It had attracted foreign investment, and its economy had taken off.

Perú's remarkable growth coincided with the global commodities' super-cycle. Copper and moly prices rapidly increased and, with them, mining company profits.

Against this backdrop, certain Peruvian politicians began pushing for a bigger piece of the pie. One of leaders in this push was Congressman Javier Diez Canseco, Head of the Socialist Party and a familiar name from the briefs.

He, along with other national and local political leaders, had a set agenda: Pad the Government coffers by capturing a greater share of mining company profits.

Diez Canseco proposed what he called a reasonable royalty of 3 percent on the mining sector, including on companies with stability agreements.

In June 2004, Congress adopted a version of Diez Canseco's royalty with the Mining Royalty law.

But Government officials, such as Pedro Pablo Kuczynski, then-Minister of Economy and Finance, the MEF, and Hans Flury, then-MINEM Minister, Minister of Energy and Mines, rightly recognized that the law--that the Mining Royalty Law would not apply to companies with mining stability agreements.

The Government's initial defense of stability agreements incensed politicians like Diez Canseco, who you see front and center on the screen.

He believed--and I quote: "Many of these agreements were a questionable legacy of the Fujimori regime and should be reviewed and renegotiated," he said.

He also decried Government officials for "sleeping with the enemy" and the MEF and MINEM for "winking to the mining lobbies."

So, Diez Canseco ramped up political pressure against the Government to disregard stability agreements by targeting mining companies, and Cerro Verde in particular.

Indeed, Cerro Verde was, unfortunately, a natural target for the Government.

Smack in the middle of this political debate, SMCV made one of the largest investments in Perú's history with the Concentrator.

That Concentrator would nearly triple Cerro Verde's production right when copper prices were an all-time high. Yet, pursuant to the Stability Agreement, SMCV was entitled to the so-called "profit reinvestment benefit," a key pillar of President Fujimori's Mining Reform that the Government had since repealed. That was repealed in the year 2000. This benefit entitled SMCV to reinvest up to 800 million of its profits to partially finance the Concentrator without having to pay any income tax on those profits. And SMCV also didn't have to pay royalties during the life of the Stability Agreement.

This infuriated politicians, plain and simple. So, as Respondent does not deny, SMCV and the Stability Agreement became a lightning rod for political criticism.

In the words of Mr. Davenport at the SMM Cerro Verde Hearing, politicians openly pushed for the Government to violate SMCV's Stability Agreement,

stating: "I don't care if they have a Stability Agreement. It doesn't matter. They are making a ton of money; they need to give us more."

We document this campaign of targeted political pressure in great detail in our written submissions. I will, therefore, provide a brief overview.

The targeted campaign began in January 2005, just one month after MINEM and MEF confirmed that SMCV could use the profit reinvestment benefit that I just told you about.

Congressman Diez Canseco reacted to this by asking MINEM Minister Sánchez Mejia to provide him, with "the greatest urgency," information about the incentives granted for SMCV's investment in the Concentrator, and what he called "the cost-benefit analysis supporting MINEM's approval of the profit reinvestment benefit."

From January to October 2005, Congressman Diez Canseco and other members of Congress barraged Minister Sánchez Mejia with letters requesting information about the Stability Agreement and

expressly pushing for action against SMCV.

Diez Canseco amplified this political pressure by publicly broadcasting it, taking to the press to castigate mining companies for "refusing to pay royalties" and for allegedly "refusing to give fair compensation for exploiting natural resources," even though, again, "the price of copper was breaking all-time records and generating huge profits for mining companies," and they named Cerro Verde, "including Cerro Verde."

Initially the Government, again, stood their ground. They refused to give in, and they rightly defended stability agreements.

For instance, in April 2005, MEF Minister Kuczynski publicly said that mining companies with stability agreements would be exempt from paying royalties because of administrative stability guarantees. Also, in April 2005, Mr. Isasi issued his report confirming that stability agreements cover mining concessions. My partner Dr. Prager told you about this report. And in June 2005, in a presentation before Congress, Minister Sánchez Mejia

acknowledged that, while "great expectations had been generated by the Royalty Law, stability agreements grant the concessionaire immutability of the legal regime."

Thus, as Ms. Julia Torreblanca testified, "political pressure grew enormously against MINEM," the Minister of Energy and Mines, "and other government officials to act against mining companies and SMCV."

Again, Congressman Diez Canseco in particular ramped up the pressure against Minister Sánchez Mejia. Why him? Because he had personally signed and approved SMCV's use of the profit reinvestment benefit.

Diez Canseco denounced Minister Sánchez Mejia for "failing to serve the State" in favor of defending what he called "illegitimate private interests," including at Cerro Verde, for the questionable benefit of profit reinvestment. And he demanded that Minister Sánchez Mejia revoke SMCV's authorization to reinvest profits and order royalty payments.

To push Minister Sánchez Mejia to comply, Diez Canseco personally threatened him by saying that the Minister would otherwise face "compliance action or process" or a "constitutional complaint."

Under this process, Peruvian Government officials may be subject to disciplinary--may face criminal consequences for their alleged failure to comply with Peruvian law.

But this was still not enough. Diez Canseco also took formal congressional action. On 19 September 2005, he made an official motion to create a congressional committee to investigate the alleged "irregularities that may have been committed by Minister Sánchez Mejia when he approved the profit reinvestment benefit," and to "establish administrative and legal responsibilities."

More specifically--and you see this on the screen--the motion argued that Sánchez Mejia's approval of SMCV's profit reinvestment benefit was a controversial and irregular act resulting from a biased interpretation that violated the regulatory framework, costing the state approximately

$240 million.

The Congressional Committee unanimously agreed to create a Working Group to investigate Cerro Verde.

Shortly thereafter, the Working Group indeed began investigating. For months, under the guise of irregularities that simply did not exist, the Working Group served interrogatories to SMCV and Government officials, with the looming threat of establishing administrative and legal consequences for these so-called "irregularities."

And then it happened: Minister Sánchez Mejia finally caved. He caved to months of political pressure from Diez Canseco and other Congressmen, to months of demands for information about SMCV, to months of being publicly chastised for allegedly enriching mining companies at the public's expense, to the Congressional Working Group investigation which threatened potential administrative and legal consequences, and he caved to the very real and very personal threat of constitutional denunciation, which, again, could result in criminal consequences.

On 19 September, the very same day that Diez Canseco made his motion to create the Congressional Working Group, Mr. Isasi circulated to several MINEM officials a draft presentation for Mr. Sánchez Mejia to deliver before Congress in order to--and I quote again: "In order to adequately respond to Diez Canseco."

I'd like to pause here because this presentation marks a key turning point in our story. Everything that we've told you today is about how the Government consistently viewed stability agreements as applying to entire concessions and Mining Units. In this presentation, that all changes.

For the very first time, Mr. Isasi, who worked with Minister Sánchez Mejia at the Ministry, he asserted in this presentation that Cerro Verde's Primary Sulfide Project--this is the Concentrator--is not part of the stabilized regime covered by the Stability Agreement. This position directly contradicted MINEM's confirmation a year earlier that the Concentrator would be entitled to stability guarantees if it was part of the stabilized

Beneficiation Concession, and it contradicted the Government's consistent practice of applying stability guarantees to entire concessions and Mining Units.

MINEM did not inform SMCV of the presentation or of this new position. Instead, Minister Sánchez Mejia ran off to the press and tried to appease Congressman Diez Canseco. He told the press, providing no justification whatsoever, that SMCV would have to pay royalties on the Concentrator. By this point, the Concentrator was already well under construction. And Minister Sánchez Mejia, of course, also specifically responded in writing to Congressman Diez Canseco and to other Congressmen like Alejandro Oré, reassuring them: "Hey, no worries, SMCV will have to pay the applicable royalties on the Concentrator."

The names of these two Congressmen are important: Diez Canseco--I've been talking about him; Ore.

As my partner, Dr. Prager, explained, Perú has attempted to overcome the complete lack of evidence in support of its novel and restrictive

position by misleadingly presenting documents. They did that constantly at the SMM Cerro Verde Hearing, including by showing one of these letters from Minister Sánchez Mejia to Congressman Oré from late 2005. Look at that letter, because they might show it again this afternoon.

These letters do not support Perú's case. Quite the opposite. These were the Congressmen leading the political campaign against SMCV, and these letters are proof that Minister Sánchez Mejia caved to their threats and changed his position.

In fact, as Mr. Davenport, then-President of SMCV, explained, officials defending agreements risked putting "their career or even their livelihoods on the line." And MINEM and Minister Sánchez Mejia chose not to take that risk.

Now, despite the compelling evidence that I just described, Perú might tell you, as it, again, told the SMM Cerro Verde Tribunal: "Well, Sánchez Mejia didn't cave with regard to the profit reinvestment benefit, and Congressman Diez Canseco specifically said, he ordered, you have to revoke that

benefit, but he didn't cave. So, if he truly believed that the Stability Agreement covered the Concentrator, why didn't he again just stand his ground and not cave?"

But that question is misleading and it's wrong. As I mentioned, Sánchez Mejia personally signed and approved SMCV's profit reinvestment benefit. You see again his signature on the screen. Revoking that benefit would have entailed an admission of wrongdoing.

So, Sánchez Mejia offered Diez Canseco an even juicier prize: MINEM disregarding the Stability Agreement, paving the road for SMCV to pay millions and millions on royalties and nonstabilized taxes.

MINEM's about-face, however, did not suffice to abate political pressure. Politicians wanted concrete action.

So, in the summer of 2006, Arequipa political leaders stepped in. They created the Comité de Lucha por los Derechos de Arequipa, the Committee for the Struggle for the Rights of Arequipa, organizing local dissent to join Diez Canseco's

unrelenting campaign against SMCV.

Specifically, in June 2005, 5,000 local Arequipa residents took to the streets to protest the loss of tax revenue from Cerro Verde, and their local leaders threatened a regional strike if the Government failed to respond to their protests. The press that reported on the protests cautioned that ignoring the demands of the protestors might lead to radicalization.

That same month, after a year and a half of political pressure and threats that only increased in severity and culminated in the risk of regional unrest, MINEM developed a contrived legal interpretation to support Minister Sánchez Mejia's public statements that SMCV would have to pay royalties for the Concentrator.

On 16 June 2006, Mr. Isasi issued his nonbinding report, developing for the first time the Government's contrived argument that the Stability Agreement was limited to the investment project clearly delimited by the Feasibility Study.

Mr. Isasi's newly minted position ignored

the Mining Law and Regulations, the Government's consistent practice, and the Government's assurances to SMCV.

MINEM was not the only Government entity that succumbed to the political pressure. In this Arbitration, Freeport-McMoRan learned that SUNAT, the tax authority, also succumbed to political pressure around the same time.

For the first time in its Rejoinder, Perú submitted a SUNAT internal report concluding that the Stability Agreement would not apply to the Concentrator.

This report was prepared also in June 2006 by Ms. Bedoya, just as various Government officials were falling like dominoes to the political pressure. And that political pressure included a prolific litigation campaign by activist Dante Martínez. He launched this campaign against SUNAT. He claims that SUNAT had distorted the regulations in granting SMCV's profit reinvestment benefit, that SMCV had unduly enriched as a result of that benefit, and that SUNAT should assess royalties against SMCV.

Around a year later, in November 2007, dissatisfied with SUNAT's lack of progress, Mr. Martínez filed another claim against SUNAT.

Shortly thereafter, in January 2008, MINEM sent to the SUNAT Mr. Isasi's June 2006 Report, where he first devised this novel and restrictive interpretation. MINEM sent that report to SUNAT, and, just a few months after receiving Mr. Isasi's report, SUNAT initiated the first audit of SMCV.

This audit culminated in SUNAT's 2006-'07 Royalty Assessment, and that audit explicitly relied on MINEM's interpretation and, of course, Mr. Isasi's Report.

We've covered a lot of ground, so I'd like to take a step back and put all of this in context.

Respondent disputes that the assessments were the result of political pressure, but it does not and cannot dispute these key underlying facts. Instead, it has tried to downplay their importance by simply saying: "This is all just a fanciful conspiracy theory." But there's nothing fanciful or theoretical about these facts. They are all

well-documented, often in official correspondence and reports.

You see on the screen a timeline of all these events and their corresponding exhibit numbers. And we can see here on this timeline how the Government's long-standing position on the scope of stability benefits changed, just like that, as pressure built up on MINEM and SUNAT regarding SMCV.

I'll now address my second point, that Perú's arbitrary volte-face in the face of political pressure was exacerbated by its total lack of transparency and calculated efforts to induce SMCV into making voluntary contributions on the understanding that SMCV would not be subject to royalties during the life of the Stability Agreement.

There is no question that the Government was all but transparent with SMCV. In fact, Perú does not dispute that SMCV did not learn of many of the politically driven decisions that I just mentioned until well after Freeport made its investment in SMCV, after SMCV made the 850 million investment in the Concentrator, after the Concentrator was built and

entered into operations, after SUNAT issued the 2006-'07 Royalty Assessments, and, in some instances, even after Freeport commenced these proceedings.

I'll give you three examples.

Isasi's September 2005 presentation stating for the first time that the Stability Agreement applied only to the Leaching Project, that presentation was not disclosed to SMCV and Freeport until the document production phase of this Arbitration.

Isasi's June 2006 Report devising MINEM's contrived legal position to restrict the scope of the Stability Agreement was not shared with SMCV until 2008.

And the internal SUNAT report that I told you about, which Ms. Bedoya allegedly prepared in June 26, it was not disclosed to SMCV and Freeport until over 16 years later, when Respondent filed its Rejoinder.

Since, again, Respondent cannot dispute these facts, it instead argues that SMCV somehow knew or should have known of the Government's restrictive

position, but that's false. I'll focus on two key events that Respondent claims support its position: The Prospectors & Developers Association of Canada conference, PDAC, in March 2005, and the Roundtable Discussions between SMCV and Arequipa residents in June 2006.

Perú is wrong to argue that these events, individually or in the aggregate, gave SMCV any kind of notice about the Government's restrictive position and its intentions to violate the Stability Agreement.

Let's take them in turn, starting with the PDAC conference.

According to Mr. Tovar, one of Perú's witnesses, during the conference in March 2005, he informed Harry Conger, the President of Phelps Dodge, that the Concentrator would have to pay royalties because it was not stabilized.

Mr. Tovar says he informed Harry Conger of this at PDAC. Mr. Tovar's recollection, however, is unsupported by any documentary evidence and cannot be reconciled with Mr. Conger's presentation at PDAC.

To begin, let's look at the title of

Mr. Conger's presentation at PDAC. The title was: "Perú and Phelps Dodge: Partners in Progress."

Further, in his presentation, Mr. Conger explained--and Dr. Prager showed you this presentation. He explained that Phelps Dodge decided to proceed with the Concentrator investment after "extensive interaction with the Government" and after obtaining requisite "certainty of stability contract."

Mr. Conger surely would not have made such a presentation if Mr. Tovar's recollections were right and Phelps Dodge had just learned the shocking news that the Concentrator would not be covered.

So, it's no surprise that, at the SMM Cerro Verde Hearing, Mr. Tovar was unable to explain this fundamental inconsistency and incoherence in his testimony. In fact, his only response was that he did not understand that Mr. Conger was talking about the new Concentrator Plant not being subject to royalties in the PDAC conference.

That claim is obviously not credible. Mr. Conger's presentation could not have been more clear. It said--the presentation said: "The

stability contract provides certainty to make $850 million investment." That was obviously the Concentrator, and Mr. Tovar knew that well.

So, there really cannot be any question that the Government did not inform Phelps Dodge or SMCV about the new restrictive interpretation at PDAC.

And the same is true about the Roundtable Discussions that were held in June and July 2006.

As I explained earlier in my presentation, in the first half of 2006, Arequipa political leaders threatened a regional strike if the Government failed to address their concerns. In response, Congress created what was called the "Roundtable Discussions" with SMCV, the MEF, MINEM, and Arequipa politicians to discuss "how to mitigate protests and reduce the impact on the Municipalities."

According to Mr. Tovar, the same witness, during the Roundtable Discussion of 23 June 2006, MINEM officials gave a presentation--again, at the Roundtable Discussions, they gave a presentation, according to Mr. Tovar--stating that the Stability Agreement would not cover the Concentrator.

But Perú and Mr. Tovar have, again, presented no documentary evidence that MINEM actually made that presentation or gave a copy of that alleged presentation to SMCV's representatives.

Press reports from El Heraldo, the official newspaper of the Peruvian Congress, provided a detailed account of the discussion, and guess what? It did not mention any MINEM presentation on the scope of stability agreements.

And Mr. Tovar's testimony is incompatible with later Roundtable Discussions where SMCV specifically agreed, as, again, El Heraldo reported, to contribute over 125 million in voluntary contributions that would help cover Arequipa's budget deficit to make up for the fact that SMCV was "legally exempt from paying royalties." You see that on the screen from El Heraldo.

SMCV would simply have not agreed to millions in voluntary contributions to assist Arequipa with its budget deficits if the Government had just announced at those discussions that SMCV would actually have to pay the royalties.

The truth is that the Government stayed silent and said nothing at all about MINEM's newly minted justification to impose royalties on the Concentrator.

And the Government's egregious conduct, unfortunately, did not stop there. As the Arequipa Roundtable Discussions concluded, similar discussions began at a national scale. Members of Congress, once again, began pushing to amend the Royalty Law so that all mining companies, including those with stability agreements, would have to pay the royalties.

In this context, President Alan García created what was called the Voluntary Contribution Program, and, as history repeats itself, political pressure rose yet again in 2011. In response, President Humala created El Gravamen Especial a la Minería, the GEM, for stabilized companies, and he created the Special Mining Tax for nonstabilized companies.

As with the Roundtable Discussions, the Government induced SMCV to participate in the voluntary contribution and GEM programs on the common

premise that it did not have to pay royalties for the Concentrator. Indeed, Mr. Castagnola and Mr. Santa María of APOYO Consultoría, the architects of the voluntary contribution and GEM Programs, they testified that APOYO's models projecting collections assumed that SMCV was stabilized.

The Government never contested these projections back then, and Perú decided not to call Mr. Castagnola or Mr. Santa María for cross-examination.

Further, as Ms. Torreblanca's emails clearly show, the Government confirmed that stabilized companies would be subject to the GEM and nonstabilized companies, again, would be subject to royalties and Special Mining Tax, but they said no company would be subject to all three. No company would have to pay the GEM, the Special Mining Tax, and the royalties.

The Government, however, they happily received SMCV's contributions without ever uttering a word about their plan for SMCV to pay voluntary contributions and GEM and royalties and Special Mining

Tax.

In total, SMCV contributed over 365 million, more than the value of the royalties themselves, under the Roundtable Discussion Agreement, the Voluntary Contribution Agreement, and the GEM, all based on the understanding that the Government would uphold its obligation to stabilize the Concentrator under the Stability Agreement.

This brings me to my third topic: The Tax Administration's due process violations when SMCV sought relief for the Government's politically motivated and arbitrary assessments.

We've already described the Tax Tribunal's due process violations in our briefs. Shockingly, at the SMM Cerro Verde hearing, Ms. Bedoya revealed that SUNAT's Claims Division also violated Peruvian law and its own internal procedures designed to guarantee due process.

SMCV's first recourse for challenging the royalty and tax assessments was SUNAT's Claims Division in the Arequipa intendency.

As the first-instance decision-maker in the

administrative process, SUNAT's Claims Division was supposed to be independent and it was supposed to be impartial. It was neither.

At the Hearing, again, Ms. Bedoya admitted that SMCV's proceedings before SUNAT's Claims division were nothing but a sham and that SMCV essentially had no recourse whatsoever before SUNAT.

Specifically, Ms. Bedoya admitted that the June 2006 Internal Report stating that SMCV had to pay royalties, she said that report definitively established "the tax situation of the Concentrator."

As I mentioned, SUNAT's June 2006 internal report was prepared in the midst of potential regional unrest, when political pressure reached its peak in Arequipa. Further, as Ms. Bedoya also conceded at the SMM Cerro Verde hearing, this report concluded that SMCV would have--this report that concluded that SMCV would have to pay royalties was not part of any administrative procedure, despite Mr. Cruz--another witness from Perú, despite Mr. Cruz acknowledging that administrative procedures are necessary to "respect the rights of the taxpayer," and despite Ms. Bedoya

herself similarly acknowledging that these administrative procedures protect the taxpayer from being what she called "defenseless."

Ms. Bedoya also conceded that the June 2006 Internal Report was issued without any consideration of key documents that were necessary to "actually see what SMCV's operations were like."

And it was issued without ever consulting with SMCV, before SMCV even finished building the Concentrator, before the Concentrator even started operating, and before SMCV ever had any obligation to pay royalties or nonstabilized taxes on the Concentrator.

Moreover, even though SUNAT's Claims Division was required by law to independently consider each of SMCV's challenges, Ms. Bedoya admitted that, in fact, SUNAT's position was already decided in June 2006 and that each of SMCV's challenges would be "resolved the same way because of this extra-official, politically motivated internal report," that we only learned of 16 years later with Perú's Rejoinder.

So, SMCV clearly had no administrative

process before SUNAT. SUNAT gravely violated SMCV's due process rights.

To make matters worse, SUNAT not only deprived SMCV of its right to independent consideration of the challenges; it also deprived SMCV of its right to impartial consideration.

Ms. Bedoya also testified that she and Mr. César Guillen, another SUNAT auditor in Arequipa, devised the extra-official and politically motivated June 2006 Internal Report. Yet Ms. Bedoya and Mr. Guillén also--they not only devised and prepared this politically motivated secret Report; on top of that, they personally audited SMCV and then personally decided SMCV's challenges to the 2006-'07 and 2008 Royalties Cases.

Ms. Bedoya and Mr. Guillen were clearly conflicted, and, pursuant to Perú's Law on general administrative procedure, they should have recused themselves, but they did not.

Instead, they wrongly rejected SMCV's challenges adopting or in line with their own, again, extra-official and politically motivated report, once

again violating SMCV's due process rights.

SMCV challenged, as you know, SUNAT's unlawful rejections before the Tax Tribunal, who is part of the Executive Branch, specifically the MEF. As the last-instance decision-maker in the administrative process, the Tax Tribunal was supposed to set things right.

But SMCV's efforts were futile. The Tax Tribunal also violated SMCV's due process rights, yet again.

The first challenges SMCV brought before the Tax Tribunal were to SUNAT's 2006-'7 and 2008 Royalty Assessments. In the 2008 Royalty Case, in spite of Peruvian law to the contrary, President Olano, the President of the Tax Tribunal, instructed her personal assistant, Ms. Villanueva, to draft the resolution resolving that case. And, according to Perú, this interference was "normal."

But there is nothing normal about the Tax Tribunal President and her personal assistant deliberating a case instead of the Chambers themselves. The President and her personal assistant

have no deliberative functions to resolve taxpayer challenges, and they cannot, under any circumstances, interfere in the resolution of the merits of those challenges.

And even if it were, indeed, somehow "normal," which, again, Perú has not shown, a State cannot excuse its violations of due process by saying that it regularly disregards its own laws. Yet that is exactly what Perú's argument implies.

Peruvian law recognizes that only "vocales" and the Chamber law clerks may participate in the resolution of cases. After all, they are the only Tax Tribunal members that attend the oral Hearing, that hear the taxpayer's arguments, and that ask the taxpayer questions. They are also subject to heightened scrutiny in hiring and are protected from termination to ensure their independence and impartiality.

For example, law clerks are appointed through a public merit contest and can only be terminated because of just cause, while Ms. Villanueva, who is just a personal assistant to

President Olano, she could not have been hired without President Olano's consent and could only be terminated--and could be terminated at President Olano's sole discretion.

Perú contends that President Olano had the "authority" to flout these protections and appoint her personal assistant "to support the 'vocales' Chamber 1 handling the 2008 Royalty Assessment case because of a staff shortage." But that is simply not true.

Perú has identified no law, no regulation, no rule that would allow President Olano to appoint her personal assistant to draft a Tax Tribunal resolution. And there are good reasons for that. Perú cannot temporarily suspend due process because of a staff shortage.

But appointing her personal assistant to draft the resolution in the 2008 Royalty Case was not enough. As President Olano herself acknowledged in her Second Witness Statement, a lot was at stake. By the dates that they were issued, the 2008 Royalty Assessments had accrued close to 57 million in assessment value, and several other assessments

followed.

So, President Olano took matters into her own hands and directly participated in the resolution of the case. President Olano's own emails show her interference. For instance, on 22 March 2013, Ms. Villanueva sent an email to President Olano asking her to "read the arguments" of the Parties of the 2008 Royalty Case so that they could "talk about it." The personal assistant told the President of the Tax Tribunal: "Read the Parties' arguments so that we can talk about it." What did President Olano respond? She said: "Okay. Thank you."

What she did not tell her personal assistant? She did not tell her that it was inappropriate for the President to be reading the Parties' arguments and deliberating about the merits of case. She did not tell her that only the assigned "vocales" can decide cases, and she certainly did not tell her: "Hey, you should discuss the Parties' arguments with the 'vocales' to Chamber 1."

Instead, as President Olano herself admits, after this email exchange, she met with her personal

assistant. Ms. Olano did not stop there. To resolve the "controversy" surrounding Cerro Verde, as she called it, she needed to ensure that the 2006-'07 Royalty Case would also be decided in the Government's favor. Those assessments were likewise a goldmine for the Government, and, just a few months after the case was decided, had accrued close to 49 million in assessment value. So, President Olano ensured that Chamber 10, hearing the 2006-'07 Royalty Case, would follow suit.

We described those facts in detail in our submissions. Here, I will simply recall that emails from Mr. Moreano, the "vocal" President of Chamber 10, those emails confirm that President Olano did not simply coordinate between Chamber 1 and 10 to "ensure that there was a consistent application of the law," as Perú tells you.

There was no coordination at all. Chamber 10, hearing the 2006-'07 Royalty Case, they were presented with a fait accompli, Ms. Villanueva's draft, one day after it was issued by Chamber 1.

And let's be clear about one thing:

President Olano's role is not to prevent conflicting decisions between Chambers. Her only role is to submit any such conflicts, once they arise, to the Plenary Chamber.

Mr. Moreano, again, the "vocal" President of Chamber 10, complained precisely that Chamber 1 did not previously inform Chamber 10 that it was going to meet to issue the decision and expressed outrage by saying that: "The ideal thing would have been for Chamber 1 to hold a session on the Cerro Verde file after--after--coordinating with us," because that was "the right thing to do."

And, in fact, at the SMM Cerro Verde Hearing, President Olano conceded: "She conceded that there was a problem with coordination because Mr. Moreano improperly received the draft only after it was issued by Chamber 1."

Jorge Sarmiento, the third "vocal" in Chamber 10--again, this is the 2006-'07 Royalty case--he would have you believe that Mr. Moreano's outrage which we just saw in the emails is not evidence of procedural irregularity, even though he

also acknowledges that Chamber 1 did not coordinate with Chamber 10 before issuing the decision.

And he would have you believe that in this context of no coordination, that in this context of nearly identical resolutions, he would have you believe that's just common, even though they're each supposed to reflect independent deliberation.

And he would also have you believe that Chamber 10 independently deliberated the 2006-'07 Royalty Case without offering any documentary support to back that up, such as, for instance, draft resolutions by Chamber 10 or handwritten notes from the "vocales" about the case file.

After all this, Perú was still not satisfied. It was not enough that Perú received record tax revenues from the Concentrator. It was not enough that Perú succumbed to political pressure to adopt its novel and restrictive interpretation and that it misled SMCV into making three rounds of significant voluntary contributions in lieu of royalties. And it was not enough that Perú then imposed royalties and nonstabilized taxes at SMCV,

despite the Stability Agreements and the Government's assurances to the contrary.

