

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Freeport-McMoRan Inc.

v.

Republic of Peru

(ICSID Case No. ARB/20/8)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Dr. Inka Hanefeld, President of the Tribunal

Prof. Dr. Guido Santiago Tawil, Arbitrator

Mr. Bernardo M. Cremades, Arbitrator

Assistant to the Tribunal

Ms. Charlotte Matthews

Secretary of the Tribunal

Ms. Marisa Planells-Valero

4 July 2022

Freeport-McMoRan Inc. v. Republic of Peru
(ICSID Case No. ARB/20/8)

Procedural Order No. 2

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A. PRELIMINARY REMARKS

1. On 6 June 2022, the Parties submitted their Replies to the other Party's Document Production Requests (**DPRs**) in the form of Redfern Schedules in accordance with Procedural Order No. 1 dated 17 June 2021 and the Updated Procedural Timetable as per the revised Annex A to Procedural Order No. 1 dated 21 April 2022.
2. Claimant's and Respondent's DPRs and their underlying reasoning are contained in the first and second rows of their Redfern Schedules. The respective other Party included its agreement to produce or summary of objections in the third row of the Redfern Schedule. The requesting Party's reply on the other Party's agreement to produce or objections are contained in the fourth row of the Redfern Schedule. The Tribunal's decisions on each Party's DPRs are contained in the fifth row of their respective Redfern Schedule.
3. The Parties' Redfern Schedules are attached to this Procedural Order as **Appendix 1** (Claimant's Redfern Schedule) and **Appendix 2** (Respondent's Redfern Schedule) and constitute an integral part of this Procedural Order.

B. THE TRIBUNAL'S CONSIDERATIONS

4. This Procedural Order as well as the considerations set out below and in the Appendices are based upon the Tribunal's current and non-prejudicial understanding of the case and solely made for the purpose of this Procedural Order without prejudice to any future decision on jurisdiction and/or the merits in this arbitration. In this regard, the Tribunal is mindful that the proceedings are still at an early stage and that a number of submissions of the Parties (as well as Non-Disputing Party and Amicus submissions, if any) are still outstanding. Accordingly, none of the Tribunal's considerations and decisions set out in this Procedural Order should be taken as any indication as to the Tribunal's views on the question of the Tribunal's jurisdiction and/or the merits of the case.
5. The Tribunal has duly considered the Parties' reasons for their DPRs as set out in their Redfern Schedules, the opposing Party's objections and the requesting Party's replies. Furthermore, the Tribunal has duly considered the Parties' general comments to the respective DPRs submitted on 6 June 2022. Finally, the Tribunal has duly considered the Parties' submissions made to date, in particular:

- Claimant’s Notice of Arbitration dated 28 February 2020;
- Claimant’s Notice of Additional Claims dated 2 July 2021;
- Claimant’s Memorial dated 19 October 2021;
- Respondent’s Counter-Memorial on the Merits and Memorial on Jurisdiction dated 4 May 2022.

6. When deciding on the Parties’ DPRs, the Tribunal has followed the applicable rules under the ICSID Convention and Rules and Procedural Order No. 1 and has taken guidance from the 2020 IBA Rules on the Taking of Evidence in International Arbitration (the “**IBA Rules**”) pursuant to Section 16.4 of Procedural Order No. 1.
7. In deciding on the Parties’ DPRs, the Tribunal has been guided, in particular, by the following considerations:

I. Requirements for requests

8. The Tribunal has examined whether each of the Parties’ disputed DPRs comply with the standards under the IBA Rules (Article 3.3 (a)-(c)).
9. **With respect to the definition of documents**, the Tribunal has adopted the definition provided by the IBA Rules, namely that there be “*a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means*” (“**Document**”). Accordingly, the Parties may generally not only request “*final versions of official documents*” as submitted by Respondent,¹ but also drafts and emails subject to the further requirements of Article 3.3 (a)-(c) of the IBA Rules.
10. **With respect to the ‘narrow and specific’ standard** under Article 3.3 (a) (ii) of the IBA Rules, the Tribunal recalls that Section 16.5 of Procedural Order No. 1 confirms that “[e]very request for production of documents shall precisely identify each document, or category of documents, sought”. The Tribunal has considered that under such standard a Party’s request shall identify:
 - a precise description of the Documents sought, *i.e.*:
 - if requesting a Document, the specific Document’s identification; or

¹ Respondent’s general objection in Claimant’s DPR, p. 4, ¶ 3.