Indeed, Perú wanted not double--or, really, here, triple--taxation. It wanted more. Perú, therefore, also assessed over 600 million in penalties and interest against SMCV that, under Peruvian law and general principles of fairness, it should have waived.

Under Peruvian law, taxpayers have the right to a waiver of Penalty and Interest when there is reasonable doubt about the proper interpretation of a legal provision. Here, even on Perú's case, the record demonstrates that, at the very least, there was reasonable doubt about the scope of stability guarantees.

So, to conclude, Perú acted with blatant disregard for its obligations under the Stability Agreement, under Peruvian law, and under international law. Perú's actions must have consequences. And, indeed, they do.

The TPA holds states accountable precisely for the egregious conduct that I just told you about through Article 10.5. That provision, which is

central to the TPA's investment protections, incorporates the dynamic and multi-faceted Minimum Standard of Treatment, which requires Perú to treat foreign investment "in accordance with customary international law, including fair and equitable treatment."

Article 10.5 provides that: "Fair and equitable treatment is an umbrella concept that includes several 'pillars' or 'elements.'"

Tribunals like the Eco Oro v. Colombia Tribunal have confirmed that these elements or pillars include: Nonarbitrariness, due process, respect for legitimate expectations, consistency and transparency, and nondiscrimination. Because fair and equitable treatment is a flexible concept, these elements can be considered together to establish a breach, or as a standalone basis for liability, as both Parties agree with respect to due process.

However, according to Perú--and I quote--"the Neer Standard remains the foundation of the modern customary international law Minimum Standard of Treatment."

Neer is a case from 1926 concerning the protection of aliens against denials of justice. So, Perú is essentially asking you to hold that the standard has barely changed over the past century. But, in fact, the world has changed significantly since the Roaring '20s, and the minimum standard, like all customary international law, has come a long way from its historic origins.

The minimum standard has developed in the direction of increased investor protection and now forms the backboned of foreign investment protection. Article 10.5 of the TPA itself acknowledges the minimum standard's evolution by recognizing that fair and equitable treatment, a concept that was yet unknown a century ago when Neer was decided, that fair and equitable treatment has become a key pillar of the standard.

Perú also spills much ink on the appropriate adjectives to describe the standard, yet whether the conduct must be "grossly," "manifestly," or "completely," unfair and inequitable is nothing more than a semantic side show.

As the Windstream v. Canada Tribunal aptly said "just as the proof of the pudding is in the eating and not in the description, the ultimate test of correctness of an interpretation of the Minimum Standard of Treatment is not in the description of the words but in its application to the facts."

Well, as I just showed you in my presentation--and the Hearing will further corroborate--the pudding in this case was rotten.

Perú's conduct fell short of any conceivable threshold of the Minimum Standard of Treatment.

So, allow me to ask you this: Members of the Tribunal, if Perú's conduct in violation of all the hallmarks of fair and equitable treatment does not violate the minimum standard, then what will?

After all, this is a case where the Government expressly guaranteed stability to an investment, both in contract and assurances from the relevant authorities, only to renege on those guarantees for political reasons.

This is a case where the Government singled out an investor as a political target to test a new

and restrictive interpretation of stability guarantees, all the while respecting the stability guarantees of other investors in like circumstances.

A case where even after the Government developed its novel and restrictive interpretation, it withheld that position from the investor to induce hundreds of millions of dollars in additional contributions.

This is a case where each level of the Tax Administration flouted due process. After all the Government's arbitrary, inconsistent, nontransparent, and discriminatory conduct, this is a case where the Government blamed SMCV for its own faults and imposed hundreds of millions of dollars in penalties and interest.

If Perú's fundamentally unfair and inequitable conduct is allowed to stand, it would set a dangerous precedent for investment protection by allowing states to violate the key tenets of foreign investment protection with impunity.

And Perú, of course, cannot justify impunity and escape its violations of international law by

blaming Freeport for allegedly conducting inadequate due diligence.

More than adequate due diligence was conducted, including by obtaining an express assurance from MINEM's Directorate General of Mining, that the Concentrator was stabilized, the very authority in charge of regulating mining stability agreements.

And the same is true for Perú's contractual breaches of the Stability Agreement. Perú cannot escape liability by invoking deference or collateral estoppel to argue that the Tribunal should abdicate its mandate to independently resolve this dispute, by arguing that the Tribunal should ignore the record before it, or by arguing that the Tribunal should blindly follow the Supreme Court decision in the 2008 Royalty Case, which is not even binding or precedential under Peruvian law.

But before we dive into the substance, let's again take a step back here and recognize what Perú is really seeking by saying--when they tell you, you should blindly follow the Supreme Court's decision. Perú is asking you to do what no Peruvian court,

including the Supreme Court, would do or has done: Regard the 2008 Royalty Case decision as decisive.

Perú's position here is, indeed, fundamentally wrong as a matter of both Peruvian law and international law. First, this Tribunal has the independent mandate to adjudicate Peruvian law claims submitted to international arbitration under the TPA; second, the Tribunal cannot cede its mandate to the Supreme Court; third, the Tribunal should not consider the Supreme Court decision as persuasive evidence of whether Perú breached the Stability Agreement; and, fourth, Freeport is not "collaterally estopped" from arguing that Perú breached the Stability Agreement.

So, first, the Tribunal has a mandate to independently decide Freeport's breach-of-contract claims under Peruvian law. Article 10.16.1 of the TPA establishes an independent and impartial oversight mechanism for breaches of investment agreements like the Stability Agreement.

By creating this mechanism, the TPA Parties intended and expressly authorized international Tribunals to resolve Peruvian law claims. As the Duke

Energy Tribunal rightly observed, by agreeing to international arbitration, Perú "affirmed Claimant's right to review by an ICSID Tribunal of the matters considered by the Peruvian administration and court system."

Perú would, nonetheless, have you believe that by independently considering Freeport's claims--which, again, the TPA requires you to do--you would impermissibly become what they call "an uber Court of Appeals."

But how could you possibly act as an "uber Court of Appeals" when SMCV never even submitted a breach-of-contract claim in Perú, and no authority or court has ever considered the compelling evidence before you, which clearly demonstrates that Perú repeatedly breached the Stability Agreement as a result of intense political pressure.

And let me emphasize that point: You are the first, the first Tribunal or court, to consider a claim for Perú's breach of the Stability Agreement, and the first to consider the compelling evidence presented here by Freeport and SMCV. So, Perú's

fear-mongering about an "uber Court of Appeals" is nothing more than that.

Now, my second point. This Tribunal cannot cede its mandate to the Peruvian Supreme Court because the 2008 Royalty Case decision did not create binding precedent on the scope of the Stability Agreement and is not even entitled to deference as a matter of Peruvian law. The Supreme Court decision in the 2008 Royalty Case simply upheld the validity of the 2008 Royalty Assessments. Its effects are limited to that assessment alone.

You might see Perú this afternoon, as they did at the SMM Cerro Verde Hearing, spending significant time of their Opening reading quote after quote after quote of the Supreme Court and Appellate Court decision. But that is mere rhetoric, at best.

Perú's Counsel themselves and Perú's own experts have unequivocally conceded, both in their papers and at the SMM Cerro Verde Hearing, that the Supreme Court decision in the 2008 Royalty Case does not have any precedential effect. And I repeat that: They have considered--both Counsel and experts--that

the Supreme Court decision does not have any precedential effect.

Perú's expert, Mr. Eguiguren, also admitted that if a lower court in Perú did not want to follow the Supreme Court's decision, it could simply choose to disregard that decision.

The Supreme Court itself did not even consider the 2008 Decision to be binding or to have any effect whatsoever in other proceedings.

Just look at the 2006-'07 Royalty Case, which was heard by the Supreme Court shortly after the 2008 Royalty Decision came out. Two of the Supreme Court Justices voted in favor of SMCV, showing absolutely no deference whatsoever to the 2008 Royalty Case Decision.

In fact, they rightly pointed out that the Appellate Court decision failed to consider SMCV's argument that the Concentrator was included in the stabilized Beneficiation Concession, and was thus covered by the Stability Agreement. So, they voted to remand the case, and they obviously would not have done so if the 2008 Royalty Case definitively resolved

the issue.

And even the three Justices that voted against SMCV did not defer to the 2008 Royalty Case. Two of these Justices, Justices Wong and Cartolín, they had even decided the 2008 Royalty Case themselves. And what did they say when they acknowledged the decision for the first time, on Page 30 of 35 of their explanation of votes?

They said, in passing and in a single paragraph, that the 2008 Royalty Case "should be taken into account only 'a mayor abundamiento,'" not that it should be entitled to any deference. So, this is the kind of "deference" that Supreme Court decisions have in Perú, even one Chamber of the Supreme Court does not defer to the other. So, why should you defer to the 2008 Royalty Case decision?

Now, my third point. Aware of the fundamental flaws in its argument, which I just described, Perú says: "Well, at the very least then, the decision should be 'highly persuasive' in deciding Freeport's Peruvian-law breach-of-contract claims."

But here, too, Perú's argument is

fundamentally flawed. Again, the Supreme Court did not decide whether the Government breached the Stability Agreement as a matter of Peruvian law. The Supreme Court decision was rendered in contentious-administrative proceedings that challenged the validity of the Tax Tribunal resolution in the 2008 Royalty Case under administrative law. It was not a civil action for breach of contract. Perú keeps ignoring this fact, but do not be fooled: It is a crucial distinction.

Unlike in civil proceedings for breach of contract, contentious-administrative proceedings allow for only limited submission and consideration of evidence. And as you see on the screen, Perú itself concedes: "Evidence played little, if any, role in the Supreme Court's analysis."

And, in fact, the Supreme Court did not and could not consider the wealth of evidence before this Tribunal, much of which was not even available until the course of this arbitration proceeding. The compelling documentary record before you, that the Supreme Court did not have, shows that the Government

consistently applied stability guarantees to entire concessions and Mining Units, both before and after its politically motivated volte-face. That includes, for instance, the unredacted SUNAT documents that Perú fought tooth and nail to withhold; Mr. Isasi's April 2005 Report, where he unequivocally confirmed that stability guarantees apply to concessions; and evidence of SUNAT's and the Tax Tribunal's grave due process violations. The Supreme Court also did not have, and could not consider, the witness statements or the expert reports that the Parties have presented in these proceedings.

The evidentiary record before you clearly shows that the Government consistently understood--and applied--stability guarantees to entire concessions and Mining Units. It also shows that SMCV was singled out for political reasons and treated differently and adversely. If this Tribunal defers to the Supreme Court and cedes its independent mandate under international law, which did not consider the claims raised in this international forum, and which did not consider and have the wealth of evidence that we have

presented, it would again violate SMCV's due process rights. Again, ceding your mandate and disregarding the evidence to blindly follow an administrative court proceeding decision for a single assessment, that would constitute yet another violation of SMCV's due process rights.

And, finally, not content with arguing that you should abdicate your mandate and disregard the record before you, Perú argues that Freeport should be collaterally estopped from raising claims for breach of the Stability Agreement. With due respect, this argument is nonsense and entirely unsupported, both under domestic and international law.

As a matter of domestic law, as I've just explained, the Supreme Court decision had no binding or precedential effect in Perú, not even in administrative proceedings concerning other royalty assessments, much less in civil proceedings for a breach of contract. And as Members of the Tribunal from civil law jurisdictions, you will be familiar with the fact that collateral estoppel does not exist in Perú. A Peruvian court would have to decide this

issue anew, and that, of course, applies with equal force to this Tribunal, which, under this claim, is deciding a breach of contract under Peruvian law.

As a matter now of international law, it is well-established that domestic court decisions do not have preclusive effects on international tribunals. Perú cites five cases and three secondary sources--you see them on the screen--that allegedly support its position that a nonbinding domestic court decision with no precedential effect can bind an international tribunal.

But Madam President, Members of the Tribunal, a little more rigor is in order. Not a single one of these cases and sources that Perú cites, not a single one of those sources applies collateral estoppel the way that Perú is asking this Tribunal to apply it. All these cases and secondary sources concern estoppel between subsequent international arbitration proceedings, decisions issued within the same legal order and on the same cause of action. They do not establish a generally applicable collateral estoppel principle spanning across domestic

and international legal orders.

So, to be clear, an international tribunal is not bound by domestic court decisions. Period.

Indeed, contrary to Perú's claims, there is no requirement that an investment treaty tribunal accept the findings of a domestic court, absent a denial-of-justice violation.

Here, Perú again cites several cases, both to support its collateral estoppel argument about the Tribunal's power to hear Freeport's claim and also in support of its deference argument about how this Tribunal should decide Freeport's claims in light of the 2008 Royalty Case decision.

In either case, Perú's analysis is entirely undisciplined and unsupported.

As just one illustrative example, several of these cases rely on the sentence from Helnan v. Egypt that you see on the screen. That sentence says: "The Tribunal will accept the findings of local courts as long as no deficiencies in procedural substance are shown in regard to the local proceedings."

But this is errant dicta in the Award.

There is no further analysis, and the Tribunal does not cite any legal support.

Helnan v. Egypt involved--unlike here, it involved a binding and final domestic arbitration award that was res judicata within the Egyptian legal order. The Tribunal, therefore, considered whether that national res judicata could be relied upon in the international proceedings, and concluded that it could not ignore the Award's binding effect.

So, it was the res judicata constraint that was decisive, not the Tribunal's general assertion, without more, that it will accept the findings of local courts.

And even if Helnan's actual analysis applied in this case, it would fail. Here, the Supreme Court decision did not create res judicata on the Peruvian law issue of the scope of the Stability Agreement. Once again, no Peruvian court has ever decided whether the Government breached the Stability Agreement repeatedly. This is the key distinction between all the authorities that Perú cites and this case.

So, let's take one more step back here and

consider what Perú is really asking you.

Without citing a single investment treaty authority finding that collateral estoppel applies between international and domestic proceedings or that tribunals must defer to nonbinding domestic court decisions absent a denial of justice, Perú is asking this Tribunal to do what no Tribunal has done: Find that a decision with no binding or precedential effect under Peruvian law, which, as I explained, resolved an administrative law claim for a single royalty assessment, which did not decide a breach-of-contract claim under Peruvian law, and which did not consider the wealth of record evidence before you, that that decision should somehow bar Freeport's claims for breach of the Stability Agreement caused by all other royalty and tax assessments. This is not and cannot be right.

So, we respectfully submit that you must exercise your mandate under the TPA to resolve Freeport's claims and hold Perú accountable for its actions. And just like Perú cannot evade liability by invoking the Supreme Court's decision in the 2008

Royalty Case, it also cannot evade liability through a series of meritless jurisdictional objections to Freeport's claims, which my partner Dr. Prager and my colleague Nawi Ukabiala will now address.

Madam President, Professor Tawil, and Dr. Cremades, thank you for your attention.

PRESIDENT HANEFELD: Thank you very much.

MR. PRAGER: Members of the Tribunal, in this part of the presentation we will explain why the Tribunal has jurisdiction over Freeport's claims.

And as we have explained in our submission, each of Perú's five jurisdictional objections is fundamentally flawed. As we will show, Perú's jurisdictional objections have in common that they are completely detached from the terms of the TPA and that they would lead to absurd results.

Now, we have presented testimony from both sides of the TPA negotiations confirming that the TPA Parties never intended the result that Perú argues for. We have Mr. Carlos Herrera, who led the Peruvian delegation in the TPA negotiations, and we have Mr. Gary Sampliner, who is an expert on U.S.

investment treaty practice with over 20 years of U.S. Government experience, including negotiating this TPA. Perú in turn has not presented any witnesses or experts in support of its arguments.

So, I will start by explaining why Freeport's claims are not time-barred. Now, Perú does not contest that the same standard applies for determining when the statute of limitation starts to run for the breaches of the Stability Agreement and for breaches of the minimum standard. So, I will address them together. Let me start by taking a step back. This is the statute of limitations.

Article 10.18.1 says that it only applies if more than three years have elapsed from the date on which the Claimant first acquired or should have first acquired knowledge of the breach alleged and knowledge that the Claimant or the enterprise has incurred loss or damage.

So, to start with, there is no dispute here about what the cutoff date is. The cutoff date for the statute of limitation is the 28th February 2017, three years before Freeport filed their Request for

Arbitration.

Now, if we look at Article 10.18, there are three conditions that must be met.

First, an alleged breach must have occurred.

Second, loss or damage must have been incurred--and it's in the past tense, "has incurred." It does not say--and that's important--"might occur" or "would occur," as Perú is arguing. It says "has incurred." So, the statute of limitation does not start to run if loss will only occur in the future.

And, third, the Claimant must have knowledge, or at least constructive knowledge, of the breach and that loss of damage has been incurred.

And in most cases, SMCV had knowledge when the breach and loss occurred. So, that's not really at issue here. The exception are the due process claims, where Freeport obtained knowledge only in 2019, when it started investigating the due process violations in preparation of filing their Request for Arbitration.

Now, to determine when the breaches and losses occurred, we first and foremost have to look at

what are the alleged breaches and what are the alleged losses, and this is a very important point. This is not your average plain vanilla expropriation case where the government breach, one government breach causes damages in the form of lost profits, or a fair and equitable treatment case where one breach causes a diminution of share value, for instance. That's not that kind of case.

Instead, here the Government breaches arise out of 36 separate and independent acts by the Peruvian Tax Administration that required Cerro Verde to pay royalties and taxes that Cerro Verde did not owe under the Stability Agreement, and it caused 36 separate losses in the form of 36 separate payment obligations for different fiscal period and different for royalties and the various taxes. Each Government act and loss exists independently of the other. And this distinction to your typical lost profits claim, that is important because a lot of the case law that Perú is using is based on those type of cases, but it is important to keep in mind that here we face different alleged breaches and different alleged

losses.

Now, having made that clear, I will explain in two steps why Freeport's claims are timely.

First, I will explain why a SUNAT assessment causes breach and loss when it becomes final and enforceable, and not when it is first notified, and second, I will explain why Perú breaches the Stability Agreement and the TPA each time that a SUNAT assessment became final and enforceable, and not a single time when SUNAT first notified the 2006-'07 Royalty Assessment.

Now, let's start with the date on which each breach and loss occurred. Now, most fundamentally, both under Peruvian law and international law, an administrative government act can result in a breach and a loss once the government act becomes enforceable. Now, it's not necessarily when a government actually goes and enforces the act, but when the act is capable of being enforced, when a government has the right and the authority to enforce the act.

Now, typically, administrative acts are

immediately enforceable. Take the example of an order to stop construction because you don't have a required permit. That's immediately enforceable, even if the investor goes and challenges the act.

A mining investor whose Environmental Permit is denied, immediately enforceable. The investor cannot go and mine while it challenges the permit denial.

And in some jurisdictions, that is also true with regard to tax assessments. It may be in your jurisdictions. The tax assessments may be immediately enforceable, either partially or fully, before a challenge is made. You pay and then you complain.

But in Perú, as in some other jurisdictions, in Perú, that is not the case. The Peruvian Tax Code treats SUNAT assessments differently from most other administrative acts, and that's important to keep in mind.

In Perú, the assessments become enforceable only and result in a payment obligation only when they become final and administrative acts. There is no payment obligation until they are final and

enforceable.

And specifically when does that happen? A SUNAT assessment only becomes final and enforceable if the taxpayer does not challenge the assessment, then it creates a payment obligation; if the taxpayer requests reconsideration of the assessment before the SUNAT Claims Division, gets an adverse decision, and does not challenge the decision; or if the taxpayer, like Cerro Verde did with many assessments, challenges the assessment before the final administrative stage--that's the Tax Tribunal, and we are still within the Ministry of Economy and Finance, that's still the administrative review--and is served with an adverse Tax Tribunal resolution. The taxpayer can also withdraw a pending challenge, which then results in the assessment becoming final and enforceable and payable when SUNAT or the Tax Tribunal accepts the withdrawal.

Hence, if a taxpayer challenges a SUNAT assessment, it does not become final and enforceable against a taxpayer until the administrative process is complete. Until that moment, the taxpayer does not

have an obligation to pay the assessment, and SUNAT cannot start any collection procedures. The taxpayer has the right to pay the assessment, but it does not have a legal obligation to do so. And there are good policy reasons that that is the case. The Tax Code allows the Tax Administration to consider the arguments of the taxpayer. It can consider new evidence. It can correct mistakes that it has made before the taxpayer has the obligation to send over the money and payment--and the assessment becomes enforceable.

And Perú doesn't take issue with that. That's important too. In its Rejoinder, Perú affirmed that it never argued that Cerro Verde had the legal obligation to pay the assessments before challenging them. So, it is only at the moment that the SUNAT assessment becomes final and enforceable that the taxpayer has the obligation to make the payment and that SUNAT can then enforce the obligation through coercive collection procedures. It is only at that moment that the Government breaches its obligations under the Stability Agreement, it is at that moment

that liability arises, and at that moment that the taxpayer incurs a loss because it has become liable to make a payment.

Now, that the breach and loss occurs when the assessment becomes final and enforceable, that is confirmed by case law, Peruvian case law. And we have provided the Poderosa case as an example in point. And it can't get any closer than that, because that case specifically addresses a breach of a mining stability agreement.

Poderosa is a Peruvian gold mining company that brought claims for breach of a mining stability agreement, and MINEM filed a motion to dismiss, arguing that the limitation period has expired. Sounds familiar.

So, the trial court rejected MINEM's argument and held that the limitation period for breach of contract did not begin until the Tax Tribunal issued its resolutions, which exhausted the administrative stage. So, the limitation period for breach of contract only starts with the final Tax Tribunal resolution.

The appellate court upheld that decision, and it held that the limitation period started to run when the Tax Tribunal resolutions were issued because--and listen to that--because on those dates the alleged breach of the aforementioned agreement by the Peruvian State occurred.

So, here we have the appellate court saying that the breach of the Stability Agreement occurred when the Tax Tribunal issued its resolutions and that the limitation period for breach-of-contract claims runs from that date.

So, Perú tries to escape the implications of the Poderosa case by arguing that the limitation period is dictated by the terms of the TPA, not Peruvian law, but that misses the point.

The point is that Peruvian law determines the date of breach of the Stability Agreement, and the Poderosa case confirms that under Peruvian law, a SUNAT assessment results in breach and loss once the administrative process is complete.

And Perú actually got it right in another arbitration, the Gold Fields arbitration, and that was

an arbitration before the Lima Chamber of Commerce. Now, in that case, SUNAT had issued an opinion that stability guarantees did not extend to certain payments under the Complementary Mining Pension Funds. And Gold Fields objected to that and sought a declaration that the stability agreement protected it from those payments.

Now, Perú objected that Gold Fields' claim was inadmissible because there was not a "decision on a challenge, much less a final position by the Tax Administration that allows alleging that the CEJ, which is the legal stability agreement, has been violated, that it is breached."

So, Perú recognized here that you need a final position by the Tax Administration to claim a breach. Exactly what we are saying. That's what Perú recognized in the Gold Fields arbitration, and the Tribunal dismissed Perú's objection on another reason because Gold Fields did not allege breach of contract but sought declaratory relief. But again Perú correctly observed that it was only the final position of the Tax Administration that gives rise to a breach

of the Stability Agreement.

Now, Perú has not provided any legal authority to the contrary. Instead, it makes a number of arguments that not only plainly contradict the case law and its own position in Gold Fields, but that, with due respect, also don't make any sense. So, let's look at those quickly.

First, Perú argues that the SUNAT assessment is valid and effective from the date of notification. Well, of course it is valid, and of course it produces some effects. Nobody is saying that the notification is an invalid act. It has effects such as triggering the time period during which the taxpayer can challenge the assessment, but that doesn't mean that the assessment creates a payment obligation.

Second, Perú argues that even though the SUNAT assessment cannot be enforced, the assessment creates an obligation to pay. But an unenforceable obligation to pay is an oxymoron. By definition, you can only have an obligation if it also can be enforced. And as Perú itself said, as I just pointed out, it does not contest that Cerro Verde did not have

a legal obligation to pay the assessments before challenging them.

So, if Cerro Verde did not have a legal obligation, what obligation did it have?

Third, Perú argues that the assessments' enforceability is merely suspended. But that is not correct. By definition, you cannot suspend something if it previously existed--you can suspend something only if it previously existed. Here the assessment was never enforceable in the first place before it became final.

And, finally, Perú argues that the statute of limitation cannot be tolled by subsequent litigation. But like suspension, tolling necessarily assumes that the statute of limitation has started to run with the assessment. But it did not because there has been no breach or loss. So, these arguments are, therefore, all wrong.

But there is one argument that Perú makes where it actually gets it right. In its Rejoinder, Perú plainly contradicts its argument that loss and damage has been incurred before an assessment became

final and enforceable. When discussing quantum, Perú argues that Cerro Verde is not entitled to recover damages for unpaid assessments because: "A legal obligation can only be considered a 'damage' if that legal obligation will actually result in the victim making the payments; if not, then the victim has not suffered (and will not suffer) any actual damage."

So, you remember, "damage" is one of elements that you have to show for statute of limitation, breach, damage, and then loss that the damage has been occurred, and here Perú says only when Cerro Verde makes the payment has the damage occurred.

Now, we believe that an enforceable obligation to make the payment is already sufficient to create a loss, even when the payment is not yet made, but Perú's statement shows that Perú perfectly well understands that losses incurred only if the assessments are final and enforceable, because it is only then that it becomes certain that the assessment will actually result in the taxpayer making a payment.

So, if damages only are incurred when a payment is made, you first need the final assessment.

That creates that payment obligation.

And this admission of Perú itself is dispositive. Perú cannot with a straight face argue the opposite on jurisdiction from what it argues on quantum.

So, to sum up, Freeport's position that the breach and loss occurs when each assessment becomes final and enforceable not only is correct as a matter of Peruvian and international law, it is also supported by Peruvian case law, by Perú's own submissions on quantum, and by common sense.

Now, as you can see here, all the assessments for which Freeport has submitted claims became final and enforceable against Cerro Verde within the cutoff period.

The two assessments that became final and enforceable in 2013 are the 2006-'07 and 2008 Royalty Assessments, but Freeport did not bring any claims for breaches of the Stability Agreement based on those claims. We did bring, as I explained, claims for breaches of the due process violation for those two claims because knowledge only occurred within the

cutoff period. And there are a number of reasons why, with those two exceptions I mentioned, all the final assessments are in the 2007 and 2019 period.

First of all, keep in mind that SUNAT notified the assessments through 2019. Keep in mind that the last fiscal period was only 2013, and it takes SUNAT a few years to actually audit the fiscal periods.

Moreover, for a period of five years, SUNAT did not issue any royalty assessments against Cerro Verde because the Administration had assured Cerro Verde that if it made GEM payments, and my colleague Ms. Sinisterra talked about them. If Cerro Verde made GEM payments, it did not need to pay any royalties, and the Cerro Verde paid the GEM payments, and during the administration of President Humala, Perú complied with that assurance and did not issue any royalty assessments.

The Tax Administration also took, sometimes, years to decide the challenges. For example, the 2009 Royalty case was pending before the Tax Tribunal for more than six years.

So, in fact, actually a number of assessments were actually not even final in early 2020, and Cerro Verde had to withdraw the challenges to comply with the TPA's waiver provisions.

This brings me to the second point, and that is to explain why each of the final and enforceable assessments resulted in a separate breach of the Stability Agreement with separate loss and a separate limitation period.

There were a total of 36 final and enforceable assessments after the cutoff date, as you can see, and each of them was an independent administrative act. Each of them gave rise to a separate cause of action for breach of the Stability Agreement and for breach of the TPA's minimum standard. And each of those final and enforceable assessments also caused a separate significant loss in the form of an independent payment obligation for the respective fiscal period. If one payment obligation would not have existed, the other would have existed. Each of them were completely independent. Again, that's different from a lost profits claim, where one

act happens and causes the loss. Here each of them are independent payment obligation, independent losses. Now, Perú argues that all 36 of Freeport's stability claims are time-barred, and to support that argument, it seeks to march back all the breaches to 18th August 2009, long before the assessments were ever issued and while some of the fiscal periods were still in the future. And then, Perú attempts to consolidate all 36 breaches into a single breach, the date of the notification of the 2006-'07 Royalty Assessment. There is just no support for Perú's argument that there was a single breach, either under Peruvian law or international law or the terms of the TPA.

Now, let's look at Peruvian law, where each final and enforceable assessment is an independent administrative act that supports an independent cause of action for breach of the Stability Agreement, with an independent obligation to make a payment.

Cerro Verde had to self-assess its taxes separately for each of the fiscal periods. SUNAT then conducted separate audits for each fiscal period, and

as a result of those audits issued separate assessments for royalties, each type of tax, and penalties, again, for each fiscal period. Cerro Verde filed separate administrative challenges for each assessment with SUNAT's Claims Division, and then, in many cases, with the Tax Tribunal.

And Perú and its experts have repeatedly admitted that each assessment is an independent administrative act that is subject to an independent administrative process. So, we don't even have a dispute about that point.

It's also undisputed that none of SUNAT's or the Tax Tribunal's resolutions had any binding or precedential effect for future fiscal periods. So, the 2006-'07 Assessment on which Perú relies for its statute of limitation arguments could not have predetermined any future decisions.

SUNAT had to reconsider each assessment independently without being bound by its previous reconsideration decisions. And Perú itself admits that, in its Rejoinder, that the Government might have subsequently changed and corrected the 2006-'07

Royalty Assessments after SUNAT notified Cerro Verde of them.

Neither SUNAT nor the Tax Tribunal ever indicated that they were bound by the 2006-'07 Royalty Assessment in deciding Cerro Verde's challenges to any of the subsequent assessments. Well, because they were not.

The Tax Tribunal has the power to issue precedents of mandatory compliance through its Plenary Chamber, but it never did so in any of Cerro Verde's administrative challenges.

And even after SUNAT notified Cerro Verde of the 2006-'07 Royalty Assessments, the Government repeatedly took the contrary position that it set forth in the 2006-'07 Royalty Assessment. Just for example, the Government official continued to confirm to Cerro Verde that the Concentrator was stabilized, and that Cerro Verde would have a very strong argument for prevailing before the Tax Tribunal.

And as I'd mentioned earlier today, in 2012, SUNAT issued an opinion in which it repeatedly stated that stability guarantees apply to concessions or

Mining Units. And we have seen the case of Milpo, where SUNAT and then the Tax Tribunal applies stability guarantees to Mining Units through the entire 2010 up to last year.

So, as a result of that, each of those final enforceable assessments support a separate claim for breach of the Stability Agreement under Peruvian law. In Perú, Cerro Verde could have brought separate contract claims for breach of Stability Agreement for each of those assessments, could have decided to bring a contract claim for the 2009 Royalty Case, for instance.

And Perú recognizes that SUNAT assessments are separate acts, but then it argues, without providing any basis, that they constitute a single breach, but it does not makes any sense, and Perú does also not provide any authority for that, and no authority for treating claims, as Cerro Verde would be able to bring separately in Peruvian civil law proceedings, as a single claim here in these Arbitration proceedings.

Now, let me give you one example, just to

further emphasize that, an example that Professor Bullard gave you in one of the expert reports. And that's the long-term service contract. Now, a Party breaches its obligation to make monthly installment payments under that long-term service contract.

The service provider may file separate contract claims for each of those breaches, even if they are factually and legally related, because the obligation to pay is unique. It's for a specific amount, for a specific time period, and for the specific service given during that particular time. There's no question about that.

But there's also no support for a single breach and loss argument under international law--and the case law there is clear: Where there is a series of events, each of which gives rise to an independent cause of action, each of those events constitutes a separate breach and a separate loss, and each of them has a separate limitation period.

Now, the Nissan v. India case deals with exactly that scenario. India had payment obligations under a Memorandum of Understanding, and it repeatedly

defaulted on these payment obligations. The Tribunal in Nissan v. India held that each of those alleged defaults gave rise to separate cause of action for breach of the MoU, each with a separate limitation period.

Now, Perú instead pretends that there was a single breach at the time of the 2006 or '07 SUNAT Assessment, and to support its argument, Perú relies, basically, on two distinct arguments. It says, first, that SUNAT assessments are a series of similar and related actions, and, second, it says that the SUNAT assessments all have the same legal basis.

So, let me start with the first argument, the series of similar and related acts. Well, there Perú relies on language in a number of investment treaty authorities stating that, where the government action challenged is part of a series of similar or related actions by a respondent state, the limitation period does not renew each time an alleged government action occurs, such as, for instance, Grand River made such a statement.

But as Perú must also admit, investment

treaty authorities also provide that, where there's a series of related events, each giving rise to a self-standing cause of actions, those events may be separated into distinct components, some are time-barred, some eligible for consideration on the merits, like Spence said.

So, in other words, to summarize this, if there's a single cause of action, then the statute of limitations starts to run from the earliest point that the Claimant had knowledge of the specific breach of loss, but where there are multiple causes of actions, even if they arise out of similar or related actions, then each of them has its own statute of limitations, and, of course, for each of these claims the statute of limitations then starts to run from the earliest point.

Now, the first category, the one that you see above, on which Perú bases its cases here, those are typically cases where a single government act causes loss in the form of lost profits or a diminution of value.

Take, for example, an expropriation claim

that causes the investor to lose business. Now, the investors often argue that there was a continued or a composite breach, if they have a statute of limitation problem and they want to rely on the last government act. So, the expropriation resulted out of a number of government's acts, and it's the last one, and the Tribunal said, no, you have to go--it's the first--it's the first of those acts.

And the case law in which Perú relies is exactly in that category. Take, for instance, Perú's key authority, the Corona v. Dominican Republic case, an example in point. There, you have a denial of an environmental license, something that's immediately enforceable, constituting the breach and causing the loss; and, as a result of that, the Claimant could not rely on the later government acts or of omission. There was a single cause of action, and the statute of limitations started to run from the first act.

But we are not in that scenario. We are not in the expropriation scenario. We are not in the single-breach scenario here. We are in the second scenario, the multiple causes of action scenario.

We have similar and related Government actions, each giving rise to a self-standing cause of action, with a separate claim for breach and legally distinct loss. Each of them with its own statute of limitations. And this is the Nissan case that I had already mentioned, where you have identical defaults on payment obligations, under the same contract, that each give rise to a different cause of action.

Next, Perú argues that the single-limitation period applies because all assessments were based on the same legal basis, or the same legal reasoning. But there's no support that the same legal reasoning transforms distinct losses, distinct causes of action into a single cause of action.

Now, Perú arrives at that curious result by saying that "legally distinct injury" means "legally distinct reasoning," but that's not right. "Legally distinct injury" refers to "distinct causes of action," like the distinct causes of action for breach of the Stability Agreement that Freeport alleges.

For example, in the Eli Lilly case, the Canadian courts had rendered three decisions

invalidating patents that--by Eli Lilly, each based on the same legal basis. The legal basis they used was the so-called "promise utility doctrine," and the first decision was rendered before the cutoff date, and the second and the third decisions, they were rendered after the cutoff date.

And Eli Lilly brought separate claims of NAFTA breaches for the second and the third decision.

Now, Canada tried the same argument that Perú is trying to run here. It said the two decisions on which Eli Lilly based its claims had the same legal basis than the decision that was rendered before the cutoff period. They all dealt with the promise utility doctrine.

But the Tribunal rejected that argument, and it held that Eli Lilly did not allege that the promise utility doctrine itself, in the abstract, is a violation of NAFTA, but, rather, challenged Canada's invalidation of its patents after the cutoff date. Thus, the Tribunal applied separate limitation periods to each of the decisions of the Canadian courts. Those were claims--to the claims that challenged

separate decisions by the Canadian courts, applying the same doctrine, the same legal reasoning.

And that applies here as well. Freeport doesn't allege that SUNAT's adoption of the novel or restrictive interpretation of the Mining Law and Regulations is a breach of the Stability Agreement, in the abstract. But what we're alleging here is that the breaches result from the final and enforceable assessments, failing to apply the Stability Agreement to Cerro Verde's entire Mining Unit after the cutoff date.

And, finally, I want you to take a step back and just imagine what would have happened if Freeport had done what Perú argues it should have done. Imagine in 2009, after Cerro Verde was notified of the 2006-'07 Assessments, Freeport had initiated this arbitration, claiming breaches and yet unknown damages for fiscal periods 2005-2013, most of which would have been way in the future, and for which SUNAT hasn't even started any audits, let alone rendered any assessments or reviewed them.

Now, Perú would have been up in arms,

deriding Freeport for bringing premature and speculative claims for assessments that are not final and not even rendered. It would have argued that this Tribunal is not an administrative review body. It would have said that this is not what the TPA could possibly have contemplated, and Perú would have been right about that.

Now, Perú might think that its single breach and loss theory might serve it well in this particular case to avoid the liability for its egregious breaches with regard to Freeport, but if that theory were accepted, it would wreak havoc to the integrity of ICSID system, as it would require investors to file premature and speculative claims based on a single tax assessment that has not even been reviewed by the tax authorities. Now, that need not happen.

Here, each of the assessments are separate and independent administrative acts, subject to separate and independent review procedures, and they cause legally-distinct injuries, and the Legal Authorities, as I've shown, confirm that legally-distinct breaches and injuries give rise to

separate limitation periods. Freeport claims are, therefore, all within the-three-year limitation period.

And with the Tribunal's permission, I will now call on my colleague, Nawi Ukabiala, to address the four remaining jurisdictions. Unless you want to break for lunch, or what...

MR. ALEXANDROV: Madam President, we thought that we would start after lunch, and make our presentation.

PRESIDENT HANEFELD: We continue with jurisdiction of Claimant.

MR. PRAGER: Great. Thank you.

MR. UKABIALA: Madam President, Members of the Tribunal, I'm Nawi Ukabiala, and I'll be addressing the remaining jurisdictional objections.

I'll start with Article 10.18.4 of the TPA, the fork-in-the-road for Investment Agreement claims. I'll explain why the fork doesn't apply to Freeport's Stability Agreement claims. This is the fork in the road. It says that: "No claim may be submitted if the enterprise has previously submitted the same

alleged breach."

Now, we're all agreed that nobody ever submitted a breach of the Stability Agreement anywhere before this arbitration. In fact, Perú and its experts have admitted this so many times that it's baffling that we still have to talk about the fork in the road. But Perú still insists Cerro Verde took the fork-in-the-road, and I'm going to explain the three key flaws in Perú's argument.

First, Perú's argument makes no sense. It assumes that the breaches occurred after--I'm sorry, it assumes that Cerro Verde took the fork-in-the-road before the breaches occurred.

Second, if the fork election occurs at the administrative level, as Perú argues, it would have absurd implications.

It would mean that a taxpayer has only 20 days to decide whether it wants to go to the Tax Administration and ask it to correct an errant tax assessment, or to make a whole ICSID case about it. And, finally, Perú is trying to rewrite the TPA, and Perú is trying to rewrite the TPA, not just with

anything, but with a fundamental basis test, that is so disfavored that even Perú's own authorities criticize it.

So, I'll turn now to the first flaw. Perú is arguing that Cerro Verde took the fork for breaches that hadn't occurred yet. At first, Perú argued that Cerro Verde took the fork for Freeport's Stability Agreement claims that are based on assessments that Cerro Verde challenged before SUNAT's Claims Division and the Tax Tribunal.

But, as Dr. Prager just explained, each of those breaches only occurred at the end of the administrative process for that respective assessment. Right? So, in most cases, that process concluded when the Tax Tribunal or SUNAT's Claims Division issued a resolution.

So, Perú's objection largely falls away, if you agree with us, on the limitation period argument because, otherwise, the administrative process that caused the breaches would constitute a fork-in-the-road election, and, obviously, that makes no sense.

My second point is the absurd implications of Perú's argument. Let's just pause and reflect for a moment. A foreign investor with multi-billion-dollar operations in Perú doesn't take lightly the decision about how to seek recourse for an errant tax assessment. But taxpayers only have 20 days to ask the Tax Administration to reconsider an assessment.

And so, if Perú is right, the taxpayer would only have 20 days to decide whether to start an ICSID case over a tax assessment, or go through the normal administrative process for correcting the tax assessment within the MEF.

Now, the purpose of the fork-in-the-road is to give the investor a meaningful choice between different methods of resolving a dispute. But Perú's argument would deprive the investor of any meaningful choice, because 20 days isn't long enough to decide whether to start an ICSID Arbitration.

And worse yet, Perú argument would open the floodgates, because why flip a coin with the Peruvian Tax Administration when you can just come to an

independent ICSID Tribunal and ask it to do its job?

So, Perú's argument would transfer ICSID Tribunals into part of the Peruvian Tax Administration. But TPA drafters from both Parties have testified in this case, that that's not how the fork works.

Now, we told you all of this in the Reply, and Perú recognized its objection was doomed because now Perú has a new theory. Now, Perú argues that the fork applies to all of Freeport's Stability Agreement claims, because Cerro Verde submitted claims with the same fundamental basis before the Contentious Administrative Courts in the 2006-2007 and 2008 Royalty Cases. But that new argument doesn't succeed in rehabilitating Perú's objection.

One thing Perú did succeed at is coming up with a host of different formulations explaining what the same fundamental basis is supposed to mean. But none of it has a shred of textual support.

Let's go back to the text. It only applies to the "same alleged breach," not a "breach with the same fundamental basis."

And Cerro Verde didn't submit breaches of the Stability Agreement to the Contentious Administrative Courts. Cerro Verde submitted breaches of Peruvian administrative law in those proceedings.

But it's not just that Perú's argument is inconsistent with the text of the TPA. Perú affirmatively rejects any kind of textual interpretation of Article 10.18.4. We already told you why Perú's argument would render nonsensical the TPA's "no-U-turn" provision, and I'll refer you to our papers for that.

But also, the TPA has two forks, Article 10.18.4 for Investment Agreement claims, and Annex 10(G) for breaches of the Treaty. Now, the Treaty wouldn't need two forks if they applied to breaches with the same fundamental basis. It would just need one fork that referred to breaches with "the same fundamental basis," instead of "the same alleged breach."

And Perú has no real response for all the decisions we cited, rejecting this "fundamental basis" argument, and none of the sources that Perú cites

remotely support rewriting the TPA. Pantechniki, H & H Supervision, the only cases that ever adopt this "fundamental basis test," are all distinguishable because they interpreted treaties that applied to the same dispute.

And even those cases have been widely criticized. The Tribunal in Khan Resources explained why. Because as I've explained, that vague standard would transform ICSID tribunals into part of the Peruvian Tax Administration. And even Perú's own authority recognizes that the "fundamental basis test" is simply too vague to ensure legal certainty. So, it can't possibly apply to Freeport's Stability Agreement claims.

I turn now to Perú's retroactivity objection.

As we explained, none of Freeport's claims require retroactive application of the TPA.

Let's start by looking at Article 10.1.3.

Now, it probably looks familiar. That's because it merely reiterates the general nonretroactivity rule in Article 28 of the VCLT. It

doesn't modify that rule. It says the TPA doesn't "bind a party in relation to any act or fact, or any situation that ceased to exist" before entry into force.

First, I'll explain that there's no retroactivity here because Freeport only challenges measures that postdate the TPA's entry-into-force.

Second, I'll explain why Perú's application of this standard is so misguided, and why Perú's reliance on Spence is fundamentally flawed.

So, none of Perú's--none of Freeport's claims would bind Perú retroactively. Look, the TPA regulates measures. It regulates government measures. Article 10.1 says that it "applies to measures adopted or maintained by a Party."

Therefore, government measures are the relevant acts, facts, or situations for determining whether a claim would "bind" a Party retroactively. If a claim challenges post-entry-into-force measures, it can't result in a Party being bound retroactively.

And the investment treaty decisions all confirm that the nonretroactivity rule doesn't apply

to post-entry-into-force measures that are sufficient to constitute a breach. Take Eco Oro, for example. The Tribunal applied a treaty that reiterated the VCLT Rule just like the TPA. Okay.

Colombia argued that the nonretroactivity Rule applied because the claims related to a pre-entry-into-force mining ban, and that mining pan regulated mining in protected wetlands. But Eco Oro didn't challenge that law. It challenged various post-entry-into-force measures that actually deprived it of its mining rights.

Those included a resolution establishing the boundary of the protected wetlands, a court decision eliminating the possibility of being granted an exception to the mining ban, and a subsequent resolution that limited the Claimant's mining rights.

The Tribunal said the nonretroactivity rule didn't apply because Eco Oro only challenged post-entry-into-force "measures," and that was sufficient to establish jurisdiction over Eco Oro's claims.

In all the cases that actually apply the

rule from the VCLT, they all say the same thing: MCI, Tecmed, Mondev, all confirm that the nonretroactivity rule doesn't apply if the post-entry-into-force measure is sufficient to constitute a breach.

And, all the cases all confirm that this Tribunal can and "should" consider pre-entry-into-force acts or facts in considering the-post-entry-into-force measures that Freeport alleges are breaches.

Okay. So, now let's talk about Freeport's claims. They could only result in Perú being bound retroactively if they challenged measures from before February 2009, when the TPA entered into force. The measures Freeport challenges include the final and enforceable assessments, the decisions refusing to waive penalties and interest, and the refusal to reimburse GEM payments. So, the question is, when did these measures occur.

Well, in this case it's undisputed that they all occurred long after February 2009. So, Freeport's claims can't bind Perú retroactively. It's that simple. And as Dr. Prager explained, all of the

measures occurred after February 2017. So, if you agree with us on the limitations argument, you don't have to reach Perú's nonretroactivity objection.

Now, what Perú is trying to do is to use the 2006 SUNAT and MINEM Reports and various other pre-2009 government reports to say that there's retroactivity here. But those Reports are nonbinding. They didn't deprive Freeport or Cerro Verde of their rights, even if those Reports never existed, each final and enforceable assessment alone would still be sufficient to constitute a breach of the Stability Agreement and the TPA.

In fact, as far as Freeport and Cerro Verde are concerned, the June 2006 SUNAT Report did not exist until Perú exhibited it in the Rejoinder last year. So, it's ridiculous to argue that Freeport was trying to bind Perú to that report when it filed its Notice of Arbitration almost three years earlier.

And Perú knows that. So, again, Perú advances a bunch of vague standards. But they are all just different ways of saying the same thing, which is what Perú is really arguing, that the pre-2009 Reports

are the "genesis of the dispute."

But, it's also ridiculous for Perú to argue that. It's ridiculous for Perú to argue that the TPA bars pre-entry into force disputes, because the TPA drafters considered and rejected two different provisions that would have barred pre-entry into force disputes.

So, what does Perú does do? Perú tries to rely on PCIJ and ICJ decisions that interpret treaties with the very language that Perú proposed, and Perú must have forgotten, didn't make the cut in the TPA negotiations. Those cases are obviously irrelevant because they involved treaties with provisions barring pre-entry-into-force disputes. And I already explained that all the cases applying the VCLT Rule allow claims challenging any measures from after entry-into-force that constitute a breach.

So, that leaves Perú with nothing to rely on except the gross misrepresentation of the decision in Spence. But the Spence decision supports Freeport. It says the same thing that all of the other cases applying the VCLT rules say. There's no retroactivity

if the-post-entry-into-force measure is actionable in its own right.

Now, Perú is latching onto the Spence Tribunal's conclusion that the nonretroactivity Rule applied, because the post-entry-into-force facts were deeply and inseparably rooted in pre-entry-into-force facts.

But Spence doesn't help Perú. Let me tell you what Spence is really about.

Spence is about pre-entry-into-force expropriations, and the only post-entry-into-force conduct, was the continued failure to pay adequate compensation for those expropriations. So, obviously, the post-entry-into-force failures to pay compensation for expropriations that happened before the Treaty entered into force were deeply and inseparably rooted in those pre-entry-into-force expropriations.

But that in no way modifies or supplements the VCLT Rule in the TPA, and that's exactly what the Renco II Tribunal said when it was applying the TPA recently. So, Freeport's claims are not deeply or inseparably rooted in pre-entry-into-force conduct,

because they each challenge a post-entry-into-force measure that is sufficient to constitute a breach. There's no retroactivity.

I'd like to turn now to Perú's next attempt to rewrite the TPA, and that's Perú's objection to the Investment Agreement claims on behalf of Cerro Verde. First, I'll explain why the requirements for Freeport's Investment Agreement claims are met.

Second, I'll explain why Perú is wrong when it argues that we have to show that both Freeport and Cerro Verde relied on the Stability Agreement.

And, finally, I'll explain that the TPA doesn't have a latent temporal limitation that only applies to Investment Agreement claims.

Now, the TPA allows a Claimant to bring a claim for a breach of an Investment Agreement on behalf of an enterprise the Claimant owns or controls. This is the definition of an "Investment Agreement" in Article 10.28.

As you can see, the reliance requirement in the definition is clearly disinjunctive. It's satisfied if either the covered investment, in this

case, Cerro Verde, or the investor, in this case Freeport, relied on the Investment Agreement.

Now, all the elements are present here. The Stability Agreement is an Investment Agreement because MINEM is a national authority of a Party; Cerro Verde is a covered investment of Freeport; and Cerro Verde relied on the Stability Agreement in establishing the Concentrator investment.

Now, let's look at Article 10.16.1. This Article permits a Claimant to submit claims for breach of an Investment Agreement on its own behalf, under Subpara (a)(1)(c), or on behalf of an enterprise under Subpara (b)(1)(c). Now, the last paragraph applies to both (a)(1)(c) and (b)(1)(c). Let's zoom in on that last paragraph.

It says "the Claimant can only bring Investment Agreement claims if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established in reliance on the relevant Investment Agreement."

This is the so called "direct nexus" requirement. It's satisfied in this case because the

subject matter of Freeport's Stability Agreement claims and the claimed damages directly relate to the Concentrator that Cerro Verde established in reliance on the Stability Agreement.

Now, really, there should be no dispute that Freeport is allowed to bring Investment Agreement claims on behalf of Cerro Verde, but Perú just has to object to everything, so Perú argues that the last paragraph means Freeport has to show that both Freeport and Cerro Verde relied on the Stability Agreement.

But Perú's argument is completely detached from this paragraph. Again, it says the Claimant can bring Investment Agreement claims if "the subject matter of the claim and the claimed damages directly relate to the covered investment that was established in reliance on the relevant Investment Agreement."

Now, I'm going to tell you the only thing you need to know to dismiss Perú's argument. This paragraph doesn't say that the Claimant's reliance is required for the Claimant to submit Investment Agreement claims on behalf of an enterprise. Perú

made that requirement up, whole cloth.

That paragraph doesn't say whose reliance is required. It just refers, in the passive voice, to the investment that was established in reliance on the relevant Investment Agreement.

But, no ambiguity results from the use of the passive voice in this paragraph. Because it uses the term "Investment Agreement," which, as we've just seen, is defined in Article 10.28.

And Article 10.28, again, clearly establishes whose reliance is required: Either the reliance of the investor or the reliance of the enterprise, and it's completely clear why Article 10.16.1 doesn't say whose reliance is required. It's because--

MR. ALEXANDROV: Madam President, I'm sorry to interrupt, but in line with the argument that Perú objects to everything, we believe, then, the time has expired, and we want to understand what the plan is because they have some 25 slides left.

PRESIDENT HANEFELD: Yeah. It has not yet fully expired, but I have to remind you that it's

only, I think, two minutes left. And, so, if you could come to the conclusion, I would be grateful.

MR. UKABIALA: Thank you. Yeah. I'll wrap up. So, I will also just submit that Perú's new objection to the Investment Agreement claims under Article 10.16.1 is untimely under ICSID Rule 41. Perú should have raised those in the Counter-Memorial, and, so, Perú's objection to the question of when reliance is required in the Rejoinder is untimely.

And anyway, in any event, Perú's objection is meritless because the TPA doesn't contain a temporal limitation for Investment Agreement claims. U.S. treaty practice demonstrates this. Many U.S. treaties do include that requirement, but, in the TPA negotiations, the U.S. specifically rejected that requirement due to concerns about SUNAT.

I'm not going to spend any time on the tax exclusion objection, because there's no reason the Tribunal should have to reach that. It only applies to a very minor subset of our claims. I'll now proceed to damages.

Freeport and SMCV have suffered damages in

excess of $942 million as a--the result of Perú's breaches. We have the main claim and the alternative claim. They're described in our papers. I won't go into detail here. The only thing that I do want to address is Perú's absurd mitigation argument. And so, I just want to ask you to think about it for a minute.

Perú is saying that the result of its Treaty breaches should be that it keeps its ill-gotten gains, but as a matter of law, the Claimant has no obligation to mitigate amounts paid to the Respondent. That's clear from Perú's own authority, AIG v. Kazakhstan, and it's clear why that's the Rule. The purpose of mitigation is to protect the Respondent from being out of pocket for losses that the Claimant could have prevented.

But if a Claimant's losses were received by the Respondent, the Respondent will not be out-of-pocket if it has to pay them back. So, allowing the Respondent to keep the money doesn't serve the purpose of mitigation. It only serves impunity, and, actually, Perú's mitigation argument is impunity masquerading as law.

So, it's not surprising that Perú hasn't cited any authority to support that argument. But also, even if the mitigation defense could somehow be legally available to Perú--it's not--Perú's argument would still make absolutely no sense because it's inconsistent with the existence of liability.

Perú's argument could only make sense if, in hindsight, it was unreasonable for Cerro Verde to run the risk of having to pay penalties and interest because it was unreasonable for Cerro Verde to think its legal position was correct. But when you reach damages, you've already decided that Cerro Verde's legal position was correct. So, you cannot also decide that it was unreasonable for Cerro Verde to think its legal position was correct.

And also, it was--it would have been unreasonable for Cerro Verde to pay because that would have amounted to giving SUNAT a loan for an indefinite period, and that's not what the mitigation rule requires. That's exactly what the Tza Yap Tribunal said when it rejected Perú's mitigation defense in that case.

So, that concludes our presentation on damages. Thank you for attention, and that also concludes our Opening Argument. Thank you.

PRESIDENT HANEFELD: Thank you very much.

So, we will now have a one-hour lunch break, and then we will continue with the Respondent's Opening. Thank you.

(Whereupon, at 1:27 p.m., the Hearing was adjourned until 2:30 p.m., the same day.)

AFTERNOON SESSION

OPENING STATEMENT BY COUNSEL FOR RESPONDENT

PRESIDENT HANEFELD: Welcome back. We will now proceed with the Opening Statement of the Respondent.

Mr. Alexandrov, you have the floor.

MR. ALEXANDROV: Thank you very much, Madam President and Members of the Tribunal. Good afternoon.

We will proceed with our Opening Argument on behalf of the Republic of Perú. You have received electronically and hard copies of our slides that we intend to show.

Before I start with introduction, I will clarify my terminology. I will be referring to Freeport as "Freeport" or "Claimant," and I will be referring to the Peruvian subsidiary, which on the slide is SMCV, Sociedad Minera Cerro Verde, I'll be referring to it simply as "Cerro Verde" to avoid a mouthful of abbreviations.

So, here is what this case is about. Cerro Verde tried to game the system, and here you see a very brief chronology. In '96, Cerro Verde submits to MINEM, the Ministry of Energy and Mines, a Feasibility Study covering the "Cerro Verde Leaching Project," to expand the leaching facilities, the "Leaching Project," and applied for a stabilization agreement based on that Feasibility Study, which we'll refer to at the "1996 Feasibility Study."