- if requesting a category of Documents, a precise identification of the category (e.g. meeting minutes, correspondence, drafting history of a law, etc.) and its subject matter;
 - the time frame of the Documents sought, which must identify narrow initial and final dates during which the Documents were issued;
 - the identity of the authors and their addressees;
 - the reasons for which the Documents are believed to exist.
- 11. The Tribunal has particularly considered whether each request enables the requested Party to precisely discern what Documents are responsive to such request. Accordingly, in disputed requests for Documents which only “*concern*” or “*relate*” to a specific topic and not directly address such topic, the Tribunal has considered such requests to not be sufficiently narrow and specific.² The Parties are only required to search for and produce documents that discuss a given topic.
- 12. While the Tribunal does not consider itself compelled to narrow down requests that are overly broad, it has nevertheless considered whether any requests could be partially granted. The Tribunal has in this respect taken due consideration of the Parties’ specific requests, any voluntary production agreements and respective amendments to such requests.³ As far as a Party has agreed to voluntarily produce certain Documents, the Tribunal has ordered production in accordance with the terms of such agreement.
- 13. Finally, the Tribunal has taken note of Claimant’s broad definition of “Respondent” in its DPR, *i.e.* that “‘Respondent,’ ‘Peru,’ or the ‘Government’ means any entity, agency, organ, official, employee, or representative of the Republic of Peru, including the central government and any administrative or territorial unit of Peru, regardless of whether it, he, or she exercises legislative, executive, judicial, or any other function, and regardless of whether any entity, agency, or organ is considered to have distinct legal personality under domestic law.”⁴ The Tribunal is mindful of the fact that it had accepted, in the context of document preservation notices under Section 16.2 of Procedural Order No. 1, that Respondent’s relevant individuals and bodies for the purposes of the preservation of documents were the Ministry of Energy and Mines, Ministry of

² Respondent’s general objection in Claimant’s DPR, p. 4, ¶ 4.

³ See, for example, Claimant’s DPRs nos. 1, 15, 16, 17, 18, 19, 21; Respondent’s DPRs nos. 1, 2, 4, 5, 6, 7, 15.

⁴ Claimant’s DPR, p. 1, ¶ 2.d).

Economy and Finance, SUNAT, the Tax Tribunal, and ProInversión. The Tribunal nevertheless takes note of the fact that Respondent has not challenged Claimant’s broad definition of Respondent” in its objections to Claimant’s DPRs and, hence, accepts Claimant’s broad definition of “Respondent” for document production purposes.

14. **With respect to the ‘*relevant to the case and material to its outcome*’ standard** under Article 3.3 (b) and 9.2(a) of the IBA Rules, the Tribunal has considered the relevance and materiality of the requested Documents on a *prima facie* basis based on the Parties’ current respective arguments. Furthermore, with regard to the *prima facie* relevance and materiality of the requested Documents, the Tribunal has considered that it is for each Party to make its case. The burden of proof for factual allegations is on the Party benefitting from and relying on them.⁵
15. **With respect to the standard of ‘*possession, custody or control*’ of the Documents** under Article 3.3 (c) (i) and (ii) of the IBA Rules, the Tribunal has considered that the requesting Party must show that the sought Documents are not in its possession, custody or control, and explain why it assumes that the Documents are in the possession, custody or control of the other Party.