In 1998 Cerro Verde enters into a Stabilization Agreement for the Leaching Project on the basis of the 1996 Feasibility Study, and we'll refer to that as the '98 Stabilization Agreement.

The '98 Stabilization Agreement refers explicitly to the Leaching Project, and the '96

Feasibility Study, which is, again, the Feasibility Study for the Leaching Project, is an integral part of the Agreement. And for many years, until 2004, it was considered uneconomical to build and operate the Concentrator.

In 2004, Cerro Verde decided to build a new project, "Concentrator Project," which is different from the Leaching Project. And you'll see the Leaching Project, we have references to oxide and Secondary Sulfide, because that's what is extracted for the purposes of leaching. And it produces cathodes. So, when you see those terms, you know we are referring to the Leaching Project. The Concentrator extracts Primary Sulfide, and it produces concentrate through flotation. So, when you see those terms, you know the references are to the Concentrator Plant.

The Royalty Law was enacted also in 2004, and that required Cerro Verde to pay royalties on the Concentrator Project. A new Stabilization Agreement after that would not have given Cerro Verde the benefit of not paying royalties under the Royalty Law,

because it would have stabilized the regime after the Royalty Law was implemented.

And so, what Cerro Verde did was they tried to sneak this new Concentrator Project into the 1998 Stabilization Agreement, into the regime that was stabilized by the 1998 Stabilization Agreement, so that those stability benefits applied to the Concentrator Plant and they wouldn't pay royalties on the Concentrator Plant as well.

It's very important to point out that Cerro Verde's own conduct shows that it understood very well that the 1998 Stabilization Agreement did not cover the Concentrator Plant, and I will go into that in some detail.

But for the purposes of this introduction, it's important to point out that Cerro Verde sought assurances in writing from MINEM that the Concentrator Project would be stabilized under the Stabilization Agreement, and never--and I emphasize "never"--received such assurances in writing.

Now, Cerro Verde claimed it received oral assurances from MINEM. However--and, again, we'll go

into some detail into that--Claimant did not submit any documents, even internal ones, recording that such alleged assurances were provided.

The Peruvian Government consistently held the position that the 1998 Stabilization Agreement covered only the Leaching Project and not the Concentrator Plant. And, again, I will go into some detail to show you--to demonstrate to you that this point is very valid, contrary to Claimant's arguments.

Cerro Verde gambled and Cerro Verde was caught. All relevant Peruvian authorities--SUNAT, the Tax Tribunal, the Peruvian judiciary--correctly determined that Cerro Verde owed royalties and taxes for the new Concentrator Project.

SUNAT issued assessments for underpaid taxes and royalties on the Concentrator Project. Cerro Verde challenged those assessments before the Peruvian administrative agencies and then before the Peruvian judiciary, all the way up to the Supreme Court, and Cerro Verde lost. And Claimant now seeks to relitigate the issue that was fully and fairly decided by the Peruvian judiciary.

So, the bottom line is this: This case is a straightforward case of contract interpretation. The question, the key question before you, is: Did the 1998 Stabilization Agreement that stabilized the Leaching Project extend to the Concentrator Plant?

Cerro Verde's new investment, the Concentrator Plant, was made years after the Stabilization Agreement was signed. Did it extend to that project? The answer is no. The 1998 Stabilization Agreement explicitly applied only to the Leaching Project. That is the Investment Project outlined in the Feasibility Study which is an integral part of the Stabilization Agreement. And that's what this case is about.

Now, in our presentation, we will address a number of topics.

First, we will focus on the Stabilization Agreement itself to show you that it covers only the Leaching Project.

Then we'll talk about Peruvian law, which provides that a stabilization agreement covers the specific Investment Project defined in the Feasibility

Study. So, we will talk about what Peruvian law says.

Then we'll talk about the Peruvian courts and their decisions, including the Supreme Court, courts that decided as a matter of Peruvian law and contract interpretation that the 1998 Stabilization Agreement covered only the Leaching Project.

We'll talk about--importantly, about Cerro Verde's own conduct, which shows that it understood very well that the 1998 Stabilization Agreement did not cover the Concentrator Project.

We'll talk about how Perú has been consistent and transparent in its interpretation of the '98 Stabilization Agreement.

We will then talk about how Perú has been consistent in its treatment of stabilization agreements of other mining companies.

We'll talk about Claimant's allegations that the Tax Tribunal violated Cerro Verde's due process rights, which rest on unsubstantiated conspiracy theories.

We'll then talk about Claimant's allegations that the Peruvian Government somehow misled Cerro

Verde into participating in the voluntary contribution program, again, wholly unsupported by evidence.

We will then discuss--something is missing--we will discuss jurisdiction as our Topic 9. Then we'll discuss--for some reason, my slides didn't like that section, but you will like it, I'm sure.

We will then discuss as Topic 10 that Claimant's treaty claims have no merit, and then we'll discuss Claimants' damages claims.

So, this is the roadmap for our submission.

Of course, we will not be able to cover everything in our 3.5 hours, so we rest on our written submissions in all the arguments that we have made, whether we have the time to discuss them in this Opening Statement or not.

Ah, the slides for some reason decided that the jurisdiction argument will be last, but it will not be last.

So, let me proceed to our first topic, the Stabilization Agreement. And I will first discuss the Feasibility Study.

As you see on the screen, Cerro Verde

applied for a stabilization agreement, and when it applied for the stabilization agreement, it included in the application the Feasibility Study, and I quote from their application: "Related to the Project that our company is executing and which is intended to expand the production capacity, et cetera, et cetera, of copper cathodes per year," in a clear reference to the Leaching Project. And that's the Feasibility Study that they submitted with their application, and that became an integral part of the 1998 Stabilization Agreement.

And let's take a look at the Feasibility Study. So, this is Section 1. The Feasibility Study covers the Cerro Verde Leaching Project. You'll remember that they say in the Stabilization Agreement--and I'll come to that--the reference to the Leaching Project is just the label. It's meaningless. The application for the stability regime and for entering into a stabilization agreement is based on the Feasibility Study, which is an integral part of the Stabilization Agreement, which refers explicitly--it covers the Cerro Verde Leaching Project

and nothing else. The objective of the study is to evaluate the feasibility of producing 105 million pounds per year of cathode, cathode copper, again, leaching. The study is based on test data results and operating experience obtained to date from leaching secondary sulfide ore at Cerro Verde.

There is no question that the Feasibility Study covers the Leaching Project and nothing else.

Now, according to Claimant--this is not correct--Claimant says the 1996 Feasibility Study envisioned conducting another Feasibility Study to determine the feasibility of building a Concentrator.

Well, a possible merely "envisioned" future Feasibility Study with unknown results cannot be stabilized. That Feasibility Study that they say that was "envisioned" did not yet exist at the time. In fact, just the opposite. Multiple Feasibility Studies--and you see the year: '72, '75, 77, '80, '85, '95, '98--concluded that it was "uneconomical" to build and operate a Concentrator Plant, among other reasons because there was no adequate supply of power and water.

From 1916 to the 1990s, the Cerro Verde mine primarily extracted oxide ore and had processed it through the leaching facilities. In fact, in 1997, Cerro Verde dismantled its small pilot concentrator, which was built in 1979 as a "proof of concept," and so, as of 1998, Cerro Verde had no Concentrator Plant at all.

In May 2004, for the first time in decades, a Feasibility Study concluded that it had become economical to build a Concentrator.

So, in October of 2004, Cerro Verde decides to build a Concentrator, which we refer to as "the Concentrator Project," and that is more than six years after the 1998 Stabilization Agreement was signed, and more than eight years after the 1996 Feasibility Study.

And so, the construction of the Concentrator Plant was not completed until the last quarter of 2006, eight years after the Stabilization Agreement was signed.

MINEM prepared the Report. MINEM had to approve the Feasibility Study and prepared the report

that would accompany that approval of the Feasibility Study, and it clearly stated: "The objective of the study is to evaluate the feasibility of producing 105 million pounds per year of copper cathodes in Cerro Verde's facilities, considering the results of the experimental tests and operating experience with leaching Secondary Sulfides in Cerro Verde." The report makes clear what is approved: A Feasibility Study about leaching.

Now, then MINEM adopts a resolution approving the 1996 Feasibility Study, and that resolution also shows the Government's understanding that the 1996 Feasibility Study and, in turn, the application for a stabilization agreement submitted by Cerro Verde, covered only the Leaching Project.

Just look at the resolution. It says that the Sociedad Minera Cerro Verde has submitted the Feasibility Study, the objective of--with the objective of production of copper cathodes, and then Article 1 approves the Feasibility Study submitted by Cerro Verde, and Article 3 decides to submit to the Office of the Vice Minister of Mines the Feasibility

Study that is approved in this resolution in order to sign the Tax Stability Agreement with Cerro Verde. Without this Feasibility Study, on the basis of this feasibility with Cerro Verde, they have to sign the Tax Stabilization Agreement--the Stabilization Agreement.

And then the--Cerro Verde shall communicate the completion of the execution of the investment---- investments committed in the Feasibility Study. This is important because the completion of the investment is one of the events that triggers the application of the stabilized regime, of the stabilized benefits. And so, the completion of those investments committed in the Feasibility Study triggers the--is one of the triggers of the stabilized--the application of a stabilized regime, and that's an important point, because I told you earlier, the Concentrator Plant was not envisaged until some six years after the Stabilization Agreement, and it was not--construction--remember, I told you, fourth quarter of 2006, eight years after the Stabilization Agreement was signed.

Here, it's clear: The investments relate to the Leaching Project, and their completion is what has to trigger--is one of the triggers of the stabilized regime.

So, to conclude on the Feasibility Study, MINEM's report accompanying its approval of the Feasibility Study and MINEM's resolution approving the Feasibility Study and, of course, the Feasibility Study itself all indicated that the Investment Project to be stabilized was the expansion of the Leaching Facilities in order to increase the production of copper cathodes. That's the Leaching Project and nothing else.

Let's look at the 1998 Stabilization Agreement itself. Here is Section 1, and it--look at the language. It talks about the application requesting that, through a contract, the guarantees of the benefits contained in articles so-and-so of the law be granted to it, in relation to the investment in its Concession Cerro Verde 1, 2, and 3, hereinafter "the Leaching Project of Cerro Verde."

Now, I'll get into that. They say it's just

a label, just a label. That means the mining unit, all the concessions--I'll come to that in a moment.

Look at Section 1.2. It says: "The owner attached to its application the technical-economic Feasibility Study."

"The objective of the Study"--says Section 1.3--"is to evaluate the feasibility to extend the production capacity of copper cathodes per year coming from the heap leaching of the copper mineral in the facilities of Cerro Verde." This is not a label, because the subsequent provisions refer explicitly to the Feasibility Study which covers the Leaching Project.

Now, you already saw that. I want to bring your attention to that as well.

There is a model stabilization agreement, and you see the excerpt on the left-hand side of the screen. That's the boilerplate that then the investor, the company that is seeking, that is applying for a stabilization agreement, fills in. And they say, "Well, we could have said anything." Ms. Chappuis--and we'll cross-examine her.

Ms. Chappuis says, "Oh, I could have just put in numbers." And if you--their argument is essentially: "It doesn't matter how we name it. We could have named it Juan Pérez or Jane Doe. It doesn't matter," because it covers--well, what does it cover? And that's important to--they cannot make up their minds, whether it covers all their concessions, all of the company, or all of their mining units. We will get into that in a moment, but look at what they took out.

First of all, they filled in the blank. They could have called this the "Mining Unit of Cerro Verde," as they argue now is the case. They could have called it--now, maybe if they had listened to Ms. Chappuis, they could have given it numbers. But they could have called it "the Leaching Project and every other----and all other future investments in the mining unit." They didn't. They called it "the Leaching Project."

Equally importantly, they took out the reference to the administrative economic unit--sorry, the Economic-Administrative Unit. They took that reference out. Now they argue that the 1998

Stabilization Agreement extends to the whole mining unit.

Well, the term "mining unit" is not defined in the law. They say it's equivalent to "Economic-Administrative Unit," which it was, and--well, again, I'll get into that: If it was, why did they take out the reference to Economic-Administrative Unit?

It was Cerro Verde that specifically limited the scope of the Agreement to the phrase "the Leaching Project of Cerro Verde." They could have said "Economic-Administrative Unit." They could have said "mining unit." They could have said "the whole mine," "everything that we do there we will be doing from now on for the next several decades." They could have said anything, and they said "the Leaching Project," and took out "Economic-Administrative Unit," and I'll show you why they did that.

So, the Mining Law regulations require an application by the mining company to create an Economic-Administrative Unit, and then requires a resolution from the Directorate-General of Mining of

MINEM to approve that application. So, we've given you on the slide the relevant articles of the law. The point is, you don't just say: "I have an Economic-Administrative Unit." You have to apply and it's approved.

Well, Claimant admits that Cerro Verde did not submit an application for an Economic-Administrative Unit. We refer you to their Reply. Cerro Verde did not and does not have an Economic-Administrative Unit, and that's why they took out that reference.

But they argue that this is irrelevant because--that they don't have an--I call it an "EAU"----they argue that that's irrelevant, but in our submission, this is highly relevant for a number of reasons.

First of all, the 1998 Stabilization Agreement cannot apply to Cerro Verde's alleged Economic-Administrative Unit if Cerro Verde doesn't have one. This is why Cerro Verde deleted that reference.

Two, the fact they didn't have an EAU

demonstrates why they have to invent the term "mining unit," which is not in the law, which is not defined in the regulations, and--but they have to invent it because they have to call what they have a mining unit in the absence of an Economic-Administrative Unit.

The fact that they don't have an EAU also demonstrates why Claimant and Cerro Verde have been inconsistent in their interpretation of the scope of the Stabilization Agreement. Sometimes they say that it covers the mining unit. Sometimes they say it covers Concessions 1, 2, and 3 and the Beneficiation Concession. Sometimes they say that it covers the mining company or the Mining Titleholder.

Well, which one is it? They cannot make up their minds, because they don't have an Administrative----Economic-Administrative Unit to be covered by the Agreement, and they took that term out.

And that's where their attempts to compare themselves with other mining companies that have EAUs fails, because if SUNAT applied the stabilization agreements of other mining companies that refer to Economic-Administrative Units to the

Economic-Administrative Units, well, that's fine. They have Economic-Administrative Units. Cerro Verde doesn't. So, what are they inviting SUNAT to apply the Stabilization Agreement to, or MINEM? To an Economic-Administrative Unit that does not exist.

Now, they are equating this Economic-Administrative Unit to--well, before that, let me--Claimant said this morning in the Opening, and I quote from the Transcript, Page 74:19, to 75:6 "Now, the form contract leaves a blank space in which the investor fills in a referral title for the Economic-Administrative Unit that is covered by the Agreement. You see it here, a referral title that Cerro Verde chose for its only EAU, and that title that was chosen was the title 'Cerro Verde Leaching Project'."

So, Counsel said this morning "the Cerro Verde Leaching Project" is a title for their one and only Economic-Administrative Unit. But, again, they don't have one, and they took the words "Economic-Administrative Unit" out.

It is also important--and I don't want to

interrupt my presentation and show you their slides, but you will see eventually Claimant's Slide 72, when they were talking about Tintaya and the alleged inconsistent treatment, and I refer you to what they have on Slide 72, a quote from SUNAT's assessment resolution, that says: "The calculation of taxes which includes income tax prepayments payable by the Mining Titleholder must be made separately for each of the Economic-Administrative Units for which it has signed"--"it" meaning Tintaya--"for which it has signed a tax stability agreement."

This is a quote from Claimant's Slide 72, a quote from a SUNAT resolution that they say, well, look, in the case of Tintaya, they apply the stability regime on the basis of an Economic-Administrative Unit. Well, again, maybe, but they don't have an Economic-Administrative Unit, and they are saying: "Well, our mining unit is an Economic-Administrative Unit." They didn't apply for one, they didn't get one.

Now, to the extent that there is any question who fills in those blanks and who takes text

out, it was the investor. It was the company, the mining company, that seeks the stabilization agreement, and we have evidence that we have put on the screen. But Counsel essentially admitted to that this morning. It was Cerro Verde that filled in the name and that took out the words "Economic-Administrative Unit," so I think there is no question that it was not done by the Government.

And, by the way, there is no witness presented by Claimant who negotiated that Stabilization Agreement to explain why this was done.

Now, they all say the Government has not put forward a witness, either. It's not our burden to show what is the scope of Stabilization Agreement. It's their burden to show it, and they have not offered a witness who can explain why they chose this name and why they took out the words "Economic-Administrative Unit," but we believe the answer is clear: They don't have an EAU.

It's also instructive to look at their other--they have two other Stabilization Agreements, and in the '94 Stabilization Agreement, they--sorry.

This was--yeah, okay.

The '94 Stabilization Agreement talks about--we are showing you again, sorry, the model and how close one ended up, what words they took out.

But what I wanted to show you on the next slide is the difference between the '94, '98, and 2012 Stabilization Agreements.

So, look at the '94. They called it "the Cerro Verde Project." Now, you heard arguments; if we called it again the "Cerro Verde Project," it would have been repetitive. It's as if the two Stabilization Agreements cover the same thing.

Well, one, it's inconsistent with their argument that these words don't matter. But, two, they could have called it something else. They could have called it "the Cerro Verde Mining Project." They could have come up with a name that made it clear that this Stabilization Agreement, the '98 Stabilization Agreement, extended beyond the Leaching Project, and they didn't.

The 2012 Stabilization Agreement talks about the Cerro Verde Unit Expansion Project. Well, why

didn't they call it the Leaching Project and future Investment Projects related to the mine, or whatever? They didn't. They did that in '94. They didn't do it in '98.

Now I will go quickly through the other clauses of the Stabilization Agreement which support the Peru's interpretation of Clause 1.

So, Clause 2, the General Director of Mining approved the Technical-Economic Feasibility Study, which confirms our point that it is the Feasibility Study that defines the scope of the investment project and, therefore, the scope of the Stabilization Agreement.

Clause 3, mining rights. According to what is expressed in Clause 1.1, the Leaching Project of Cerro Verde is circumscribed to the concessions related to Exhibit 1 with the corresponding areas. Exhibit 1, which you can look at--we didn't put on the screen--it identifies the geographic area of the Mining Concession and the Beneficiation Concession.

Claimant will tell you, and has told you, this is the only clause you should look at, because it

says, in their interpretation, the stability regime applies to Concessions 1, 2, and 3. Well, this provision makes it very clear that the Leaching Project cannot extend beyond the geographic area of these concessions, but it doesn't mean that the stability regime applies to all of the concessions. Look at the verb. It's a restriction: "Circumscribed." It's not a definition or a statement of inclusion. It doesn't mean that the scope of the '98 Stabilization Agreement extends to any project within the geographic areas of these concessions. It says the Leaching Project is circumscribed by those concessions. It does not go outside of the geographic areas of those concessions. That's all that it says.

Now, another argument they make on the basis of Clause 3 is the second paragraph that you see on the screen, that: "What is provided in the above paragraph does not prevent the Owner from incorporating other mining rights to the Cerro Verde Leaching Project after approval by the General Directorate of Mining." So, they say, this means we can incorporate the Concentrator Project into the

stabilized regime.

Well, look at the text, though. The text explicitly refers to incorporating other mining rights to the Cerro Verde Leaching Project. The Concentrator Plant is not a mining right incorporated into the Cerro Verde Leaching Project.

Perú's witness Mr. Tovar explains that this clause simply provides that Cerro Verde's Mining Concessions, if they were expanded to include new pits or new land with MINEM's approval, they could--then they could extend the processing at the Leaching Facilities of secondary sulfide ore from this new land, and that would also be stabilized. But it has nothing to do with the Concentrator Project.

And, in any event, Cerro Verde never sought any approval for "incorporating other mining rights to the Cerro Verde Leaching Project." We will address their claim that the expansion of the Beneficiation Concession to cover the Concentrator Plant somehow included the Concentrator Plant into the stabilized regime, but they never actually requested incorporating other mining rights into the Leaching

Project pursuant to that clause.

Now, the model stabilization agreement also includes a reference to an Economic-Administrative Unit in the third clause, and that reference was also deleted by Cerro Verde. So, again, if it was a matter of including new mining rights into the Economic-Administrative Unit, that would have been a different story. They took that language out, and so Clause 3 talks about new mining rights to be included into the Leaching Project.

And so, the 1998 Stabilization Agreement reflects the specific circumstances regarding where the Project that is subject to the Agreement is located, in those circumscribed by those three concessions, and Clause 3 actually confirms that.

And, again, it was Cerro Verde that took the words "Economic-Administrative Unit" out of the model agreement.

Now, let's keep going.

The 1998 Stabilization Agreement, Clause 4, it talks about the investment included in the Feasibility Study and describes what they are in some

detail. Now, their argument is, oh, the only thing--there was a minimum requirement of investment to qualify for a stabilized regime, and all the Feasibility Study did was make sure that Cerro Verde qualified, that they made the requisite investment.

Well, if that were the case, then the Feasibility Study did not need to be detailed, to explain in detail exactly what work would be done, exactly what would be constructed. And here is Clause 4 that explains what the Feasibility Study actually included, and it's very specific. It describes the works, the works pending execution.

Then they can be--it is required, if you see in 4.2--if it's required to make any change, it can be done with respect to the works pending execution, provided that the final object of the Investment Plan is not affected. So, if they wanted to amend anything, they could, within certain conditions, provided that the final object of the Investment Plan, the Feasibility Study, is not affected. The final object is the Leaching Project.

So, they weren't allowed to build something

completely different and introduce it somehow into the scope of the Feasibility Study and the 1998 Stabilization Agreement.

And here in 4.3, you see the detailed description of the work, and 4.4 also explains what happens with the execution of the Investment Plan. I mean, clearly none of that covers the Concentrator Project.

The fifth clause, it talks about the execution of the Investment Plan--again, the Investment Plan that--remember, all those references to "Investment Plan," there was no Investment Plan at the time to build a Concentrator Project.

Clause 6, the commencement of production. The date of entry----It defines the date of entry into production, which is 90 days of continuous operation of the Cerro Verde Leaching Project. Again, this--what they say is an irrelevant label appears throughout the 1998 Stabilization Agreement, and it talks about the entry into production, which is related to when the Leaching Project becomes functional, and the date of the commencement of the

production is fixed. It has to be communicated to MINEM. Why? Because it's important in terms of triggering the application of the stability regime, as we'll see in a moment.

And so, what triggers the application of the stability regime? One of the triggers is the completion of the Leaching Project. Nothing to do with the completion of the Concentrator Project eight years later.

Seventh clause, it talks specifically, again, about the Investment Plan under the Feasibility Study and the "conclusion of the Project"--the conclusion of this Project, not any future project not yet contemplated, let alone concluded. And it talks about amendments or modifications to the Investment Plan: One, to the existing Investment Plan; and, two, those modifications that can be done within 120 days, not six or eight years later.

Clause 8. Recall that under Clause 6.2, as we just saw, Cerro Verde must inform MINEM about the date of the commencement of production. Thus, the period of stabilization begins after the investment is

completed--that is, the investment set out in the Stabilization Agreement, after an investment is completed.

Again, clearly, this is the Leaching Project, not the Concentrator Project. Everything in the Stabilization Agreement is tied to the specific approved and completed investment, and the specific approved and completed investment is the Leaching Project.

So, it's not just the label they call it in Section 1.1. Everything is tied to the Leaching Project in all the clauses of the Stabilization Agreement.

Now, as required--and this is important: As required by Clause 6 and 8, Cerro Verde informed MINEM, as you see on the screen there, about the commencement of production of the Leaching Project for purposes of marking the start of the stabilization period. And here is what they say. You see the highlighted text on the screen: "We inform you that on March 31, 1998, the Project for which the contract was entered has completed the 90th day of continuous

operation, and we note the foregoing for purposes of establishing the date of entry into production as set forth in Section 6.1."

So, they say, "Now we trigger the application of the stability regime." Why? Because the project for which the contract was entered into has completed the 90th day of continuous operation. Can this refer to the Concentrator Project eight years later? Of course not. It refers to the Leaching Project, the Project for which the contract was entered into.

Now, to the extent there may be an issue of translation here--and we have that in the footnote, and I'm not going to lecture you on the subtleties of the Spanish language, because at least two Members of the Tribunal know those nuances way better than I can, but I will point out that the Spanish translation talks about "el proyecto acceso contrario el contrato," and we have translated that as "the Project for which the contract was entered into." You will form your own view of the correctness of the English, but rest on the Spanish; it says the same thing.

We are not going to show you in detail Clauses 9 and 10 because they are lengthy. Claimant argues that those provisions help its case. They don't.

I want here to make sure there is no confusion because Claimant, intentionally or unintentionally, has created one.

We talk about the scope of the Stabilization Agreement in terms of what Investment Project is covered or what is covered, whether it's the concession, the mining unit, the company or the individual project. That's one meaning of scope. There is another concept of a scope of the Stabilization Agreement, and that is what are the benefits? What is the stabilized regime? That's a different concept, and Clauses 9 and 10 actually talk about what the benefits are. Clause 9, in particular, it says what is stabilized, what benefits are stabilized, what was the regime that was stabilized at the time. They describe the stability benefits. And they don't mention or refer to the Concentrator Project. And so, we don't see how Clauses 9 and 10

help Claimant's case at all. And those stability benefits, of course, frozen as of the time of the Feasibility Study, cannot apply to the Concentrator Plant. Remember, the Feasibility Study was prepared in 1996. The Concentrator Plant was not completed until 10 years later.

All right. So, to conclude our discussion of the Feasibility Study and the 1998 Stabilization Agreement, the terms of the Stabilization Agreement specifically limit the scope to the Project defined in the Feasibility Study, and that's the Leaching Project. The Stabilization Agreement refers to a specific project, the Leaching Project, intended to process a specific type of ore and produce a specific type of copper and copper product. The Agreement does not provide that every investment carried out in Cerro Verde's concessions or so-called "mining unit" is covered. It doesn't say that. The Agreement does not provide that the Leaching Project also includes the construction of a Concentrator Plant to process Primary Sulfides. Nothing in the Agreement provides that the stability guarantees would extend beyond the

Leaching Project and cover the Concentrator Project.

And we submit the text of the 1998 Stabilization Agreement is determinative of the scope of the Agreement.

Our Topic Number 2, we will discuss Peruvian law and how it applies, and we argue the Stabilization Agreement's language and the Feasibility Study, which is an integral part of that Agreement, are dispositive. Well, to minimize the importance of the Stabilization Agreement, Claimant's argument is--and we'll come to that--it's not--the Stabilization Agreement doesn't matter. It's what the law says. So, we have to go through the law. I will tell you, after I go through the law, that all this is irrelevant because the Peruvian courts have already interpreted the law, but before I get there, I will tell you why the law doesn't help Claimant and supports Perú's position.

So, let's start with the law and then I'll talk about the regulations. On this slide you just see the--to remind you of how the law came about. It was various decrees that eventually in 1992 were

included in Supreme Decree 014, which was the so-called "Single Unified Text." And Title Nine of the Mining Law governs the 1998 Stabilization Agreement. So, let's start with the Mining Law in Article 82. So, Article 82 provides that Stabilization Agreements are available to promote and facilitate financing of specific mining projects. Look at the words "mining projects." It doesn't talk about mining units. It doesn't talk about concessions, doesn't talk about companies, doesn't talk about Economic-Administrative Units. It is specific mining projects.

Article 82 also provides that the stability benefits take effect only after the mining company has executed the Investment Project that was detailed in the Investment Plan. And this would not be necessary if the stability guarantees applied to the entire mining company or to the entire so-called "mining unit." So, their interpretation is not consistent with the text of Article 82.

Article 83 provides that in order to be able to apply for a 15-year stabilization agreement, the

Mining Titleholder must prepare an "Investment Program," and it provides a minimum. So, again it is tied to an Investment Program.

Article 83 also provides that the stability benefits apply "exclusively" to the activities of the company in whose favor the investment is made. So, a couple of points on that.

The benefits are limited to the mining company in whose favor the investment was made, but they don't extend to all of its investments. It doesn't say, shall apply exclusively to all the activities of the mining company in whose favor the investment is made.

So, we say it doesn't apply beyond that company, but it doesn't mean it applies to everything that that company does. You say, well, then, why is this provision, and particularly the word "exclusively," necessary?

Well, for a number of reasons, and one reason was explained by Counsel this morning, another important reason is the Peruvian Government didn't want to apply those benefits to the parent company

that may make the investment. It won't enjoy the benefit.

In this case, say, Phelps Dodge, the predecessor of Freeport. The benefits are not granted. The benefits are granted to Cerro Verde, the Peruvian company in whose favor the investment is made, exclusively to that company and not to any other company. That does not mean that it covers all the investments made by that company or in favor of that company.

And if you have any doubt about that, this is confirmed by Article 84, and this is what Article 84 says. It explains that a stabilization agreement will provide the guarantees including in the Mining Law in relation to each Investment Project, according to the characteristics of each project. So, it's based on an individual project, not company, not mining unit, not concession.

Article 85, which you see on the screen, provides that in order to obtain stability benefits, the mining company must submit a Technical-Economic Feasibility Study, which must be approved. Well,

again, if this is just to make sure that they cover the minimum investment to qualify, there would be no need to submit a multiple-page Feasibility Study explaining in great detail exactly what needs to be done, what is planned to be done, what the Investment Plan or the Investment Project is.

Article 85 also provides that the stability regime is triggered by the approval of the Feasibility Study discussed earlier. So, just to make sure you understand, the stability regime is frozen at the time of the Feasibility Study, and then the Agreement applies when the investment is completed. None of this can cover the Concentrator Project.

The conclusion under the Mining Law is the company must submit a Feasibility Study describing the Investment Plan for which it is seeking stability benefits. That Feasibility Study must be approved by MINEM. The applicable laws are stabilized as of the date on which the Feasibility Study is approved, and once the mining company qualifies for and enters into a stabilization agreement, the stability benefits do not take effect until that project is completed and

executed. Again, that cannot refer to any future Investment Project.

And the stability benefits apply exclusively to the activities of the Investment Project described in the approved Feasibility Study and for which the investment was made.

So, under law, the scope of the Stabilization Agreement is limited to the specific Investment Project described in the approved Feasibility Study and identified in the Agreement.

Now, according to Claimant, the scope of the Stabilization Agreement is irrelevant. There is a quote from their Reply. They say, "It's the law." Nothing more and nothing else. So, the Stabilization Agreement and its scope are irrelevant, essentially. It's the law that says to whom the benefits apply and how and when and what scope, et cetera. If that were true, there would be no need to submit a Feasibility Study to define the Investment Project, there would be no need to obtain approval for that Investment Project, not even a need for a stabilization agreement to refer to a specific Investment Project described in

the Feasibility Study. There would be no need for any of that, but that's not the case. This cannot be the case.

Claimant argues that all the activities of a particular mining company within its concessions or within a "mining unit" are covered by a stabilization agreement, even, as in this case--even if the Stabilization Agreement refers to a specific Investment Project. Disregard that, they say.

But that cannot be the case because, as we saw, the Mining Law refers on numerous occasions to specific Investment Projects described in Feasibility Studies. So, the Mining Law sets the parameters, and they tried to make this morning the point that it sets the "outside boundaries." It sets the outside parameters. It sets the parameters of who can apply for that benefit, mining titleholders, not any type of company; what types of investments can benefit, so investments in mining activities, not other investments; where those investments can be made, within concessions, not outside of concessions; what legal regime will be stabilized. Yes, it provides the

parameters of what can be done. But the specific Investment Project that benefits from a specific mining stabilization agreement is defined in that agreement, not in the law. The law cannot identify a specific Investment Project that a company wants to develop. It's up to the company to say what they want to do, and that's why they take the model stabilization agreement and fill in the blanks.

So, it is the company, not the Mining Law, that defines what the Stabilization Agreement applies to, and that definition is set by cross-referencing and incorporating the Feasibility Study as required by Article 85 of the Mining Law. And they want you to ignore in this case the Feasibility Study and say, well, "Leaching Project" is just a label.

And so, the scope of the 1998 Stabilization Agreement is expressly limited to the specific Investment Project, one, defined in the agreement, not just in Section 1.1, as we saw, but throughout the Agreement, described in the 1996 Feasibility Study, which, again, is an integral part of the Agreement.

So, we heard again this morning the argument

that we really don't understand, which is that in 2014, Perú amended Article 83 by adding Article 83(b), and they say, well, this was--they said it narrowed the scope of Article 83, therefore, this is an admission that Article 83 was broader.

Remember, the initial text of Article 83 says on top "the effect of the contractual benefit shall apply exclusive to activities of the mining company." And we talked about that. And they say, well, now, what they did was narrowed it, which means that it was broader before.

Well, it didn't, because look at the text that was added. "Provided that the said investments are expressly mentioned in the Investment Program contained in the Feasibility Study that is part of the Stability Agreement." They make their argument on that basis and forget the rest which is, "or the additional activities that are performed after the execution of the Investment Program, provided that such activities are performed within the same concession where the Investment Project that is the subject matter of the agreement entered into with the

State is being developed."

So, this expands the scope to additional activities, and it did not narrow, it did just the opposite. It expanded it, which shows that it was narrower before, and if you have any doubt, look at the statement of reasons which the Executive Branch issued explaining the purpose of the amendment. This was an amendment introduced to Congress by the Executive Branch, and they stated the reasons, and this is what they said. They said, "pursuant to the legal framework in force, it would not be possible to stabilize preexisting assets or investments, nor those investments that did not appear in the Feasibility Study that is attached to the Stabilization Agreement."

Well, now, with this amendment, you can stabilize additional activities that are carried out after the execution of the Investment Program. You couldn't do it before. Now you can, after the 2014 Amendment. Clearly this is an expansion of the scope, which clearly shows it was narrower earlier. We think that is dispositive of this argument. That's the law.

Let's talk about implementing regulations.

Article 18. So, Article 18 requires certain information to be submitted in writing for companies to take advantage of the stability benefits, and one of those requirements, again, is the Feasibility Study for the purposes of Article 82 of the Single Unified Text of the Mining Law and the Investment Program with the completion dates in the case of Article 78 of the Single Unified Text. So, that's what they have to submit, the Feasibility Study about the specific project and the Investment Program. So, nowhere in the Law or the Regulations there is a reference to "Project" or "programs." Here is one. A specific Investment Program is required. And the completion dates are important, and I told you why, because they are one of the triggers of the application of the stability regime.

Article 19 imposes very specific requirements on what the Feasibility Study should prove, thus delineating the Investment Project that is proposed to be made. You see--and I'm not going to go through it--the requirements of what should be

included in the Feasibility Study. The information to be included in the Feasibility Study allows the specific Investment Project for which the study is prepared and which will be stabilized to be entirely identifiable and separable from any other Investment Project conducted within the same concession.

The language of Article 19 puts an end to Claimant's unsubstantiated theory that "project," as used in Clause 1.1 of the 1998 Stabilization Agreement, is merely a synonym of "concession" or a "mining unit." Because the information included in the Feasibility Study describes a specific "project," an Investment Project, as indicated in Article 19. The Government needs to know not only that the investor has met the minimum requirement for investing to qualify for stability benefits, but exactly what this investment is, what this Investment Plan is, in great detail.

Article 22, which you see on the left-hand side--and you see Article 83 of the Mining Law on the right-hand side--when it--when Article 22 of the Regulations is read together with Article 83, it

refers to a specific investment pursuant to the Investment Program approved by the Government. And it is, of course, consistent with Article 83 of the Mining Law, which requires a specific Investment Program and limits the parameters that govern the stability benefits "exclusively" to the activity of the mining company.

Now, Claimant reads the first paragraph of Article 22 as if it refers to all of a titleholder's investments in all of its concessions. But it doesn't say that. It says exclusively in the investment that it makes in the concession. Not all the investments and not all the concessions. So, when you read it that way, you see it's consistent with Article 83.

Claimant also reads the second paragraph of Article 22 in isolation. It says "concessions or Economic-Administrative Units shall keep independent accounts and reflect them in separate earning statements." Well, again, you have to read that together with Article 83 of the Mining Law, which grants stability to Investment Projects. But you also have to read it together with Articles 24 and 25 of

the Mining Regulations, which I will show you in a moment.

So, here is what Article 24 says. "The Director General of Mining shall submit to the Office of the Vice-Minister of Mines the record and the Directorial Resolution approving the Feasibility Study or Investment Program, as the case may be, which will serve as the basis to determine the investments that are the subject matter of the agreement in order to proceed with signing the original prepared in accordance with the model approved pursuant to Article 86." So, it clearly says the Feasibility Study or Investment Program which will serve as the basis to determine the investments.

Now, again, there is a translation dispute. We have given you our translation and Claimant's translation. The Members of the Tribunal will decide which one is the correct, but you see that Claimant has translated the word "subject matter" in the underlined text as "set out." And we believe it's incorrect and misleading because the word in Spanish is "materia del contrato," and we've translated that

as the "subject matter of the contract," which indicates that the Feasibility Study determines the investments are the matter or the subject matter of the Stabilization Agreement. And that, we think, is important. So, it's the Feasibility Study that is the basis for determining the specific investment that would be stabilized under the Stabilization Agreement, and that will become the subject matter of the Stabilization Agreement, and that's what the Regulations say.

And then, finally, Article 25, mining companies are required to have available for the tax authorities documents that demonstrate the application of the stabilized regime to the specific Investment Projects, new investments, or expansions for which the Stabilization Agreement was approved.

So, while Article 22, which we showed you earlier, requires separate accounting for separate concessions or Economic-Administrative Units, Article 25 explains that separate accounting is required for specific stabilized Investment Projects, new investments, or expansions.

If, indeed, the stabilization agreements automatically applied to the whole concessions or the whole Economic-Administrative Units, as Claimant asserts, Article 22 would be sufficient and Article 25 would make no sense, or, at best, would be superfluous. But it's there, and it requires separate accounting, project by project.

And indeed--and that's very important--Cerro Verde was capable of separating the accounts and, in fact, did separate the accounts between the Leaching Project and the Concentrator Plant. Don't say it was not possible. They did it.

According to Claimant's witness Mr. Aquiño, Cerro Verde's Chief Engineer, Cerro Verde separates the accounts, including shared costs, between the Leaching Project and the Concentrator Plant. In his witness statement, he gives an example of what he calls a "typical" calculation performed by Cerro Verde. And you'll see that, contrary to Claimant's allegations in this Arbitration, separating the accounts between the Leaching Project, which was the stabilized project, and the Concentrator Project,

which was the nonstabilized project, was not only possible, contrary to their statement, but Cerro Verde actually did it. They calculated separately the costs and the profits of the two projects.

You see "flotation," which is Concentrator, and then "leaching." And the calculation----the typical calculation separates the costs and the profits.

Now, there are amendments to Article 22 of the Regulations in 2019 to make it consistent with the amendment of the Mining Law. We showed you the 2014 Amendment of Article 83 of the Mining Law, which expanded, in our submission, the scope of the mining stabilization agreement to cover new investments. Article 22 was amended simply to reflect in the Mining Regulations that 2014 Amendment to the Mining Law. That amendment doesn't--it doesn't help Claimant's case at all.

Article 2 of the Mining Regulation, Claimant relies on that provision which you see on the screen. It sets out the parameters that govern the application of the stability regime, which cannot extend beyond

concessions or units within which there are investments covered by a stabilization agreement. So, yes, the stability regime does not extend beyond concessions or units, Economic-Administrative Units, but Article 2 does not say that stability benefits extend beyond the Stabilization Agreement to automatically cover the whole concession or the whole unit. It doesn't say that. And, again, this provision must be read together with the Mining Law, because it cannot grant rights beyond what is provided in the Mining Law itself, and you saw that the Mining Law limits the stability regime to Investment Projects or Investment Plans or investment programs.

So, the conclusion on Peruvian laws and regulations is that the legal framework that was and is applicable to Stabilization Agreement--and that was explicitly referenced in the 1998 Stabilization Agreement, shows that the benefits granted under these agreements, the Stabilization Agreements, are limited to the specific Investment Project defined in the Feasibility Study. The 1998 Stabilization Agreement covered the investment defined in the Feasibility

Study and the Agreement itself, and no question that was the Leaching Project.

And so, Perú's interpretation of the 1998 Stabilization Agreement as being limited to the Leaching Project is fully consistent with the terms and the logic of the Agreement itself, but also with the Mining Law and the Mining Regulations.

By contrast, Claimant wants you to believe that the Stabilization Agreement that covers a specific Investment Project based on a specific Feasibility Study nevertheless extends to all of a company's activities in all of its concessions.

Claimant wants you to believe that in 1998, when Cerro Verde entered into a Stabilization Agreement for its Leaching Project, Perú agreed to stabilize any and all future investments in Cerro Verde's concessions, without Perú knowing anything about what those future investments would be.

Claimant wants you to believe that Perú granted, as of 1998, stability benefits with respect to all future revenue streams relating to Cerro Verde's concessions, without knowing what those

revenue streams would be.

So, they get huge tax benefits based on something that is unknown to Perú, what they'll be doing in the next decades.

Claimant's interpretation, we submit, is contrary to Perú's Mining Law and Regulations, and contrary to the specific terms of the 1998 Stabilization Agreement.

The Peruvian courts. Cerro Verde has litigated the matter regarding the scope of the 1998 Stabilization Agreement all the way to the Peruvian Supreme Court. Cerro Verde had fully availed itself of the opportunity to seek judicial review, and absent a denial-of-justice claim, we invite this Tribunal to respect the Peruvian courts' decisions on matters of Peruvian law. And I emphasize "on matters of Peruvian law." Cerro Verde has not claimed any denial of justice with respect to the Peruvian courts' decisions.

And you see on the screen the submission of the United States of America, which says "as a matter of customary international law, international

tribunals will defer to domestic courts interpreting matters of domestic law, unless there is a denial of justice."

"It is well-established that international arbitral tribunals, such as those established by disputing Parties under the U.S.-Perú TPA Chapter 10, are not empowered to be supranational courts of appeal on a court's application of domestic law."

"A fortiori, domestic courts performing their ordinary function in the application of domestic law as neutral arbiters of the legal rights of litigants before them are not subject to review by international tribunals absent a denial of justice under customary international law."

"Were it otherwise, it would be impossible to prevent Chapter 10 tribunals from becoming supranational appellate courts on matters of the application of substantive domestic law, which customary international law does not permit." But this is what Claimant is inviting you to do.

After SUNAT's Claims Division and the Tax Tribunal confirmed the 2006-2007 and then the 2008

Royalty Assessments, Cerro Verde challenged those assessments and the corresponding Tax Tribunal resolutions before the Peruvian courts and lost.

I will go through first the 2008 Royalty Assessment, and briefly the history. The first instance court, when they challenged that assessment, held in Cerro Verde's favor, annulling the 2008 Royalty Assessment. And this is the only court decision that has been issued in their favor, but that was overturned.

The Superior Court of Lima, which is the appellate court, revoked that decision and held that the scope of the 1998 Stabilization Agreement was limited to the Leaching Project and that Cerro Verde had to pay royalties with respect to the Concentrator Plant, and you see that language on the screen.

Cerro Verde challenged that decision of the Superior Court of Lima before the Supreme Court, and the Supreme Court ruled against Cerro Verde, holding again that the 1998 Stabilization Agreement did not cover the Concentrator Project.

And, yes, we'll show you a few excerpts from

those decisions, because the argument we heard this morning is there was never a dispute about a breach of the Stabilization Agreement. What the Peruvian courts are doing here is they are interpreting the scope of the 1998 Stabilization Agreement and Peruvian laws and regulations to come to the conclusion that the 1998 Stabilization Agreement covers only the Leaching Project and not the Concentrator Project.

And you see here they talk about Clause 1 of the Stability Agreement, and they say that the systematic interpretation of this Agreement based on the content of the Feasibility Study establishes, based on what the content of the Feasibility Study establishes and of the Investment Plan that gave rise to the Stability Agreement, does not allow to conclude that the Primary Sulfide Plant was part of the Cerro Verde Leaching Project, since none of the clauses of the Stability Agreement allude to the investment in general or to the entire Mining Concession, Cerro Verde 1, 2, 3, as the appellant contends. Clause 1.1 of the Stability Agreement only shows that the application to guarantee the benefits to the appellant

was made in relation to the investment in its concession, not in a generic fashion, but rather in terms of what the Feasibility Study and the Investment Plan included, which did not specify that the Primary Sulfide Project, which is the Concentrator Plant, was an infrastructure project of the Cerro Verde Leaching Project.

The Supreme Court rejected Cerro Verde's argument that the clauses invoked by Cerro Verde state otherwise, and say the clauses invoked by Cerro Verde are not suitable for establishing the object of the Stability Agreement because Clause 3--that's the clause they rely on in this Arbitration, and this is what the Supreme Court says. Clause 3 of the Stability Agreement governs the mining rights that form part of the Cerro Verde Leaching Project.

It should be noted, the Supreme Court says, that the Cerro Verde Leaching Project is limited to the Mining Concession Cerro Verde 1, 2, and 3, as well as the Beneficiation Concession, limited to those concessions. But that does not imply that the sulfide plant has been considered within the investment plan

of the Cerro Verde Leaching Project, because neither the Feasibility Study in the first place, nor the Investment Plan in the second place, include it, include the Concentrator Plant.

There is no evidence of the Appellant initiated the respective action to include this plant, the Concentrator Plant, within the Investment Plan of the Cerro Verde Leaching Project as stipulated in Clause 4.2. So, the Supreme Court addressed that argument too. And it said the "Investment in its concession" is any "investment" that includes the Feasibility Study and that the Investment Plan covers. They only extend to the scope of the benefits arising from the Stability Agreement, which can be interpreted based on the stipulations in Clause 1.3, 4.2, and Clause 7.2.

So, the Supreme Court rejected the arguments that they have presented before you in this Arbitration and agrees with our interpretation of the Stabilization Agreement and Peruvian law.

And, remember, their argument that the Stabilization Agreement doesn't matter; it is what the

law says: No more, no less. Well, here is what the Supreme Court said: "The purpose of the contractual design is to pursue this functionality of the investment that the investor implements in order to earn the benefits granted to it, likewise providing with that identification and understanding that the Government is in the right position to supervise and oversee which goods, services, and rights to which it will have to apply the stabilized benefits for the Owner of the mining activity."

Perhaps the translation is not the most eloquent one, but it makes the point I made earlier: The Government needs to know what revenue streams it is stabilizing, what exactly will be done in these concessions, in this unit, or whatever you call it. It is not just anything that we'll do in the future in our concessions or in our mining unit. It is something specific: Which goods, services, and rights will be covered.

And here is what the Supreme Court says about Clause 2--sorry, Clause 10 of the Stabilization Agreement. It "only contains one rule," it says,

"limiting the effects that the legal regulations will have, which are issued after the approval date of the Feasibility Study of the Cerro Verde Leaching Project, but not so for those corresponding to the Investment Project which gave rise to the sulfur plant," which is the Concentrator Plant.

And, again, I showed the Article 25 of the Regulations, and the Supreme Court interprets that article as well, and it says "Article 25 of the Regulations imposes on mining activity owners the duty to maintain at the disposal of the tax authorities the schedules which demonstrate application of the tax systems granted to the expansion of 'facilities' or 'new investments' that contractually enjoy the stability guarantee. This demonstrates the existence of different treatment given to an investment and new investments within the system regarding the guarantees and measures to promote investment in mining activities." A different tax treatment of existing investments and new investments. And we know what the existing investment is, the Leaching Plant, and the new investment is the Concentrator Plant.

And, again, this is--the Supreme Court says Article 84 of the Law "introduces the criteria into the configuration of the benefits that will be guaranteed to the mining activity's owner as a result of the Stability Agreement, of having to take into account 'each project's specific characteristics.'"

And this relates only to the activities that are directly related to the investment made, meaning, again, the Leaching Project.

And what we say is that this statement of the Supreme Court is an authoritative interpretation on Articles 83 and 84, which we showed you earlier, and they support Perú's interpretation of those provisions in this Arbitration.

Here is the Supreme Court's answer to Claimant's argument that the Feasibility Study only serves to make sure that the precontractual requirement of a certain amount of investment is met, and the Supreme Court says, not so. The "Feasibility Study," it says, "acts not only as a requirement for signing the Agreement but is also a technical management instrument that is required to assess and

measure the investment to be made by the operators of the mining activity."

"The content of the said Feasibility Study is a determining factor in evaluating the impact of the Legal Stability Agreement and the operation as a whole of the contractual setup proposed to the State to supply the assurance of stability."

So, the Feasibility Study is not just, oh, we've invested the requisite amount, now we qualify. It's a lot more than that. It actually defines what the Investment Project is.

And here, on this quote, the Supreme Court interpreting, as you see on the right-hand side, Article 83, says--into the middle of the quote in Paragraph 166--that the Legal Stability Agreement--the Supreme Court finds that the argument supporting the Claimant's case--well, Cerro Verde's argument before them is unfounded, since the scope of the Legal Stability Agreement depends on the type of Legal Stability Agreement that the mining activity owner enacts and "will reside exclusively with the mining company's activities for which the investment has been

made," the activities for which the investment has been made.

This does not mean that the contractual benefit, the Supreme Court said, will go to any of the mining activities that a mining company performs, but, rather solely to the activities resulting from the investment made. That is why the rule introduces the term "exclusively" in that paragraph.

And look at Paragraph 167 of the Supreme Court decision. It confirms that the word "exclusively" in Article 83 of the Mining Law means that the activities that benefit from the Stabilization Agreement are only those related with the investment that is the subject of the Agreement, not any activities of the mining company.

And the Supreme Court interprets Article 83 of the Mining Law as extending stability benefits only to the investment described in the Feasibility Study: "The scope of the contractual benefit extends solely to those activities related to the investment according to what was set forth in the Feasibility Study." And this makes perfect sense, as we've

discussed already.

The contractual benefit, the Court says, resulting from the Stability Agreement. "The contractual benefits are not as broadly enjoyed as the appellant suggests, which is why it isn't possible to reach the conclusion that the benefit extends to every investment the mining company makes in the concession that is the subject of the Stability Agreement but, rather, only to that investment in the concession related to the Cerro Verde Leaching Project, according to what is established in the Technical-Economic Feasibility Study."

The Supreme Court interprets Clause 7. And, again, it says the contractual benefit extends only to the activities for which the mining company made the investment, which are detailed by the Feasibility Study. And any amendments can be made only within 120 days, not six or eight or 10 years later.

Yes, we did go into some detail, because the language of the Supreme Court decision is eminently clear and unambiguous, and it interprets the 1998 Stabilization Agreement and Peruvian laws and

regulations, and you see how clear and categorical its conclusions are.

Let me briefly go over the decision of the Superior--Superior Court of Lima on the 2006-2007 Royalty Assessment, and the history is the first instance court ruled against Cerro Verde. Cerro Verde appealed that decision to the Superior Court of Lima, the appellate court, the Superior Court ruled against Cerro Verde, finding that the 1998 Stabilization Agreement did not cover the Concentrator Project. And that decision is final. And we'll talk briefly about why it's final.

But, again, very briefly, the Superior Court of Lima reached exactly the same conclusion, and I will go through this relatively quickly because it is no different in terms of its clarity and in terms of how categorical those conclusions are, that support Perú's interpretation of the 1998 Stabilization Agreement and Peruvian laws and Regulations in this case.

Here is an excerpt that interprets, among others, Clause 1 of the Stabilization Agreement and

says: "This Agreement cannot be made extensive to other investments made subsequently, as is the case of the Concentrator Plant."

Here is the interpretation of Clause 3, which Claimant says in this Arbitration supports their case. It says that the contractual guarantees established in the Stabilization Agreement applies solely to the Investment Plan, titled "Cerro Verde Leaching Project," as well as to any modification, expansions, corroborated inserting into that plan, as long as it pursues the same objective," but not to other investments.

And that the investment subject matter of the Agreement is limited to the Leaching Project. Another excerpt.

"The petitioner"--this is Cerro Verde--"failed to prove that the competent authority, which is the General Directorate of Mining, confirmed and included the modifications and/or expansions entailed in the new Investment Plan in the original Investment Plan, titled Cerro Verde Leaching Project, in compliance with the provisions of Clause 4 of the

Agreement of the 1998 Stabilization Agreement. Consequently, since those investments are obviously different"--they're talking about the Concentrator Plant--"in terms of both purpose as well as timing, the administrative stability guarantee granted for the Investment Plan known as 'Cerro Verde Leaching Project' is not made extensive to the so-called 'Primary Sulfides Project'"--which is the Concentrator Plant.

So, over and over again, interpreting the various clauses of the Stabilization Agreement and the provisions of Peruvian law, the Superior Court of Lima talks about--reaches the same conclusion that we reach here.

So, this is an important point because the--remember the argument, and we'll talk about--more about, that the Government approved, MINEM approved the extension of the Beneficiation Concession to cover the Concentrator Plant, and that approval of the extension of the Beneficiation Concession somehow extended the benefits of the Stabilization Agreement to the Concentrator Plant.

We'll talk more about that because we'll go over the actual approval and the documents accompanying that approval, but here the Court talks about this argument.

They say the investments are obviously different, and "both Investment Plans were executed in the area of Cerro Verde's Number 1, 2, and 3 Mining Concessions of the same Owner, and the installation of the Concentrator Plant, and the expansion of the area of the Cerro Verde Beneficiation Concession were approved by the Directorate Resolution Number 056. This is not a reason enough to conclude otherwise."

So, the Court looked at the argument that the extension off the Beneficiation Concession to cover the Concentrator Plant, years after the Stabilization Agreement was signed, somehow extended the stability benefits to the Concentrator Project, and the Court said, yes, there was an approval to extend the Beneficiation Concession to cover the Concentrator Plant.

That's not reason enough to conclude that the Concentrator Plant is covered by the benefits of

the Stabilization Agreement, and somehow falls within the scope of the 1998 Stabilization Agreement.

So, the Supreme Court of Lima defeats the argument that Claimant has made then--or Cerro Verde has made then, and that Claimant repeats in this arbitration. And, again, we'll go over in a moment--we'll go over the approval to see why this is not the case.

Again, the Superior Court of Lima says that: "The contractual benefits shall apply exclusively to the activities of the mining company in whose favor the investment is made, and in this case, this is the Cerro Verde Leaching Project, because they say, for the avoidance of doubt, Articles 22 and 24 of the Regulations, and Article IX of the Consolidated Uniform Text of the General Mining Law say that the benefit accorded to the guarantees--by the guarantees is directed at the investments determined on the basis of the Feasibility Study."

Again, it's the Feasibility Study that is the basis of what is stabilized.

So, the decision of the Superior Court of

Lima is final, because Cerro Verde challenged that decision to the--before the Supreme Court. During the deliberative process, three of the Supreme Court Justices agreed with the Superior Court. Two Justices disagreed based on procedural grounds, lack of sufficient reasoning from the appellate court.

These Justices, the two who disagreed, did not opine on the merits, including on whether the 1998 Stabilization Agreement covered the Concentrator Project. They did not say that. And you'll hear from the experts what is the significance of that deliberation, the Supreme Court was going to deliberate again if Cerro Verde had not withdrawn its appeal.