II. Requirements for objections

16. In accordance with Article 9.2 IBA Rules, the Tribunal has examined whether it should – upon the other Party’s request or on its own motion – exclude from production any Document for reasons of:
 - lack of sufficient relevance to the case or materiality to its outcome;
 - legal impediment or privilege under the legal or ethical rules determined by the Tribunal to be applicable;
 - unreasonable burden to produce the requested evidence;
 - loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
 - grounds of commercial or technical confidentiality that the Tribunal determines to be compelling;

⁵ Cheng, B., *General Principles of Law as Applied by International Courts and Tribunals*, Cambridge University Press, 2006, p. 327; Blackaby, N., Partasides, C. et al., *Redfern and Hunter on International Arbitration*, 6th edition, Oxford University Press, 2015, ¶ 6.84.

- grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Tribunal determines to be compelling; or
 - considerations of procedural economy, proportionality, fairness or equality of the Parties that the Tribunal determines to be compelling.
17. The Tribunal is mindful that the US-Peru TPA includes specific provisions on the protection of information from disclosure.⁶ Article 10.28 of the TPA defines **protected information** as confidential business information or information that is privileged or otherwise protected from disclosure under a Party's law.
18. **With respect to Article 9.2 (a) of the IBA Rules**, the Tribunal has taken note of Claimant's objection to produce Documents with their annexes and attachments.⁷ In this respect, the Tribunal is of the view that whenever it has decided that a Document is to be produced, the requested Party is expected to produce the Document in full, including its annexes and attachments.
19. **With respect to Article 9.2 (b) and (e) of the IBA Rules**, the Tribunal has considered the Parties' objections to the other Party's DPRs on the basis of legal privilege and confidentiality.
20. The Tribunal notes that both Parties have requested that the other Party furnish a privilege log.⁸ The Parties are therefore requested to submit a **protected information log** for any Document they wish to withhold in whole or in part from production despite the Tribunal's order to produce the Document(s), stating (i) the date of the Document(s); (ii) the type of the Document(s); (iii) the author(s), sender, and/or recipient(s) of the Documents; (iv) the title and subject matter of the Document(s); (v) the request(s) to which the Document(s) is/are responsive; and (vi) the basis for asserting privilege, confidentiality, or any other protection from disclosure.
21. The Tribunal is mindful of Article 9.5 of the IBA Rules, which allows the Tribunal to make necessary arrangements to permit Documents to be produced subject to suitable confidentiality

⁶ See Article 10.21(3)(4), Article 22.2 and Article 22.4 of the TPA.

⁷ Claimant's objection in Respondent's DPR, p. viii, ¶ 5.d.

⁸ Claimant's DPR, p. 3; Respondent's DPR, p. ii.

protection. The Tribunal also recalls that Section 30.2 of Procedural Order No. 1 specifically sets out that the Parties may request the Tribunal to issue a Confidentiality Order. However, the Tribunal finds that the Parties are best placed to determine any obligations they should owe each other with respect to confidentiality. The Tribunal thus invites the Parties to seek an agreement on confidentiality setting out appropriate confidentiality safeguards, where necessary.

22. Specifically with regard to legal privilege, the Tribunal notes that pursuant to Article 9.2 (b) of the IBA Rules, a requested Party may invoke privilege with respect to Documents prepared by or addressed to counsel, pertaining to the provision of legal advice, and given or received with the expectation that such Documents would be kept confidential. Pursuant to Article 9.4 (d) of the IBA Rules, the Tribunal may take into account any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein. With respect to affirmative use, the Tribunal has interpreted this, contrary to Respondent's position,⁹ to mean that the requested Party must have expressly relied on the specific Document for which it claims privilege in order for disclosure to be mandated.¹⁰
23. **With respect to Article 9.2 (c) of the IBA Rules**, the Tribunal has considered that the Parties are required to conduct at least a reasonable search for the Documents requested by the other Party.
24. **With respect to Article 9.2 (g) of the IBA Rules**, the Tribunal has considered the Parties' explanations as to the considerations of procedural economy, proportionality, fairness or equality of the Parties.

C. THE TRIBUNAL'S ORDERS

25. Based on the foregoing, the Tribunal decides and orders as follows:

- a. Respondent is ordered to produce the Documents as specified in Appendix 1 (Claimant's Redfern Schedule).**

⁹ Respondent's reply in Respondent's DPR, p. xi.