So, the Supreme Court was going to continue its deliberations, this was just one stage--but before the Supreme Court could do that, they withdrew their appeal in order to seek to resolve their dispute through international arbitration. And so, the decision of the Superior Court of Lima, the appellate court stands, and is the final judgment on the question of the 2006-2007 Royalty Assessment.

It is important--and I alluded to that already--it's important to emphasize that the argument Cerro Verde advanced before the Peruvian courts are exactly the same as the arguments Claimant has advanced in this Arbitration. They argued--Cerro Verde argued before the Peruvian courts, including the Supreme Court, just as Claimant argues here, that Clause 1, including 1.3 of the 1998 Stabilization Agreement merely and only describes background facts about the Agreement without defining its scope.

Literal and contextual interpretations of those Clauses 3, 9, and 10 of the Stabilization Agreement, that they say support their argument, show that the Agreement covered the Concentrator Project.

SUNAT and the Tax Tribunal, they argue misinterpreted Clauses 1, 2, 3, 4, 5, 7, and 8 of the Stabilization Agreement. Article 78, 82, 83, and 86 of the Mining Law, and Articles 2 and 22 of the Mining Regulations, they say, provide that mining stabilization agreements grant stability benefits to all investments made--all investments made within the area of a mining company's concession.

And the extension of the Beneficiation Concession, to include the Concentrator Project, they say, indicated that the '98 Stabilization Agreement would cover the Concentrator Plant.

These are the exact arguments submitted to you in this Arbitration. The Peruvian Supreme Court and the Superior Court of Lima rejected each one of those arguments.

So, to conclude the discussion on Peruvian law, the Peruvian courts, all the way up to the Supreme Court, have analyzed the terms of the '98 Stabilization Agreement and the applicable Mining Laws and Regulations, and confirmed the proper interpretation of the Stabilization Agreement and the Mining Law and Regulations, which is consistent with the interpretation offered by Perú in this Arbitration.

The Parties agree that Peruvian law governs the scope of the '98 Stabilization Agreement, and applying Peruvian law, the Peruvian courts have held that the Stabilization Agreement applied to the Leaching Project only, and did not apply to the

Concentrator Project.

The Peruvian courts held, under Peruvian law, that Stabilization Agreements apply exclusively to the Investment Project for which the Agreement was signed, which is described in the Feasibility Study incorporated into the Agreement. And on that basis, the Peruvian courts concluded that Cerro Verde's '98 Stabilization Agreement did not extend benefits to the Concentrator Project.

And, yes, Claimant does ask this Tribunal to sit as a court of appeal of the final judgments of the Peruvian courts, and asking you, Members of the Tribunal, to conclude that those judgments, the Peruvian court judgments, are incorrect as a matter of Peruvian law. This is what they're asking you to do.

Claimant has made no claim of denial of justice with respect to the proceedings before the Peruvian courts, because they cannot. So, they are asking you to conclude that those decisions are wrong, as a matter of Peruvian law.

Now, I will show you that Cerro Verde's own conduct shows that it knew, it knew very well that the

1998 Stabilization Agreement did not cover the Concentrator Plant. And, first--first, I'll talk about their application for the Profit Reinvestment Program.

So, July 3, 2003, Cerro Verde sends a letter to MINEM inquiring whether, even though the Concentrator Plant is not included in the '98 Stabilization Agreement, Cerro Verde could reinvest the undistributed profits from the Leaching Project and invest them into the Concentrator Project under this profit and Investment Program.

So, what is this Profit Reinvestment Program? Provisions of Peruvian law in force in May of '96, when the tax regime applicable to Cerro Verde was stabilized, applicable to the Cerro Verde Leaching Project was stabilized, mining companies were entitled to request approval from MINEM to reinvest undistributed profits, free of tax, into new Investment Projects, and that's what we call the "Profit Reinvestment Program."

So, what they were asking was, can we reinvest the undistributed profits from the Leaching

Project into a new Project, the Concentrator Plant, free of tax. That was stabilized under the 1998 Stabilization Agreement. So, they asked. Before they applied, they asked, and here is the letter signed by Ms. Torreblanca, their witness in this Arbitration.

And they ask--here is her testimony in the earlier Hearing, the Cerro Verde Hearing: "You asked for approval, even though the new Project, the Sulfide Primary Project, that's the Concentrate Plant, is not confined to the Leaching Project." That's a quote.

And she says: "We are saying here"--that's the letter--"that taking into account that the Concentrator was not foreseen originally in the Leaching Project as a synonym of the Production Unit, we are asking whether it could include it in the Production Unit," et cetera.

But focus on the very point: What is tax-free is the undistributed profits of the Leaching Plant, obviously. The Concentrator Plant is not--is yet to be built. It doesn't generate any profits, let alone tax-free profit. So, that benefit applies to the Leaching Project, and the question is: Can it be

reinvested tax-free into a new program?

September 8, MINEM responds. There are two such letters. In June--I'll come back to the second one. I'm going over because the letters make clear by their numbers which letter points to which.

So, the letter you see on the screen responds to the letter I showed you earlier. That's a letter from MINEM. And in response to this inquiry whether the undistributed profits from the Leaching Project can be reinvested tax-free in the new Investment Program, MINEM says that, yes, you can use the stabilized Leaching Project profits for a new Investment Program.

There is no requirement that this new Investment Program is stabilized because it's not taxed. It's not an issue of benefits to the new program. The new program, at this point in time, receives investments. Importantly, allowing the use of such profits from the stabilized Leaching Project to the new Concentrator Project does not mean that the new Concentrator Project is thereby stabilized.

And here is the conclusion. They say: "The

Project for the Primary Sulfide exploitation"--that's the Concentrator Plant--"could be eligible for this benefit"--meaning to receive the tax-free profits from the Leaching Plant--"there being no requirement that the Agreement giving rise to the benefit should have previously contemplated it as a Project."

This new Investment Project does not need to be contemplated in the '98 Stabilization Agreement to have reinvested the profits from the Leaching Project into it, which is logical, of course. They could come up with any new Investment Program and ask that the profits from the Leaching Project be reinvested there.

But what this text shows is that MINEM knows and Cerro Verde knows that the Concentrator Plant is not included, is not contemplated as a Project in the stabilization--in the '98 Stabilization Agreement. MINEM knows it. It communicates that. It's not controversial.

Now, this letter is not just a letter; it is a report. It's a Legal Report. It's a Legal Opinion. It is prepared by two lawyers: The Director of the Technical Regulations Office, and the General--and a

MINEM attorney, and you see their names, and the original has their signatures. And then the General Director of Mining, Claimant's witness, Ms. Chappuis, signs this and says: "Having seen this report and having found it suitable" notifies Cerro Verde.

So, this is not just any letter. It's a Legal Opinion, Legal Report, prepared by MINEM's lawyers and approved by the head of the General Directorate of Mining.

Now, let's go back to June 8. They send another letter. They send two letters in early June, and they received two responses. I showed you the first letter they sent. The response came in September. In the meantime, they send a second letter. This is the letter--"they" meaning Cerro Verde.

This is the letter you see on the screen, and what they ask here, among other things, is--well, they say: "All of the profits that Cerro Verde has deducted for the purpose of the application against some investment actually utilized for the said purpose," all the profits. Okay. And we'll talk in

detail about those letters in cross-examination, but here is MINEM's response, a second letter also dated September 8, but it's a separate response to this particular letter. And because Cerro Verde is asking "Are all the profits of the company eligible?" this is what MINEM's response says.

About the question whether the stabilized regime would be applicable to the company, the prohibition contained in Article 8 of the Supreme Decree points out that: "The application of the stabilized regime is granted to the Cerro Verde Leaching Project, and not to the company. And the regime is the one described in the aforementioned Agreement."

So, MINEM, the General Directorate of Mining, is telling Cerro Verde in September, on September 8, 2003, it's not--the stabilized regime is granted to the Cerro Verde Leaching Project and not to the company. So, you cannot use all the profits, undistributed profits of the company. It's only the Leaching Project. Why? Because this is the scope of the Stabilization Agreement, and the stabilized regime

applies only to the Cerro Verde Leaching Project, not to the company. It cannot get more explicit and clearer than that. And, again, this is the same type of document. It's a Legal Opinion, a Legal Report, signed by two lawyers, a MINEM attorney and the Director of the Technical-Regulatory Office, then Ms. Chappuis, the General Director of Mining, says: "I have reviewed it--the Bureau"--meaning her Directorate--"finds this to be in order. Notify Cerro Verde."

So, this is not just a--some sort of a language kind of mistakenly used or not well thought over. This is a Legal Opinion, prepared by lawyers, reviewed by the Bureau, the General Directorate, found suitable or found in order by Ms. Chappuis and sent to Cerro Verde. And, again, I'm going back a slide, look again at what this language says. The stabilized regime is granted to the Cerro Verde Leaching Project and not to the company. They say they had no idea.

So, after they inquired twice in writing whether this Profit Reinvestment Program applies, and they are told, yes, it applies to the Leaching

Project, not to the company, they actually make an application because that's what the procedure requires.

In January of 2004, Cerro Verde formally applies to obtain approval to reinvest the undistributed profits from the Leaching Project into the Concentrator Project. And in December of 2004, MINEM issues a resolution approving this request. Let's look at that resolution because it specifically states: One, that, the 1998 Stabilization Agreement was entered into in relation to the Cerro Verde Leaching Project; and, two, that the new Investment Program is approved in relation to the profits that must be--"must be exclusively generated by the Cerro Verde Leaching Project."

In other words, only the profits from the Leaching Project are stabilized. Again, fine, you can reinvest those undistributed profits, but those undistributed profits must be exclusively generated by the Cerro Verde Leaching Project, consistent with the letter of 8 September 2003 that I showed you.

Now, what Claimant seems to argue is that

the approval to use the undistributed profits to be reinvested in the Concentrator Plant means that the Concentrator Plant is stabilized. But this shows exactly the opposite. Only the profits from the Leaching Project are stabilized and can be used for reinvestment purposes.

And, again, it couldn't be clearer, but you also have the September 8, 2003, letter, so on two occasions: One in a formal response to a written inquiry and, two, in the formal approval of the Reinvestment Program, MINEM tells Cerro Verde it's only the profits generated by the Leaching Project and not by the company.

Okay. Now, Cerro Verde sought written assurances that the Concentrator Plant was covered and never got those, and that is undisputed. Claimant alleges that Ms. Chappuis, MINEM's Director General of Mining stated orally to Cerro Verde that the Concentrator Plant would be covered by the 1998 Stabilization Agreement if the Project were to be included in the Beneficiation Concession.

PRESIDENT HANEFELD: Excuse me,

Mr. Alexandrov. I just--I've got note from Marisa that you have used now 50 percent of your time, and one hour and 45 minutes, and she asks whether it would be good time for a break.

But, as you like. Please go ahead.

MR. ALEXANDROV: I will break immediately. Thank you very much.

PRESIDENT HANEFELD: Then we have a 15-minute break, and then we continue.

(Brief recess.)

PRESIDENT HANEFELD: Everyone ready?

Then, please, Mr. Alexandrov, proceed.

MR. ALEXANDROV: Thank you very much, Madam President and Members of the Tribunal.

So, where we stopped before the break was I was saying that Claimant alleges that Ms. Chappuis, the then-Director General of Mining, stated orally that the Concentrator Project would be covered by the 1998 Stabilization Agreement. And you have the evidence, just as an example, of Mr. Davenport.

I have a few points to make on that, and the first one is Claimant did not submit any documents

recording internally this alleged oral assurance that Cerro Verde purportedly received. Remember, we're talking about an $850 million investment. Financial consequences of hundreds of millions of dollars, look at their damages claim on whether they will pay royalties or not. They say they were looking for written assurances. They didn't get them. They say, we received oral assurances, and there is not a single internal document that records those assurances. No notes. No memoranda, no emails.

Ms. Torreblanca testified in the Cerro Verde Hearing that she sent one email, but she could not find that email. One email presumably reporting the conversation with Ms. Chappuis, who allegedly gave oral assurance. She could not find that email because Cerro Verde, she said, had a 10-year retention policy.

Well, first of all, it is hard to believe that only one email was the document that recorded this point of crucial importance for Claimant and for Cerro Verde.

Second, that email was never kept, never retained, and Ms. Torreblanca says Cerro Verde had a

10-year retention policy. Well, Mr. Davenport, her boss, the then-President and General Manager of Cerro Verde, stated under oath that Cerro Verde had no document retention policy. So, either Ms. Torreblanca did not report to Mr. Davenport or anybody--or anybody of her superiors, about this alleged oral assurances received from Ms. Chappuis or from MINEM in 2004 because she had nothing to report, or there is something, but Claimant didn't produce it, in violation of their document production obligation withheld documents that were ordered to produce.

Anyway, we have nothing that records oral assurances given by Ms. Chappuis. What we have is the exact opposite, and I will walk you through a few documents. So, you saw already that in September of 2003, MINEM told Cerro Verde only the Leaching Project and not the company is covered by the stability regime.

Now, look at July 8, 2004, a presentation to MINEM by Cerro Verde. Cerro Verde is asking for an addendum to the 1998 Stabilization Agreement to include the Concentrator Project. Cerro Verde

requires the certainty that only a stability agreement is able to give it and the requested addendum provides for that certainty.

So, what does this show? They make a presentation to MINEM. They know that the Concentrator Project is not covered. They want an addendum to the Stabilization Agreement to get it covered.

August 2004, another presentation to MINEM by Cerro Verde. Again, they ask for an addendum to the 1998 Stabilization Agreement to include the Concentrator Project because they know it is not included. Claimant's witnesses Mr. Davenport and Ms. Torreblanca were present at that presentation. And what is Cerro Verde requesting? You see I'm quoting from the presentation on the screen, "Inclusion in Annex I of the 1998 Stabilization Agreement currently in force by means of an addendum of the Primary Sulfides Concentrator."

So, they want an addendum to the '98 Stabilization Agreement, so that they can incorporate the Concentrator Project into the then-stabilized

regime by including an addendum. Clearly they know the Stabilization Agreement doesn't cover the Concentrator Plant. Why otherwise would they ask for an addendum?

So, they don't even seek written assurances here that it's covered. They say, we want to extend the scope of the '98 Stabilization Agreement by negotiating an addendum that covers the Concentrator Project.

So, in the same August 2004 presentation to MINEM, Cerro Verde quotes a SUNAT 2002 Report. And you see on the left the presentation and a reference to this SUNAT 2002 Report, which means they know about this 2002 Report. And what does that 2002 Report says? It says: "The Tax Stability Contracts entered into pursuant to the Mining Law only stabilize the applicable tax regime with respect to the investment activities that are the subject matter of the Agreement."

So, they know. And this goes to the so-called volte-face later on. They know about the SUNAT report that is dated 2002, SUNAT's view. As

early as 2002, SUNAT says that the Stabilization Agreement apply only to the investment activities, not to the concessions, not to the mining units, but the investment activities subject matter of the Agreement.

Now, I want you to focus on this point. In 2003, in relation to the Reinvestment Program, before applying to get the benefit to obtain the benefit of that Reinvestment Program, Cerro Verde asks twice in writing for a legal opinion, are we eligible? They get a response, yes, you are eligible, the Leaching Project, not the company is eligible, and then they apply.

Contrast that, please, with their conduct here in 2004. They go. They say, oh, Ms. Chappuis told us there is no reason to ask for written assurances because you are covered, no worries.

Why don't they do what they did in 2003? Why didn't they ask in writing, is the Concentrator Plant covered? And they would have received a legal opinion sign by Ms. Chappuis, yes or no. But they didn't ask.

In the context of the Reinvestment Program,

they ask twice in writing, they get twice a legal opinion that tells them the Leaching Project is covered, the company is not.

Here they go meet with Ms. Chappuis, she allegedly gives oral assurances, she tells them no need to ask in writing, and they don't.

A big contrast between their conduct in 2003 and now.

Again, I want to remind everybody, we're talking about an $850 million investment and potential royalties. Look at their damages claim, how important this is for them. And they never submit an inquiry in writing to get a legal opinion from MINEM in writing like they did with respect to the Profit Reinvestment Program.

Now, their witnesses cannot get their stories straight. So, if you look at the slide, Ms. Torreblanca says Cerro Verde understood from the start that the Stabilization Agreement applied to the Concentrator Project.

Of course, that is not true because they requested to modify the Agreement by an addendum, as

we showed you earlier. She also says Ms. Chappuis informed Cerro Verde that "it was not necessary" to obtain written assurances that the Agreement applied to the Concentrator. And they are happy with that. It's not necessary.

Mr. Davenport testifies that Cerro Verde actively sought to obtain written assurances, but he could not get any such written assurances because the Minister was not willing to sign a letter confirming that the Concentrator would be stabilized one bit. So, Mr. Davenport says something different, we wanted written assurance, but we knew we couldn't get them because that's the way it works in Perú.

Ms. Chappuis testified that MINEM never provided Cerro Verde with written assurances that the '98 Stabilization Agreement applied to the Concentrator because, she says, Cerro Verde never submitted the request in writing. Well, had they submitted a request in writing, she would have had to go through the same procedure, a legal opinion that she would then review and sign.

So, MINEM did not inform Cerro Verde that

they didn't need written assurances, contrary to Ms. Torreblanca's testimony that Ms. Chappuis stated it was not necessary.

Ms. Chappuis says they didn't ask. Notably Ms. Chappuis was asked at the Cerro Verde Hearing, and I quote: "You say, 'I confirmed to Ms. Torreblanca and Mr. Davenport that Cerro Verde did not need a separate written assurance.' Did you tell them that or not?"

And Ms. Chappuis testified that her response was: "No, they asked whether they could send a letter, and I said, 'I think not.'"

So, this response is telling because Ms. Chappuis knew that if Cerro Verde did submit a request for written assurances in writing, she would be obligated to respond in writing with a legal opinion, and she also knew that she could not respond in writing to provide the written assurances because she knew it would be inconsistent with the text of the Stabilization Agreement and the Mining Laws and the Regulations. Why not otherwise just tell them, write a letter, and I will give you a legal opinion? She

said, "No, I think not." Could we send your letter? No.

There are many inconsistencies in the witness testimony of Claimant's witnesses. They cannot get their stories straight regarding the number of meetings. Ms. Torreblanca says "several meetings." Mr. Davenport says "several conversations." Ms. Chappuis says "one meeting," one meeting where she allegedly gave those oral assurances.

They cannot get their stories straight on the timing of the meetings. Ms. Torreblanca says before and after June. Ms. Chappuis says that she gave the alleged oral assurances only after she had a meeting with her own team on June 15. The circumstances--also they cannot get their stories straight, the circumstances under which they received the so-called oral assurances. Ms. Torreblanca says: "We received the oral assurance in a meeting with MINEM 'after the presentation' that was given by Cerro Verde." She was referring to the PowerPoint presentation in August of 2004 that I showed you on the screen.

Ms. Chappuis says she gave the alleged oral assurances in "her room" where "there was no possibility of showing a PowerPoint." So, they cannot get their stories straight.

But the more important part is going back to what they asked in those presentations. They asked for an addendum to the Stabilization Agreement to get the Concentrator Plant covered, and here you see an internal document confirming that. There's a presentation that contains updates regarding the Concentrator Project to Phelps Dodge's Board of Directors. We see the email on the left to which that presentation is attached, and you see in the presentation, on the left-hand side, "Action: Modify Stability Agreement." Third quarter of 2004. An internal presentation to Phelps Dodge's Board of Directors includes as an action item "Modify the Stability Agreement," third quarter 2004."

Clearly, Phelps Dodge and its Board understood that the '98 Stabilization Agreement did not cover the Concentrator Project, because if it did cover it, why would we want to modify the

Stabilization Agreement? But that was the action item there.

Now, remember the argument we discussed, their argument, Claimant's argument that Cerro Verde requested the MINEM's approval to expand the Beneficiation Concession to include the Concentrator Project. And they say this is what Ms. Chappuis told us is sufficient. We will extend the Beneficiation Concession to cover the Concentrator Plant, and by doing that, but by obtaining that approval, somehow the Concentrator Project will be included into the scope of the '98 Stabilization Agreement. And you remember I showed you that the court rejected that argument and said, no, this did not mean that the scope of the Stabilization Agreement was expanded.

Well, here is Cerro Verde's request for MINEM's approval to include the Concentrator Project in the Beneficiation Concession, and it does not mention or refer to the 1998 Stabilization Agreement at all. We are just showing you the document, but you can read it, all of it, and you will find no reference to the 1998 Stabilization Agreement.

Here is the chronology of what happened. MINEM then publishes a notice of that request to extend the geographic area and the production capacity of the Beneficiation Concession. In El Peruano, MINEM approves the request to build a Concentrator Plant, approves the request to expand the Beneficiation Concession, and then once the construction is completed, MINEM issues a formal resolution that approves the expansion of the Beneficiation Concession to include the Concentrator Project.

None of these documents regarding the expansion of the Beneficiation Concession, none of these documents refers to the 1998 Stabilization Agreement at all. So, this maneuver to expand the scope, somehow to expand the scope of the '98 Stabilization Agreement to cover the Concentrator Plant by means of expanding the Beneficiation Concession did not succeed. Nothing in the application of the various MINEM approvals and resolutions says anything about the 1998 Stabilization Agreement or its scope.

Another document that shows Phelps Dodge

knew that the Concentrator Project was not covered by the '98 Stabilization Agreement, in a 10-K form before the Securities and Exchange Commission, they say, "However, it is not clear what, if any, effect the new Royalty Law will have on the operations at Cerro Verde." They say it's not clear. They don't say, oh, we are covered. We have received assurances from MINEM. No worries, we are not going to pay royalties.

This statement was made before Claimant Freeport acquired shares in Cerro Verde, but after MINEM had approved the expansion of the Beneficiation Concession. So, if, indeed, they believed at the time that the expansion of the Beneficiation Concession somehow expanded the scope of the Stabilization Agreement, well, their Form 10-K doesn't reflect that certainty. It reflects uncertainty. And then the following year they repeat the same statement.

Well, Counsel told you this morning that this uncertainty reflected in the 10-K forms was uncertainty that was generated by the political pressure at the time in Perú, not because the legal instruments were somehow insufficient, not because the

'98 Stabilization Agreement didn't cover the Concentrator Plant, but the uncertainty was created by the political pressure.

Well, first of all, this is not in the 10-K form. Second, Counsel was testifying this morning. They have no witness who prepared that 10-K form to explain that, oh, no, this was not because we had any doubt about the scope of the '98 Stabilization Agreement. This was because there was political pressure in Perú and we wanted more certainty. That's not what the form says, and there is no witness to say that. And Counsel was testifying, which you should ignore.

The lenders for the Cerro Verde's Concentrator Plant also knew that there was a significant risk that the '98 Stabilization Agreement did not cover the Concentrator Plant, and they included that in the text of the Master Participation Agreement--that is, the lending agreement for the Concentrator Plant. They include--you see the language that says this would not--if it happens, it's not a force majeure. They knew the risk.

The record is clear that Claimant never conducted any adequate due diligence to see whether the Concentrator Plant was covered. We asked in document production for proof of due diligence, however, Claimant repeatedly failed to submit any documents that proved that it performed adequate due diligence. Claimant failed to produce the following requested documents that you see on the screen.

Any communications between Cerro Verde and its lenders who are Parties to this Master Participation Agreement that we showed you earlier, written assurances from the Peruvian Government that Claimant allegedly requested because they never received them, contemporaneous documentation of the oral assurances from the Peruvian Government that Claimant allegedly received. I talked to you about that. Ms. Torreblanca says, I sent one email about the oral assurances that is never to be found because of a retention policy that did not exist. Nothing.

Now, these documents could, presumably, help to support Claimant's argument that it performed adequate due diligence, but Claimant failed to submit

them. So, either they don't exist, in which case Claimant did not perform due diligence about the scope of the '98 Stabilization Agreement, or if they exist, they don't help Claimant.

Now, Claimant says this is irrelevant, due diligence here is irrelevant, because, they say, due diligence cannot take away rights from Cerro Verde. If Cerro Verde has rights under the '98 Stabilization Agreement, whether or not we perform due diligence is not relevant. We retain those rights.

But it is very relevant that they did not perform due diligence for at least a number of reasons: One, due diligence would have revealed that Cerro Verde and Phelps Dodge knew all along that the Government always held the position that the '98 Stabilization Agreement did not extend beyond the Leaching Project. The failure to provide documents is telling because it is not credible, we submit, that no documented due diligence on whether the Concentrator Project was covered exists. Not even one email. The Tribunal has to assume that if any due diligence was conducted, it yielded a result not favorable to

Claimant, which is why Claimant has not submitted any documents.

The record clearly demonstrates that Claimant and Cerro Verde could not have legitimately expected that the Concentrator was covered under the 1998 Stabilization Agreement. In fact, they knew it wasn't covered. As I showed you, they were asking for an amendment to the Stabilization Agreement.

And so, Claimant can only blame itself for basing its decision to invest 850 million in the Concentrator Project without any assurances that the Project would be covered under the 1998 Stabilization Agreement, but now, Claimant wants Perú to pay for that.

Recall that the MINEM letter signed by Ms. Chappuis of September 8, 2003, that I showed you earlier, where MINEM stated explicitly that the stability benefits under the '98 Stabilization Agreement apply to the Cerro Verde Leaching Project and not the company.

What happens next? In June of 2004, Ms. Chappuis sends an email to some of her colleagues,

the subject of the email is "Meeting with Cerro Verde--New S.A.," meaning new stabilization agreement.

She says, can you come to my office on the 15th of June 2004? "Matter: Request for inclusion of the Sulfide Project in the Stabilization Agreement of Cerro Verde. Is that legal?"

She asks her lawyers and others, is that legal? What does this email show? First, she knows, Ms. Chappuis knows, that the Concentrator Project is not covered by the 1998 Stabilization Agreement because if it were covered, there would be no need to include the Concentrator Project in the Agreement. But that's what Cerro Verde is requesting.

Ms. Chappuis was right to question whether it was legal to include the Concentrator Project in the Stabilization Agreement because including it would not be consistent with the terms of the Agreement and the applicable Mining Law.

And so, please focus on this email because at the exact moment when Claimant says it received oral assurances from Ms. Chappuis that the '98 Stabilization Agreement covers the Concentrator

Project, Ms. Chappuis herself is questioning whether it is legal to expand the scope of the '98 Stabilization Agreement to cover the Concentrator Project.

Well, it wasn't legal. Cerro Verde asked for a modification of the Stabilization Agreement, and MINEM did not agree to amend the Stabilization Agreement.

Now, our next topic. So, you saw they knew what the situation was with the scope of the Stabilization Agreement. My next topic is Perú has always been consistent and transparent in its interpretation of the Stabilization Agreement.

So, we have set out in our Rejoinder, Table 1 at Paragraph 305, a series of documents showing that SUNAT, MINEM, the Ministry of Economy and Finance were consistent and transparent in their interpretation of the scope of the Stabilization Agreements, including Cerro Verde's Stabilization Agreement. And we refer you to that for a full discussion of those documents. Peruvian Government agencies consistently interpreted the Stabilization

Agreement as applying only to the specific Investment Project it defined in the Agreement and in the incorporated Feasibility Study and consistently interpreted the 1998 Stabilization Agreement as applying only to the Leaching Project and not the Concentrator Project. So, I don't propose to go over all the documents in Table 1, but I do want to go over some of those.

So, remember, I put on the screen SUNAT--the SUNAT 2002 Report. They knew about it because they refer to it in their August 2004 presentation. The SUNAT Report--which, by the way was public on SUNAT's website--includes tax stability entered to pursuant to the Mining Law only stabilized the applicable tax regime with respect to the investment activities that are the subject matter of the Agreements.

This is the MINEM's letter in response to their inquiry where they said you--you already saw that--the application of the stabilized regime is granted only to the Leaching Project and not to the company.

So, in September 2003, they had that. But

there is more. In March of 2004, Minister Polo makes a presentation at the 2004 Mining Royalties Forum. Here is what he says: "A company can have Stabilization Agreement for one Project and not have it for another, or have an old activity and a new activity. An investment grants the right to stabilization to that investment, for that development, and not for the whole company."

Again, it's very clear. A company, Vice Minister Polo says, can have Stabilization Agreement for one project and not have it for another. He makes that presentation at the Mining Royalties Forum. They say, oh, we had no idea. We didn't know. I mean, if you listen to them, and I'll go later on to statements made by MINEM and MINEM officials and the Minister and the Vice Minister of Energy and Mines to the Congressional Committee on Mining and Energy. Those are all public statements. So, they say, Claimant says, a couple of things.

First, they say, all this we didn't know until this volte-face outcome to it in 2006. We don't know anything about the Government's interpretation,

we always thought the Stabilization Agreement extended to the Concentrator Plant, we always thought--they make it sound as if this is in the backroom of the bar, a dark room where people with cigars somehow--what was the word they used?--devised this new interpretation.

Well, one, it is not credible to say, there was a mining forum, we did not know what Vice Minister Polo said. They are considering an 850 million investment. They don't follow the mining forum? They don't follow the Congressional debate where the Minister and Vice Minister of Energy and Mines appear to make statements about the scope of the Stabilization Agreement, about the scope of their Stabilization Agreement? They don't follow that?

Okay. Fine. Even though some of those Congressional debates that I'll show you were televised, they don't follow that. They have no legal obligation. Well, okay, but those are public statements.

The Minister--the Vice Minister Polo did not make that statement in a dark backroom of the bar in

the middle of cigar smoke. He made that statement to the mining forum. Other statements that I'll show you in a moment were made before the Congressional Committee. Those were public statements. To say that MINEM is making public statements and they interpret those statements, they characterize those statements as secret, secret policy under political pressure to devise some new interpretation is untenable.

A MINEM resolution approving Cerro Verde's request for the Profit Reinvestment Program, I showed you that resolution already. December 2004, again, consistent with Perú's interpretation of the Stabilization Agreement and the Law. The funding must come with the returned earnings, which must be exclusively generated by the Leaching Project. And, again, they say we were inconsistent. The meeting with Phelps Dodge in March of 2005 with Mr. Harry Conger, and Mr. Tovar explains that he was told explicitly that the Leaching Project was covered but, the Concentrator Project would not be.

And you heard, well, this could not be because Mr. Conger made a presentation, this could not

have happened. Well, we have a witness who says it happened. Where is Mr. Conger to dispute that? Why is it not here to say, no, this didn't happen. He told me something different.

Here is a MINEM report of April 14, 2005. In that Report, the Legal Director of MINEM told the Minister of Energy, Mr. Isasi, a witness in this Arbitration, analyze the question whether mining companies with mining stabilization agreements in force at the time the Mining Law was enacted would be subject to paying royalties. And MINEM concluded that because mining stabilization agreements grant administrative stability in addition to tax stability, the mining companies with stabilization agreement in force would be protected, but they will be protected only with respect to the Investment Projects referred to in their respective stabilization agreements. Here is that report of April 14, 2005.

Claimant alleges that this report supports its position. Now, what Claimant has done repeatedly in their written submissions and, in fact, this morning in their presentation, is they read the report

and they stop before the end. They read the report and they omit--they read the highlighted text, and they omit the last sentence: "Therefore, only the mining projects referred to in these agreements will be excluded from the royalty calculation basis," only the mining projects, not concessions, not units, not companies; the mining projects. This is what Mr. Isasi says.

They never--they never quote that sentence. They stop before that. And they say, oh, this report helps us. It is not clear how it helps us even without that sentence, but that sentence is abundantly clear.

And they keep doing that, ignoring that last sentence, and in fact Mr. Isasi will appear before you. When he appeared in the Cerro Verde Hearing, he was--this is nothing short of scandalous--he was interrupted when he was reading from his report before he could get to that sentence.

So, again, they are very worried about that sentence and they want to present to you the document as if that sentence wasn't there, but it is.

Here is a draft press release of April 2005 by MINEM. It was prepared by Mr. Polo, the Vice Minister of Mines, and it says, again, "the Mining Titleholders who have signed the aforementioned contracts have all the guarantees that the State has granted to the investments that are the subject matter of said contracts."

So, Claimant says, well, but it's not clear whether that press release was ever issued.

Well, whether or not it was issued, it reflects the Peruvian Government's contemporaneous position of what stability guarantees cover. Only investments that are subject matter of the Stabilization Agreement, nothing more.

Here you see several documents that I alluded to earlier. Presentations by MINEM before the Energy and Mines Congressional Committee. Again, public, televised. So, to say that MINEM was somehow concealing from Cerro Verde its interpretation of Peruvian law and the Stabilization Agreement when MINEM was making public statements in Congress about its interpretation is untenable.

On June 8, the Minister of Energy, Mr. Sánchez, and Mr. Isasi, our witness, and the General Director----Legal Director made a presentation before the Committee. And Mr. Sánchez explained--Minister Sánchez explained that mining companies with stabilization agreements would not pay royalties with respect to their "stabilized project."

Here is what he says: "Then, who pays royalties? All mining titleholders pay royalties, but not for all projects. The mining titleholders that before the mining royalty were entered into law-contracts with administrative stability, will exclude from the royalty calculation basis the value of concentrates of equivalents derived from the stabilized project."

Again, it couldn't be clearer than that. And then the advisor, which is Mr. Isasi, says, "When determining how much it must pay, the Tax Administration has to determine what is the reference basis, and to determine the reference basis, it must determine which are the stabilized mining projects and which are the nonstabilized projects. The

nonstabilized mining projects pay royalties. The stabilized projects do not pay royalties."

I mean, how could it be any clearer than that? A public statement before a Congressional Committee.

Again, the same Congressional Committee meeting. The Minister's presentation also stated that the Contrato-Ley--that is, the mining stabilization agreement, would protect "the investments set out in the contract against an obligation to pay royalties."

Again, the presentation included that same language. So, who pays royalties? All mining titleholders pay, but not for all their projects. Again, I'm saying it for the eightieth time, but it couldn't be clearer. It's on a project-by-project basis, not company by company or concession by concession, not unit by unit. Here it is: A public statement before a Congressional Committee. Again, they make it sound like this was some sort of a black box. It wasn't.

MINEM prepared the report in response to Congressman Oré's request to provide information about

the Cerro Verde Stabilization Agreement, and they say, the report says: "The '98 Stabilization Agreement was limited to the Cerro Verde Leaching Project." You see that on the screen.

It refers to the Feasibility Study, this letter, and it says: "The Feasibility Study is about the Leaching Project," and it's the Leaching Project that is stabilized and nothing else. They say, well, this is under pressure from Congressman Oré. Well, focus on those things. MINEM or the Peruvian Government never, never--to use the language of Claimant--caved in to the pressure to say the Leaching Project or other projects specifically described in the Stabilization Agreement should pay royalties. They never caved in. They maintained always that the Project that is covered by the Stabilization Agreement does not pay royalties.

They say, oh, they caved in under pressure. I just showed you consistent interpretation from 2002 by SUNAT and then MINEM say, you pay royalties for those projects that are not stabilized. You don't pay royalties for projects that are stabilized. Political

pressure or not, this was the consistent position.

So, a letter, again, in the letter--in the October 3 letter to Congressman Oré--again, October 3, 2005--specifically about the Cerro Verde Leaching Project, they say, the Leaching Project is covered. It doesn't pay royalties. Unlike the Leaching Project that is covered by the Agreement, the Primary Sulfide Project, the Concentrator Plant Project, will not enjoy the tax exchange rate and administrative stability regime.

Claimant says they caved under pressure. They didn't cave under pressure. They maintained their position that what is stabilized doesn't pay royalties, but what was not stabilized does pay royalties.

A similar letter to Congressman Diez Canseco, which says the same thing. The Leaching Project doesn't pay royalties because it's covered by the Stabilization Agreement, the Primary Sulfide Project, which is the Concentrator Plant, does not enjoy protection under any guarantee or Stability Agreement. So, yes, it pays royalties.

Another session of the Energy and Mines Congressional Committee, May of 2006. Again, public. Whether they knew about it or they didn't--again, we think it's not credible to say, we have no idea what was going on, given that there are people at Cerro Verde whose job is to follow what's going on--regardless, these are public statements. And Mr. Isasi makes a presentation to the Congressional Committee on Energy and Mines and explains that the '98 Stabilization Agreement only covered the Leaching Project and not the Concentrator Project because it was only the Leaching Project that was delineated in the 1996 Feasibility Study.

Now, again, you have excerpts from the presentation that could not be clearer. "Stability," it says, "is given to the Investment Project clearly delineated by the Feasibility Study and agreed upon in the Contract." It is not granted to the company generally or to the concession. "The Primary Sulfide Project," on the right-hand side you see, part of presentation. The Primary Sulfide Project--that is, the Concentrator Plant, "was not provided for within

the Leaching Project." There was no request to incorporate it into the Leaching Project. "It is, therefore, not part of the stabilized project under the Agreement."

"Accordingly, any profits generated by the Sulfide Project"--the Concentrator Project--"may not be reinvested with a tax benefit." Very clear, stated in public to a Congressional Committee.

In the same presentation it was made very clear that Cerro Verde would have to pay royalties with respect to the Concentrator Plant. You see the language on the screen. The royalties do apply to the Concentrator Plant. Again, I'm saying it. Again, it's a public statement before a Congressional Committee, not a statement whispered by one cigar-smoking gentleman to another in a backroom of a bar.

In May of 2006, MINEM explained again before the Energy and Mines Congressional Committee and the Congressional Working Group that the Concentrator Project was not covered. The Vice Minister of Mines, Mr. Mucho, also spoke on May 3, 2006, before the

Energy and Mines Committee, Congressional Committee, and the Congressional Working Group, and made comments that were very similar to the ones you saw earlier by the Minister of Mines and by Mr. Isasi. And Mr. Isasi again, in answering questions, says very clearly: "A contrato-ley agreement"--the Stability Agreement--"prior to the royalties Law protects the investments subject matter of the Agreement against this new obligation." These agreements do not shield all companies nor all mining concessions. "The only thing it does is to provide guarantees to a specific Investment Project which has been described in a Feasibility Study and integrated into the Agreement."

In June 2006, SUNAT prepared a report analyzing the scope of Cerro Verde's Stabilization Agreement. And here is what this report says.

"Since the Project to expand Cerro Verde's current operations through a Primary Sulfide Concentrator Plant pertains to a completely different investment than the Leaching Project, as approved for the purposes of entering into an agreement of guarantees, as described in Section 1.2 of this

Report, we can conclude that such an expansion would not be within the scope of the Agreement of guarantees since it is a new investment not contemplated by the Parties when the Agreement was entered into." And this is SUNAT in June of 2006.

Claimant appears to question that this report was, in fact, prepared in 2006, but we know it was, for two reasons: One, there is a SUNAT report of 2010 regarding the 2008 Audit of Cerro Verde, and it refers, as you can see on the screen, in the background section it refers to SUNAT's June 2006 Report. And SUNAT 2010 Report notes that it is based on SUNAT's June 2006 Report. And so, in another SUNAT document there is a reference to a SUNAT Report of June 2006, so we know, one, it was prepared in 2006; two, it was the basis for the subsequent SUNAT Report. And then, in addition, the author of that Report, Ms. Gabriela Bedoya, has testified in this Arbitration that the SUNAT report was indeed prepared in June 2006, and she confirmed that in her direct examination at the Cerro Verde Hearing. She confirmed that she prepared the 2006 Report in 2006, and she was

not cross-examined on that testimony.

Now, here is--we come to June 16, 2006. Mr. Isasi, the Legal Advisor of MINEM, prepares a report for the Minister of Energy and Mines regarding the scope of the 1998 Stabilization Agreement, and he concludes in this report that the Concentrator Project was not covered. And you see that on the screen, and the language is very clear, but consistent with all the previous documents that I said--that I showed you.

And so, Claimant says, we're shocked, shocked, we tell you, to learn for the first time this is a volte-face of the Peruvian Government. Until now, the Peruvian Government was consistently saying the Stabilization Agreement covered the Concentrator Plant, and now, all of a sudden, this is a sudden change, a volte-face, a completely different interpretation.

Well, in fact, this morning you heard Claimant's Counsel referring to this report and this date that, you know, the position of the Peruvian Government changed just like that, all of a sudden, June 16, 2006. I showed you many, many documents that

expressed, in almost the exact same words, the same position and the same interpretation, predating that June 16, 2006, document, and some of them, at least, were public.

So, to say that the Peruvian Government on June 16, 2006, changes position just like that, is just not tenable.

Another document from June 23 to August 2, the Congressional Committee overseeing ProInversión, the Peruvian Investment Promotion Agency, had a series of Roundtable Discussions with local leaders from Arequipa, MINEM, and MEF officials, and representatives of Cerro Verde.

At the Roundtable Discussions, MINEM made another presentation and distributed a copy of that presentation, which was very similar to the one made in May of 2006 before Congress, in which MINEM stated that the Cerro Verde Concentrator Project was not covered under the 1998 Stabilization Agreement. You see a copy of that presentation.

Mining royalties do apply to the Cerro Verde Primary Sulfide Project. It's not part of the

Leaching Project, and for this reason, it does not benefit from the stabilized regime. It's a new Project that does not benefit from tax, exchange rate, and administrative stability. In consequence, it will pay royalties when it enters into production."

Now, Claimant says we participated in Roundtable Discussions but we were not informed that the Concentrator Project would not be covered. We never saw this presentation.

Well, let's look at the facts. The Minutes of the Roundtable Discussion confirm that representatives of Cerro Verde, including Claimant's local Counsel in this arbitration, Mr. Rodrigo, were present at the discussion. You see an excerpt from the meeting, Meeting Minutes, that said: "Sociedad Minera Cerro Verde, Jorge Bonavento Risco, Deputy Manager of Corporate Affairs, Luis Carlos Rodrigo, Carolina Rios."

And then the agenda was income tax, royalty payment, and investment profits. "After listening to the intervention on the agenda item, the attendees agreed to the following." So, they listened to the

presentations, and they agreed. We have--nevertheless, they say, we weren't there, we didn't know.

We have an independent source, an entity that filed an amicus brief, that was referred to by Counsel this morning, that event, an entity that--a third party, an NGO files an amicus brief in another litigation, complaining against SUNAT.

And in its brief, this entity, an independent third party, not friendly to SUNAT, obviously, because it's suing SUNAT, it says the Roundtable, "we were provided with an extensive defense referred to in the PowerPoint, bound copy, attached to the minutes, regarding the reinvestment of profits and mining royalties of Cerro Verde." So, he says the participants of the--in the Roundtable were provided with a copy of that presentation.

He attaches this, and that is clearly proof that the presentation was made available to all the participants in the Roundtable Discussion. It was distributed to the attendees.

There are many other documents that I can

show you. In response to a taxpayer inquiry, SUNAT issues a report in September of 2007, and this report says, "for the investment activities that are the subject matter of the agreements and that were indicated in the Feasibility Study, the tax stability extends to those and not others. Those were the subject matter of the agreements and indicated in the Feasibility Study."

So, let's conclude on that point. All relevant Peruvian Authorities, including SUNAT, MINEM, and the MEF, were consistent and transparent in their interpretation of the 1998 Stabilization Agreement.

The Peruvian Government has consistently held the position that what is stabilized under a Stabilization Agreement is a specific Investment Project, not mining companies, not concessions as a whole, not Economic-Administrative Units as a whole, not mining units--whatever that means--as a whole.

And the specific Investment Project covered under a stabilization agreement is the one--the one that is defined in the Feasibility Study, which is incorporated into the Stabilization Agreement, and

which is the subject matter of the Stabilization Agreement. And all the documents I showed you indicate that the--demonstrate that the Peruvian Government consistently held that position.

Just one word about the conspiracy theory that Claimant advances, that this was under political pressure.

What these exchanges between members of Congress and the Executives show is that members of Congress, legitimately exercising their role as legislators, exercised their right to question actions of Government officials, and request, demand explanations. MINEM officials, however, consistently defended Cerro Verde's Leaching Project's stabilized status. They never caved in on that, they consistently defended that status before Congress.

So, they resisted that political pressure, but they said what they had consistently said, which is what is stabilized is stabilized, the Leaching Project; what is not stabilized, the Concentrator Project, that paid royalties.

Now, you heard a lengthy explanation of

Perú's economic difficulties, the need to generate revenue, and the pressure to generate revenue from the mining companies. Well, if, indeed, that were the case, then SUNAT and MINEM would have gone after all mining companies, based on this pressure, alleged pressure, that essentially required MINEM and SUNAT to change their policies.

There would have been no reason to go after one. They would have gone after others, everybody who had stabilized and nonstabilized Project, and would have required everybody to pay royalties.

That is inconsistent with their own argument, which is that, in the case of other companies--and I'll get to that--that in the case of other companies, Perú did not require the payment of royalties with respect to allegedly nonstabilized projects.

So, why would--why would Perú, under political pressure to get mining companies to pay royalties, single out Cerro Verde, but let off the hook everybody else, as they seem to argue?

All right. So, this is now a brief

discussion of other mining companies, and so, let me, before that, just take just 30 seconds to summarize where we are.

Under the Stabilization Agreement, it clearly applies only to the Leaching Project. The Feasibility Study clearly applies only to the Leaching Project. The law says that the Stabilization Agreement applies to a project-by-project basis. In this case, to the Leaching Project and not to the Concentrator Plant. The Peruvian courts confirm that under Peruvian law, this is the way to interpret the '98 Stabilization Agreement and the law.

We showed you that they knew the Concentrator Project was not covered by the Stabilization Agreement. We showed you that the Peruvian Government consistently interpreted the Stabilization Agreement as covering the Leaching Project but not the Concentrator Plant.

So, to overcome that, they submit additional claims which are, in a way they might be characterized as "claims of desperation," and these the ones--the three claims that I'll discuss now.

One is, oh, they let others off the hook. Well, very briefly, this is Yanacocha, and you see on the screen we have colored there Yanacocha. There is a concession called Chaupiloma Tres, and there were two stabilization agreements relating to this Chaupiloma Tres Concession.

In addition, that there is a concession called Chaupiloma Dos, and you see that there are two stabilization agreements, '98 and 2003, that cover the Chaupiloma Dos Concessions. So, with respect to the same concession, there are two different stabilization agreement. Two stabilization agreement with respect to Chaupiloma Dos, two stabilization agreements with respect to Chaupiloma Tres.

So, this shows that the mining stabilization agreements are not granted for the entire concession. If they were granted for the entire concession, there wouldn't be two stabilization agreements for one concession.

Then why would Yanacocha sign two--three different agreements in force at the same time that relate to the same concession? Well, so, Claimant

says, well, but--Yanacocha was able to sign two agreements with respect to, say, Chaupiloma Tres Concession because each agreement was signed with respect to a different Economic-Administrative Unit, and those different Units happen to share the Chaupiloma Tres Concession.

Well, leaving aside the fact that they did not have an Economic-Administrative Unit, the point is, this is irrelevant. It's irrelevant that that Chaupiloma Tres Concession is--included two different Economic-Administrative Units because, under their own theory, one concession, one stabilization agreement, but this is clearly not the case, one concession, two stabilization agreements.

Then they say, you know, Yanacocha was able to sign two agreements with respect to the Chaupiloma Dos Concession because each agreement refers to a different mining pit within the Chaupiloma Dos Concession.

Well, maybe, but, again, that's irrelevant. Chaupiloma Dos Concession contains two separate pits, but under Claimant's own theory, they wouldn't have

been required to sign different agreements with respect to the same Concession, because, remember, their theory, the Stabilization Agreement covers the whole concession. So, the Yanacocha example doesn't help their case.

Let's look at Southern Perú. Claimant says the Southern 1994 Stabilization Agreement covered the Cuajone and Toquepala Economic-Administrative Units. Well, Claimant's own witness, Hans Flury, who was then Legal Director of Southern, understood that Southern's '94 Stabilization Agreement covered only its Leaching Project.

On July 12, 1994, as you can see on the screen, Southern signed the stabilization agreement for the "Leaching Electrowon Project" located in two Administrative-Economic Units, the Cuajone and Toquepala Economic-Administrative Units. And this stabilization agreement was signed by Mr. Flury, and you can see, it says "Leaching Electrowon Project."

More than that, on August 15, 1994, Southern Perú's President sent a letter to MINEM. That letter was also signed--in addition to the President, was

signed by Mr. Flury, and that letter confirmed that Southern Stabilization Agreement applied exclusively to the Investment Project indicated in the Agreement. That is the Leaching Project, and that Southern, importantly, would keep separate accounts for that specific Project.

This is Southern's understanding of what was stabilized, in their own words, and look at what it says.

"The contractual guarantees will benefit Southern Perú exclusively for the construction Project of the Leaching Plant. The additional production that will be obtained from the operation of the aforementioned plant, and the income it obtains for the exportation and sale of said additional production of cathodes."

And then Southern will keep separate accounting, and will reflect, in separate results, the operation of the sales for the other products resulting from its mining activity. Southern, the example they give you, understood very well that what was stabilized was the Leaching Project, and no other

Project, and said to MINEM "and will keep separate accounts."

And in MINEM's presentation to the Congressional Energy and Mine Committee, it showed that Southern actually paid royalties with respect to their Primary Sulfide Project, which was not stabilized, even though that Primary Sulfide Project, Concentrator Project, was also within the Cuajone and Toquepala Administrative Units.

And so, if Claimant's theory regarding the scope of stabilization agreements were correct, then Southern would not have paid royalties on a project within the same Economic-Administrative Units as the stabilized project, but they did.

So, you see Southern Perú's understanding, at the time their witness was the Legal Director, you see what they understood to be stabilized and what they understood not to be stabilized.

Tintaya. Contrary to what Claimant says, SUNAT has held with respect to other companies that stabilization agreements apply exclusively to the investment described in the corresponding Feasibility

Study. So, let's look at one of SUNAT's resolutions related to the assessment of Tintaya.

After analyzing the Mining Law and the Mining Regulation, SUNAT stated that the mining stabilization agreements only cover the specific investment defined in the corresponding Feasibility Study. And SUNAT explained that the same taxpayer can be subject to different tax regimes: One with respect to a Stabilized Investment, and one with respect to a Nonstabilized Investment. And this, SUNAT said, was also the case of Tintaya.

So, this is the treatment of Tintaya.

And it defeats their point.

So, contrary to Claimant's allegation, they have attempted to introduce alleged disparate treatment as between SUNAT's treatment of Cerro Verde versus the treatment of other mining companies, but we just showed you documents, SUNAT's resolution regarding Yanacocha, Southern, Tintaya, they demonstrate that no such differential treatment occurred. But in any case, Claimant has not raised a discrimination claim, as they admitted in the March 29

letter.

Even if they did, Claimant has failed to show that the circumstances relating to the other mining companies are comparable to Cerro Verde. I mean, to show discrimination, they have to show like circumstances.

Claimant has not shown that any of the other mining companies develop an entirely new Investment Project, completely unrelated to the Stabilized Project, e.g. Project aimed to produce a separate product through a different process, entirely unrelated to the product produced through the Stabilized Project, within the same concession in which it developed the Stabilized Project, and that SUNAT treated that new Investment Project as a Stabilized Project.

And as I told you, all this discussion about application to Economic-Administrative Units, they don't have an Economic-Administrative Unit. And in any case, they should not be permitted to raise now a discrimination claim.

Well, before I leave this topic, Claimant

made a big case, a big argument about SUNAT's assessment on Milpo, another mining company, and you heard this morning an extensive discussion.

But, in reality, the documents that Claimant discussed do not support Claimant's interpretation, that stabilized guarantees are applied to entire concessions of mining units, and I'll briefly tell you why.

Just to provide some context, Milpo signed, in 2002, two separate stabilization agreements for two different mining projects: The Cerro Lindo Project and the Porvenir Mine Project.

Unlike Cerro Verde's mining project, Cerro Lindo and El Porvenir, one, were geographically located apart from each other, and, two, were constituted as different Economic-Administrative Units, which, again, to recall, to constitute as an Economic-Administrative Unit, there is a formal procedure you apply, and you get an approval, must be officially approved.

So, because they had two areas, two different geographic areas, not adjacent, and because

they had two different approved Economic-Administrative Units, they are not in like circumstances with Cerro Verde, which has one geographic area that we are talking about, and has no Economic-Administrative Unit.

The assessment that were added to the record, SUNAT's assessment, that were discussed extensively this morning by Counsel for Claimant, also do not help Claimant's case, because in those cases SUNAT did not analyze the scope of the stabilization agreements.

SUNAT focused on auditing very specific findings, such as the expenses presented by Milpo as tax deductions, and the classification of certain assets for depreciation purposes, among others. SUNAT did not analyze whether the investments were stabilized or not. And so, for those two reasons, Claimant cannot assert that SUNAT interpreted stabilization agreements differently in the case of Milpo from the case of Cerro Verde.

Now, the Tax Tribunal claim, which I will discuss very briefly, because the evidence is there

for Perú and not there for Claimant.

Claimant asserts that President Olano, the President of the Tax Tribunal, appointed Ms. Villanueva to assist Chamber 1 in order to "manipulate" the decision on the 2008 Royalty Case.

Wrong. Contrary to those assertions, President Olano appointed Ms. Villanueva, a qualified and experienced law clerk, "asesora," in Spanish, due to staffing shortages.

Claimant asserts that President Olano dictated how Ms. Villanueva should consider the 2008 Royalty Case. Wrong.

Contrary to those assertions, Ms. Villanueva read the 2008 Royalty Case file and gave it an independent consideration.

Claimant asserts that President Olano interfered with the resolution process in all--in the assessment cases that I'm not going to go through that are on the screen.

Again, wrong. The vocales, in their respective chambers, independently considered and decided the Royalty Cases before them.

Claimant asserts that President Olano "fast-tracked" the resolution of the 2008 Assessment, so that Royalty Cases would be decided in the same way.

Again, wrong. The vocales in their respective Chambers determined their own timing regarding the issuance of those decisions.

They assert--Claimant asserts that Mr. Mejia Ninocondor should have been disqualified from the 2010-2011 Royalty Case, alleging that he previously worked at SUNAT, the SUNAT department that initially confirmed that royalty assessment.

Wrong again. He had previously worked at SUNAT, but did not work on the 2010-2011 Royalty Case.

Claimant says that the Plenary Chamber did not deliberate on Cerro Verde's request for disqualification, and President Olano, as the vocal ponente of the Plenary Chamber, drafted the Plenary Chamber's resolution rejecting Cerro Verde's disqualification request.

Wrong again. The Plenary Chamber carefully considered the request for disqualification, and

denied it because it was meritless.

They say, Ms. Villanueva improperly acted as a vocal in the Q4 2011 Royalty Case. Wrong. Cerro Verde did not even try to disqualify Ms. Villanueva from the fourth quarter 2011 Royalty Case.

I'm doing this in the summary fashion because the evidence is in the record, and you have witnesses, but it's important to emphasize one point.

Claimant asserts that the Peruvian Government as a whole, and including the Tax Tribunal acted under political pressure by committing volte-face against Cerro Verde.