¹⁰ Claimant's objection in Respondent's DPR, p. iv.

- b. Claimant is ordered to produce the Documents as specified in Appendix 2 (Respondent's Redfern Schedule).**

[signed]

Dr. Inka Hanefeld
President of the Tribunal
Date: July 4, 2022

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Appendix 1 to Procedural Order No. 2 dated 4 July 2022

Claimant's Document Production Requests

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Documents Regarding Peru's Inconsistent Interpretations of the Mining Law	
Document Request No.	1
Documents or category of requested documents	<p>The following documents in the possession of SUNAT:</p> <ul style="list-style-type: none"> a) Case files and administrative files of resolutions and reports relating to the application of: <ul style="list-style-type: none"> i. the mining stability agreement referenced in Ex. RE-26, Report No. 263-2002-SUNAT/K00000 (23 September 2002); ii. the mining stability agreement referenced in Ex. RE-27, Report No. 166-2007-SUNAT/2B0000 (20 September 2007); iii. the Compañía Minera Yanacocha S.R.L. mining stability agreements referenced in RWS-4, Bedoya ¶ 28; Exs. CE-38, SUNAT Resolution No. 055-014-0001290/SUNAT, 2006/07 Royalty Assessments, p. 31; CE-46, SUNAT Resolution No. 055-014-0001394/SUNAT, 2008 Royalty Assessments, p. 30; and CE-88, Tax Tribunal Decision No. 08997-10-2013, p. 24 & nn. 19-20; iv. the Minera Milpo mining stability agreements related to “Cerro Lindo” and “Expansion of the El Povernir Mine” referenced in RWS-6, Camacho ¶ 15; or v. the Minera Barrick Misquichilca mining stability agreements related to “Pierna” and “Alto Chicama” referenced in RWS-6, Camacho ¶ 15. b) The entire administrative case files of Ex. RE-26, Report No. 263-2002-SUNAT/K00000 (23 September 2002) and Ex. RE-27, Report No. 166-2007-SUNAT/2B0000 (20 September 2007), as well as documents demonstrating the time frame during which they were publicly available.

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	<p>c) <i>Cartilla de Instrucciones</i> for the use of the <i>Programa de Declaración Telemáticas</i> applicable to mining companies for payment of royalties.</p> <p>d) Documents concerning the scope of stability agreements under the Mining Law and Regulations.</p> <p>Time frame of issuance: From 30 November 1992 to 16 August 2009.</p>
<p>Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p>(1) Claimant’s Memorial ¶¶ 50-57, 128-29, 134-36, 171, 301-04, 310, 313-25, 328-34, 345, 370-71; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 80; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 24; Choque ¶ 14; Otto ¶¶ 23, 32-34, 50; Exs. CE-38, CE-46, CE-88, CE-482.</p> <p>Respondent’s Counter-Memorial ¶¶ 13, 21, 23, 43-60, 128-30, 276, 559-67, 568-71; Polo ¶¶ 15-25; Isasi ¶¶ 7, 20, 24, 43, 54-55, 57, 68, 71; Cruz ¶¶ 19-22; Tovar ¶¶ 19-22, 34-36, 54-55; Bedoya ¶¶ 2, 28; Camacho ¶ 16; Exs. RE-26, RE-27.</p> <p>(2) This information is relevant and material to Freeport’s claims that SUNAT’s novel and restrictive interpretation of stability benefits under the Mining Law and Regulations beginning in the 2006-2007 Royalty Assessments was inconsistent with Peru’s prior practice. <i>See</i> Claimant’s Memorial ¶¶ 340-42, 373-75.</p> <p>Freeport contends that the Stability Agreement, Mining Law, and Regulations make clear that stability benefits apply to all investments in a concession, mining unit, or EAU. <i>See</i> Claimant’s Memorial ¶¶ 50-57, 301-04, 313-25; Chappuis ¶¶ 21, 28, 45-46; Vega ¶¶ 34-40. Freeport submits documentary evidence and testimony from Maria Chappuis, Julia Torreblanca, Randy Davenport, and Cristián Morán demonstrating that, in adherence to the Stability Agreement, Mining Law, and Regulations, Peru consistently applied the Stability Agreement to all investments that SMCV made in the Cerro Verde Mining Unit irrespective of whether they were contained in the 1996 Feasibility Study. <i>See</i> Claimant’s Memorial ¶¶ 313-25, 328-34, 370-71; Chappuis ¶¶ 28, 45, 52-55; Torreblanca ¶¶ 31-32, 53; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 24. Moreover, Freeport submits documentary evidence demonstrating that, in 2005, SUNAT issued instructions to taxpayers explaining how to submit information regarding their “<i>Production Unit(s)</i>,” not their investment projects, for purposes of determining royalty obligations. Ex. CE-482. Thus, Freeport maintains that it was not until the 2006-2007 Royalty Assessments that SUNAT first adopted the interpretation of the Stability Agreement, Mining Law, and Regulations according to which stability benefits are limited to the investment program in the feasibility study submitted to obtain the mining stability agreement. <i>See</i> Claimant’s Memorial ¶¶ 134-36, 171; Torreblanca ¶ 80; Choque ¶ 14.</p>