Now, Claimant's own witness, Mr. Estrada, who has no firsthand knowledge of the Royalty Cases against Cerro Verde because he was not a vocal in the Chamber deciding those cases--the Chambers deciding those cases. But he, even he, the Whistleblower, as it were, does not testify about political pressure in his witness statement.

Instead, he asserts that President Olano acted against Cerro Verde in the Royalty Cases in order to increase the performance bonuses to her

herself and the vocales. And you'll see the excerpt from his witness statement on the screen.

This claim is not only unsupported by any evidence, but it's nonsensical, because under this theory, the Tax Tribunal would essentially be squeezing money from all taxpayers appearing before the Tax Tribunal, not just Cerro Verde, to increase their bonuses.

And so, the claim that the Tax Tribunal acted inappropriately across the board is baseless. In fact, Mr. Estrada admits that those bonuses were never paid, but he doesn't even assert that there was any outside political pressure.

Now, I will--to complete the discussion on the Tax Tribunal, I think it's important to know that Claimant never complained about those alleged due process violations at the time. Now, they say in this Arbitration they did not know the full extent.

They cannot say they didn't know about anything, but they didn't know about "the full extent" of those due process violations until 2021, when this arbitration began and they received documents in

document production.

But Claimant's dispute regarding the scope of the stabilization agreement was nevertheless submitted to the Peruvian courts, including the Supreme Court. The Peruvian courts, as we saw, analyzed the terms of the 1998 Stabilization Agreement, and concluded twice that the Stabilization Agreement did not cover the Concentrator Project.

Claimant did not complain about due process violations in the Peruvian courts. They had their day in court, Cerro Verde did, does not complain about due process violations in courts.

What does that mean? The invention in this Arbitration of a claim of due process violation by the Tax Tribunal is futile. Even if--even if, which we deny, there was a due process violation on the level of the Tax Tribunal, this would not change the substantive correctness of the Tax Tribunal's decision that the Stabilization Agreement did not extend to the Concentrator Plant, because that decision was confirmed all the way through by the Peruvian judiciary.

So, the substantive result is the same, and even if--which would not be the case--you find some due process violation by the Tax Tribunal, they have to prove that those due process violation caused them harm, and they didn't, because the Peruvian judiciary, without any alleged due process violations, reached the same substantive result.

Very briefly, the Claimant's allegations that the Peruvian Government somehow misled Cerro Verde into participating in the Voluntary Contribution Programs are wholly unsupported. There is no evidence of any quid pro quo, no evidence that Cerro Verde's--that the Peruvian Government ever represented to Cerro Verde that the Concentrator Project would be exempt from royalties, if they participate in these voluntary contribution programs.

In fact, at the time, when Cerro Verde agreed to make voluntary contributions in 2006, at the roundtable we discussed, Cerro Verde, as I showed you, already knew that the Concentrator Project was not covered.

I told you about all the--we showed you all

the documents where Cerro Verde knew the Concentrator Plant was not covered. I showed you the presentation at that very same Roundtable Discussion. You have it again. They say: "Oh, we didn't know." Not only "we didn't know," but they want to represent to you that there was some sort of a quid pro quo, a promise: "You're not going to pay royalties if you participate in the voluntary agreements."

Well, to begin with, there is a minor--I say "minor" discrepancy in their argument. If, as they say, the Concentrator Project was covered by the Stabilization Agreement from the beginning, why would there be any quid pro quo, any promise that: "Don't worry. You are covered if you participate."

Well, whether they participate or not in the voluntary programs, if they're right, they are covered. The Concentrator Plant is covered. So, this quid pro quo makes no sense.

But look at the agreements that they signed. Those are the three agreements we are talking about, and I showed you all the documents that before that date they knew very well how the Peruvian Government

interpreted the 1998 Stabilization Agreement. But, more importantly, and what makes that claim a claim of desperation, we are showing you one provision from one of those agreements, the Voluntary Contribution Agreement, and which is what it says, and it says just the opposite, the Agreement that they signed: "This Agreement does not replace the obligations corresponding to the different Government levels being these national, regional, local, in terms of the distribution and investment of the resources from the "Mining Canon" and the "Mining Royalty," which shall be subject to the applicable regulations."

Not only there is no quid pro quo, but this agreement has a specific provision that states specifically, if you have to pay royalties, you pay royalties. This agreement does not replace the existing obligation to pay royalties.

So, to say that: "We signed this Agreement in exchange for a promise that we wouldn't pay royalties," well, the agreement says the exact opposite.

Now, I will stop here and hand the floor to

my colleague Jennifer Haworth McCandless to talk about jurisdiction, merits, and damages, and I thank the Members of the Tribunal.

MS. HAWORTH McCANDLESS: Thank you, Mr. Alexandrov.

Madam President and Members of the Tribunal, I'm going to discuss three topics: jurisdiction, merits, and, briefly, damages.

So, Claimant's claims fall outside the Tribunal's jurisdiction based on five grounds, and you see those on the screen in front of you. Claimant's claims are outside the three-year statute of limitations period provided under Article 10.18.1 of the TPA; Claimant's claims based on penalties and interest related to SUNAT's tax assessments constitute "taxation measures," which are excluded from the scope of the TPA pursuant to Article 22.3.1; Claimant's claims are based on acts or facts that occurred before the TPA entered into force, and, thus, they are outside the scope of the TPA under Article 10.18.4 of the TPA; and Claimant failed to prove that it relied--that it relied on the 1998 Stabilization

Agreement when it established or acquired its covered investments as required under Article 10.16.1 of the TPA.

The first ground, Claimant's claims fall outside the limitations period provided under Article 10.18.1 of the TPA. You see that provision on the screen in front of you. The TPA prohibits the submission of claims to arbitration if more than three years have passed from the date on which the Claimant first knew or should have known of the alleged breaches and that it--that it or its enterprises, arguing on its behalf, incurred loss or damage. The Corona Materials Award discusses that well. It about the earliest possible date.

Thus, if the Tribunal finds that the Claimant first knew, or should have known, of the alleged breaches and loss of damages more than three years before Claimant filed its Notice of Arbitration, then Claimant's claims would be time-barred.

Now, Claimant makes two categories of claims: One for alleged breaches of the Stabilization

Agreement on behalf of SMCV; and, two, alleged breaches of the TPA on its own behalf.

First with respect to the alleged breaches of the Stabilization Agreement. Claimant first knew, or should have known, of the alleged breaches and that SMCV incurred loss or damage as early as August of 2009. That was when SUNAT notified SMCV that it assessed royalties on SMCV's Concentrator Project for the 2006-2007 period because the Project was not within the scope of the Stabilization Agreement.

Now, Claimant filed its Notice of Arbitration in February of 2020, and, therefore, the three-year limitations period cutoff date is February 2017, and clearly the date of 2009 is much earlier than the 2017 cutoff period.

SUNAT also notified SMCV of the extent and the amount of the royalties owed by SMCV with penalties and interest, as you can see on the excerpt on the screen. Thus, as of that date, August 2009, Claimant and SMCV knew of the alleged breaches and of the loss or damage.

Now, as a minimum, Claimant first new, or

should have known, the alleged breaches and that SMCV incurred loss or damage no later than September 2009. That was when SMCV challenged the 2006-2007 Royalty Assessment before SUNAT; so, therefore, recognizing that it acknowledge that there was a wrong that was harmed against them. And you see that claim on the screen in front of you.

Now, Claimant says that it knew of the alleged breaches and loss or damage after the cutoff date. What are the reasons? They say the alleged breaches occurred each and every time that SUNAT's royalty and tax assessments became binding and enforceable against SMCV, that for each of those times Perú committed a separate breach of the Stabilization Agreement, and that SMCV incurred loss or damage only when those assessments became binding and enforceable.

Well, Claimant's assertions are meritless. Why? Claimant first acquired the knowledge of the alleged breaches when it was notified by SUNAT of the assessment in August of 2009 or, at minimum, when they themselves challenged that recognizing that there was something with which they were disagreeing with

respect to the interpretation of the Stabilization Agreement. That was in September the 2009.

You see on the screen Apotex Award is looking at any challenge that the FDA in that case, the decision itself had, to be brought within three years and could not be delayed by resort to court actions. And the U.S., in its Non-Disputing Party submission, agrees, and you see the provision on the screen in front of you in Paragraph 9.

SUNAT's royalty and tax assessments on SMCV's Concentrator Project, the challenged measures, do not give rise to separate breaches, and the limitations period does not renew each and every time that the challenged measure occurs because SUNAT's assessments are part of a "series of similar or related actions by the Respondent State." And the U.S. in its Non-Disputing Party Submission agrees, and you can see those submission on the screen in front of you. That is in Paragraph 9 and 10 of the non-disputing party submission. And the Corona Materials is the location where that language comes, "a series of similar and related actions by a

Respondent State," an investor cannot evade the limitations period by bringing its claim on the most recent transgression in that series, which is exactly what Claimant is trying to do here.

Thus, Claimant's knowledge of alleged breaches based on SUNAT's assessments must be traced to the first assessment in the series of SUNAT's assessments. In this case it's the 2006-2007 Royalty Assessment.

Now, Claimant knew that SMCV incurred loss or damage as a result of the assessments, when SMCV was first notified in August of 2009 or, at the least, when SMCV first challenged that assessment in September of 2009. And you see that the U.S. in its Non-Disputing Party Submission agrees. That's in Paragraph 11 of their submission.

And, the Grand River decision on jurisdiction is in accord. When liability accrues, it is before he or she actually dispenses any funds, even if there is no immediate outlay of funds or of the obligations. So, it is once you have knowledge of that loss, not necessarily when the obligations are

being paid.

Now, those are with respect to the royalty assessments, and if the Tribunal--that, we say, because the interpretation of this Stability Agreement is the same with respect to royalty assessments and tax assessments, that's the earliest point in time in which the Claimant knew, or should have known, of the alleged breach and of the alleged loss. But if the Tribunal is going to assess them separately, the royalty and the tax, the tax assessment occurred--the first tax assessment--Claimant first knew about the alleged--the tax assessment in December of 2009, and then they challenged that in January of 2010.

Those dates, as at the previous dates, though, are well before, years before the cutoff date of February 2017, and the key dates we just discussed are summarized on that table in front of you.

Now, SMCV continued to be notified of many of SUNAT's assessments, and they continued to challenge them well before the February 2017 cutoff date. And we--in our Respondent's Rejoinder submission in Table 3 show a list of those dates.

Alleged breaches of the TPA. So, Claimant claims alleged frustration of legitimate expectations, arbitrary actions, and inconsistent and nontransparent acts, and they say they fall outside--those fall outside the TPA's limitations period.

These claims are all based on SUNAT's royalty assessments against SMCV, and you see the different claims there in front of you. And, therefore, that knowledge, Claimant's knowledge of the alleged breaches and the incurred loss or damage fall within the same dates of the royalty assessment that I discussed earlier: August of 2009, initially when SMCV was first notified of the assessment, and, or at minimum, September 2009, when SMCV first challenged that assessment.

With respect to the due process, Claimant's due-process claims, they claim violations related to the Tax Tribunal's proceedings in the 2006-2007 and 2008 Royalty Assessments. Those also fall outside the TPA's limitations period.

Claimant first knew, or should have known, of the alleged breaches and the loss or damages when

SMCV was first notified of the Tax Tribunal's decisions regarding those assessments, and that incurred in June of 2013; again, years before the February 2017 cutoff date.

Claimant's claims based on SUNAT's refusal to waive penalties and interest on the royalty and tax assessments also are outside the Tribunal's jurisdiction.

Claims related to royalty assessments. Claimant first knew, or should have known, of alleged breaches of a loss or damage on April 22, 2010, when SMCV was notified that SUNAT denied its request to waive penalties and interest related to 2006-2007 Royalty Assessment; again, years before the 2017 cutoff date.

Claims related to tax assessments, those claims are barred under Article 22.3.1 of the TPA, which excludes from the TPA claims based on taxation measures, which we'll discuss shortly.

In sum, with respect to the first ground, Claimant filed its Notice of Arbitration in February of much 2020. The cutoff date under Article 10.18.1

of the TPA is February 2017.

Claimant first knew, or should have known, of the alleged breaches and that SMCV incurred loss or damage many years before the cutoff date.

Thus, Claimant's claims of alleged breaches of the 1998 Stabilization Agreement and almost all of Claimant's claims of alleged breaches under the TPA fall outside the Tribunal's jurisdiction.

The second ground. Claimant's claims of alleged breaches of a TPA based on penalties and interest related to tax assessments fall outside the scope of the TPA pursuant to Article 22.3.1 because those measures constitute taxation measures.

You see the article of the TPA in front of you on the screen. The TPA excludes "taxation measures" from the scope of its protection. In its Reply, Claimant agrees that the claims related to breaches of TPA based on tax assessments are barred under Article 22.3.1 because, as Claimant acknowledge, tax assessments are tax measures.

However, Claimant argues that the penalties and interest, which were imposed on the assessed tax

amounts in the same tax assessments are not taxation measures, and, thus, according to Claimant, its claims relating to the penalties and interest are not barred by Article 22.3.1. Well, Claimant's arguments are without merit.

The TPA defines "measures" broadly to include: "Any law, regulation, procedure, requirement, or practice." And you see the language on the screen in front of you. Well, the enforcement of a tax is, of course, a practice; thus, Claimant's attempt to limit taxation measures to merely "taxes" must fail.

In conclusion with respect to the second ground, SUNAT's imposition and maintenance of penalties and interest on taxes assessed in the tax assessment against SMCV constitute taxation measures under Article 22.3.1 of the TPA because those measures are taxation "practices" aimed at enforcing tax obligations; thus, all of Claimant's claims of alleged breaches of the TPA based on SUNAT's imposition and maintenance of penalties and interest applied to the SUNAT's tax assessments against SMCV are barred under

Article 22.3.1 of the TPA.

The third ground. Claimant's claims fall outside the scope of the TPA are under Article 10.1.3 because Claimant's claims are based on acts or facts that occurred before the TPA entered into force. And you see the provision of the TPA in front of you on the screen.

The TPA entered into force on February 1, 2009. Claimant's claims related to the royalty and tax assessments are all based on--or are "deeply and inseparably rooted in" acts or facts that occurred before the TPA entered into force; and, thus, Claimant's claims based on those measures fall outside the Tribunal's jurisdiction.

Claimant alleges breach of the 1998 Stabilization Agreement and of Article 10.5 of the TPA based on SUNAT's assessments. By Claimant's own telling, the cause of, and the basis of, all of SUNAT's assessments on SMCV's Concentrator Project is MINEM's interpretation of the scope of the 1998 Stabilization Agreement and the Mining Law and Regulations contained in MINEM's June 2006 Report.

And you heard earlier today in their presentation, they described it as this: Claimant reiterated that in its Opening Statement that the novel interpretation and the interpretation that was "drafted behind closed doors," or based on Mr. Isasi's June 2006 Report. Well, that report was, of course, many years before the TPA entered into force, and you see on the screen in front of you that MINEM's--this is--that Claimant is saying that MINEM's June 2006 Report directly caused SUNAT to assess royalties and taxes on SMCV's Concentrator Project. And you see the quotes on the screen from Claimant's Memorial and--from their Memorial. So you see those on the screen.

Claimant also asserts that MINEM's June 2006 Report is the basis of all of SUNAT's assessments on SMCV's Concentrator project, and you see the quotes in which that appears in their submissions. That is from Claimant's Memorial and also from Claimant's Notice of Arbitration.

Claimant also stated earlier today in their Opening Statement that the 2006 SUNAT Report--that it

was SUNAT's position--"was already decided in 2006." So they are admitting all these acts and facts occurred, and they were the basis of SUNAT's assessments, and all of these are well before the TPA entered into force.

Indeed, with respect to SUNAT's audit, they had an audit in 2008, and Claimant today said the audit "culminated"--in quotes--in SUNAT's 2006 and 2007 Royalty Assessment. So, clearly, they are acts--these are acts that occurred under the basis of the assessments on which Claimant roots their claim, and all of these are occurring before 2009, before the TPA entered into force.

So, in sum, with respect to this ground, Claimant asserts that the genesis of the entire dispute is MINEM's interpretation of the scope of the Stabilization Agreement and the Mining Law and Regulations that are reflected in the June 2006 Report.

Claimant's claims are also based on SUNAT's assessments of sales from SMCV's Concentrator Plant, which began with SUNAT's assessment of the same

notified to SMCV in June 2008. The TPA entered into force on February 1, 2009.

Thus, Claimant's claims based on SUNAT's assessments are "deeply and inseparably rooted" in an "act or fact that took place before the date of entry into force of the TPA," and, therefore, fall outside the Tribunal's jurisdictions.

The fourth ground. Claimant's claims of alleged breaches of the 1998 Stabilization Agreement cannot be submitted to international arbitration pursuant to Article 10.18.4 of the TPA because they have already been submitted to dispute settlement procedures in Perú.

And you see the provision on the screen in front of you. Accordingly, for claims of breach of an Investment Agreement submitted by the Claimant on behalf of an enterprise that it owns or controls, Article 10.18.4(a) bars the submission of those claims to international arbitration if they were previously submitted to an Administrative Tribunal by----of the Respondent, or a court of the Respondent, or any other binding dispute settlement procedure. Well, all three

are satisfied here.

Administrative Tribunal. SMCV challenged almost all of SUNAT's assessments on its Concentrator project before SUNAT's Claims Division and the Tax Tribunal, both of which are Administrative Tribunals. And, indeed, Claimant admitted that SUNAT's Claims Division and Tax Tribunal are administrative tribunals in Perú. That is at Claimant's Reply at Paragraph 259, and, indeed, earlier today, Claimant also made a comment that the first instance decision-maker in the administrative process is SUNAT's Claims Division, and also that at the last instance decision-maker in the administrative process is--the Tax Tribunal is supposed to set things straight. So, the Claimant is still admitting today that SUNAT's Claims Division and the Tax Tribunal are Administrative Tribunals in Perú.

Courts of Perú. SMCV also submitted claims of the same alleged breaches of the Stabilization Agreement to the courts of Perú, and you can see each of theirs submissions on the screen in front of you, and the language is very clear. They are stating

things such as those administrative decisions have violated the legal framework applicable to stability agreements for the mining industry and the clauses of the Agreement for the Promotion and Guarantee of the Investments that Cerro Verde entered into with the Peruvian State on February 13, 1998. They submitted those claims before the courts in Perú.

Binding dispute settlement procedures. The decisions by SUNAT's Claims Division and the Tax Tribunal are binding on the taxpayer appearing before them unless they are successfully appealed. Claimant and its Peruvian law expert, Dr. Bullard, admit that a decision of SUNAT's Claims Division is final and binding if it's not appealed to the Tax Tribunal by the applicable deadline and that the decision of the Tax Tribunal is final and binding after it is issued and notified to SMCV.

SMCV's claims before SUNAT's Claims Division, the Tax Tribunal, and Peruvian courts. And SMCV's claims in this Arbitration are for the same alleged breaches of the Stabilization Agreement, and they also share the same fundamental basis because

resolving the arbitration claims requires this Tribunal to reach and resolve the same dispute underlying the claims previously submitted to Peruvian fora.

The SMCV complains about the same Government measure. SMCV claims the same legal rights under the same legal instrument. SMCV's claims raise the same legal question regarding the same Investment Project, and SMCV's claims are governed by the same legal framework. The similarities between SMCV's claims before the Peruvian fora and its claims submitted in this Arbitration are undeniable and are shown in Table 4 of Respondent's Rejoinder.

Importantly, the Peruvian fora have already resolved repeatedly the same dispute underlying SMCV's arbitration claims whether the 1998 Stabilization Agreement covered SMCV's Concentrator Project, and it found that the Stabilization Agreement did not cover SMCV's Concentrator Project.

And you see in the table below and in the next slide, which are reproduced from Respondent's Counter-Memorial at Table 4, it shows that each time

SUNAT's Claims Division and the Tax Tribunal resolved the dispute and determined that the Stabilization Agreement did not cover the Concentrator Project.

In sum, with respect to Ground 4, the record is clear that SMCV has submitted the exact same dispute underlying its arbitration claims whether the 1998 Stabilization Agreement covered SMCV's Concentrator Project to SUNAT's Claims Division, the Tax Tribunal, and Peruvian courts. SMCV has submitted the exact same dispute to Administrative Tribunals, courts of the Respondent, and binding dispute settlement procedures.

Allowing SMCV's arbitration claims to proceed would, in effect, allow Claimant, and SMCV, to take a second, or a third, or even a fourth bite of the same apple, contrary to the text and purpose of Article 10.18.4 of the TPA.

And the fifth ground, Claimant failed to prove that it relied on the 1998 Stabilization Agreement when it established or acquired its covered investments; and, thus, it may not submit claims for breach of an Investment Agreement pursuant to

Article 10.16.1 of the TPA. You see the provision on the left.

For a Claimant to submit a claim of breach of an investment agreement on behalf of an enterprise that it owns or controls under the TPA, two requirements must be met. We will focus on the second requirement: The Claimant must have relied on the Investment Agreement when it established or acquired its covered investments.

For an agreement to be considered an investment, an agreement within the meaning of TPA, a Claimant must have relied on the agreement when it established or acquired its covered investments. This is the definition provided on the screen in front of you.

Claimant did not rely on the 1998 Stabilization Agreement when it acquired its covered investment, in SMCV, or in the so-called "Cerro Verde production unit" or in the "Mining and Beneficiation Concession."

The Stabilization Agreement is not, therefore, an Investment Agreement within the meaning

of TPA.

Now, contrary to Claimant's assertion, there is no question that the TPA requires that Claimant's reliance for it to be entitled to submit a claim for a breach of that Agreement, whether it's on its own behalf or on the behalf--on its own or on the enterprise's behalf.

Article 10.16 of the TPA sets the conditions under which a claimant--in this case Freeport--must submit a claim for arbitration, not its covered investment on whose behalf it is asserting--in this case SMCV--nor its predecessor, in this case, Phelps Dodge. It is Claimant's burden to prove its reliance on the Investment Agreement when it established or acquired its covered investments, and the U.S. appears to agree in its Non-Disputing Party Submission in Paragraph 6.

Claimant itself understood that Article 10.16.1 of the TPA requires its own reliance on the 1998 Stabilization Agreement for it to be entitled to submit a claim for breach of an investment agreement of the TPA. Claimant asserted in its

written submissions that it relied on the Stabilization Agreement, and those are quotes on the screen in front of you on--in its Notice of Arbitration and its Memorial.

Now, Claimant would not have asserted that its own--assert its own reliance on the Stability Agreement repeatedly if it too did not interpret Article 10.16.1 as requiring Claimant's reliance on the purported Investment Agreement when it acquired its covered investments in order to bring claim for breach of the Agreement under the TPA.

Claimant, however, has failed to prove that it relied on the Stabilization Agreement when it acquired its covered investments on March 19, 2007. As a matter of fact, Claimant did not and could not produce a single piece of evidence.

Instead, Claimant, because it can't prove it, it now argues that it is sufficient for other entities--SMCV, its covered investment, or Phelps Dodge, its predecessor--saying that they relied on the Stabilization Agreement in order to satisfy the reliance component, but that does not help Claimant's

case.

SMCV was not and could not be a covered investment under the TPA, whether a Phelps Dodge or a Freeport, because the TPA was not in force when it established or acquired its investment. Just for a second, I'll go back to the definition.

This is what Claimant is relying on. They are saying: "Look, it says--when--there's an agreement between national authority and covered investment--in this case, SMCV--on which the covered investment, SMCV, relied, when it acquired or its covered investment," in this case, the Concentrator.

But at that moment in time, when it got--acquired the Concentrator, when it first started to invest in it was October of 2004. It can't be a covered investment at that moment in time because the TPA wasn't in force until 2009.

Also, with respect to SMCV's purported reliance on the Stabilization Agreement in order to make its investment in the Concentrator, the Concentrator itself can't be a covered investment under the TPA because, when the investment was made,

it was October in 2004, before the TPA entered into force. Same with respect to Phelps Dodge.

In sum, with respect to the fifth basis, Article 10.16.1 of the TPA must be read to require Freeport's reliance on the Investment Agreement when it acquired its covered investments in March of 2007 for it to be entitled to submit a claim for breach of an investment agreement under the TPA. Claimant has not provided a single piece of evidence to show such reliance.

With respect to the merits, Claimant alleges that Perú breached the 1998 Stabilization Agreement by imposing royalty and tax assessments on SMCV's Concentrator Project.

Perú--Claimant alleges that Perú did not--I know have like four minutes left--right?--or three perhaps.

Perú did not breach the 1998 Stabilization Agreement. The 1998 Stabilization Agreement does not extend stability guarantees to SMCV's Concentrator Project. This was confirmed by the Peruvian Courts, including Perú's highest court, the Supreme Court.

Under the collateral estoppel doctrine, Claimant cannot relitigate the same questions that has already been decided. Even if Claimant were allowed to submit its claims before this Tribunal, the Tribunal must apply Peruvian law and reach the same conclusions as it did in the Peruvian courts.

Claimant alleges that Perú breached the FET obligations under Article 10.5 of the TPA by frustrating Claimant's alleged legitimate expectations by acting arbitrarily, by failing to act consistently and transparently, and by committing certain due process violations.

Well, they allege violations of protections that are not provided for under the TPA. The customary international law minimum standard of treatment applicable to the FET obligations of Article 10.5 does not protect investors against frustration of legitimate expectations, arbitrary actions or inconsistent and nontransparent actions.

And you can see the requirements for proving that on the screen in front of you. They must prove that there has been widespread state practice and

opinio juris in order to show that the burden has crystallized into rule of customary international law, and they have not been able to prove that, and the U.S. agrees in its Non-Disputing Party Submission. You see the relevant provisions on the screen. The only one that has crystallized is with respect to the denial of justice, which Claimant does not assert.

Then quickly moving to damages, there are five bases that Respondent states Claimant's damages claims also suffer from specific errors. Claimant claims damages that SMCV failed to mitigate. Claimant has improperly included penalties and interest related to tax assessments in Article 10.5 claims. Claimant claims damages for amounts that SMCV never paid. Claimant assumes without support that, but for SUNAT's assessments, SMCV would have distributed 100 percent of assessment amounts as dividends at the next actual distribution date, and Claimant improperly uses SMCV's cost of equity as its pre-award interest.

And there is a discussion on each of those slides, which I won't go into, but, of course, we have our damages expert who will be here to testify on

those issues later on at the end of this proceeding.

And, therefore, for the reasons--in conclusion, for the reasons stated in Respondent's Opening and in its written statements, the Tribunal lacks jurisdiction to hear Claimant's claims, and even if it did have jurisdiction, Claimant's claims fail on their merits. And even if the Tribunal were to find that Respondent were liable, which it should not, Claimant's damages claims are inflated.

This concludes Respondent's Opening Statement.

PRESIDENT HANEFELD: Thank you very much.

And thank you to both Parties for staying within the time limits. I know this is highly appreciated.

The Tribunal may have questions also to Counsel, which I indicated already this morning, but we discussed that we do not want to ask these questions now. We have now a couple days in front of us, and we will have other opportunity to ask questions. So, from our perspective, this would bring us to the end of Day 1 of our Hearing. It was a long

day for everyone, but is there anything that the Parties wish to address now before we leave?

MR. PRAGER: Nothing on behalf of Claimant. Thank you very much.

PRESIDENT HANEFELD: Thank you.

On Respondent's side?

MS. HAWORTH McCANDLESS: Nothing on behalf of Respondent. Thank you.

PRESIDENT HANEFELD: Thank you so much.

To my co-arbitrators, anything to add? Marisa? No. Thank you.

Then we thank you very much for this first day and see us tomorrow at 9:30. Thank you.

(Whereupon, at 6:16 p.m., the Hearing was adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing English-speaking proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the English-speaking proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

Dawn K. Larson