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Peru contends that the Stability Agreement, Mining Law, and Regulations “are clear” that stability guarantees only apply to the “investment project defined in the feasibility study that served as the basis for the stabilization agreement[.]” Respondent’s Counter-Memorial ¶¶ 21, 23. *See also id.* ¶¶ 43-60, 559-67; Polo ¶¶ 15-25. Peru denies that it “suddenly changed its position in June 2006” and maintains that it “has consistently interpreted the 1998 Stabilization Agreement and the Mining Law and Regulations to provide stability guarantees only to the investment project defined in the feasibility study that served as the basis for the stabilization agreement[.]” Respondent’s Counter-Memorial ¶¶ 13, 23. *See also id.* ¶¶ 21, 43-60, 128-30, 559-67, 568-71; Polo ¶¶ 15-25; Isasi ¶¶ 7, 20, 24, 43, 54-55, 57, 68, 71; Cruz ¶¶ 19-22; Tovar ¶¶ 19-22, 34-36, 54-55. Peru and its witnesses invoke the following mining stability agreements in support of this argument.

- Relying on **Ex. RE-26**, Report No. 263-2002-SUNAT/K00000 (23 September 2002) and **Ex. RE-27**, Report No. 166-2007-SUNAT/2B0000 (20 September 2007), which SUNAT relied on in the 2006-2007 and 2008 Royalty Assessments, Peru argues that “as early as 2002, SMCV (and Claimant) knew or should have known that a new investment project . . . would not be covered by the 1998 Stabilization Agreement.” Respondent’s Counter-Memorial ¶ 135. *See also id.* ¶ 270.
- Peru also offers testimony from Claudia Gabriela Bedoya Arbañil, a SUNAT auditor that was involved in preparing the 2006-2007 Royalty Assessments, the 2008 Royalty Assessments, and the 2006 GST Assessments. Bedoya ¶ 2. She testifies that Compañía Minera Yanacocha S.R.L. had stability agreements, which SUNAT referenced in the 2006-2007 and 2008 Royalty Assessments, that established two stability regimes for separate investment projects, within a single mining concession. Bedoya ¶ 28 (citing **Exs. CE-46, CE-38**). *See also Ex. CE-88*.
- Marco Camacho, a former tax manager at SUNAT, also refers to Compañía Minera Yanacocha S.R.L., as well as Mineral Barrick Misquichilca and Minera Milpo, as companies that had “more than one stabilization agreement . . . simultaneously in force.” Camacho ¶ 16.

Peru and its witnesses do not exhibit any SUNAT reports or resolutions interpreting these mining stability agreements or suggesting that SUNAT had previously applied multiple fiscal regimes within a single concession or mining unit. Nor does Peru offer any evidence regarding the public release of **Ex. RE-26**, Report No. 263-2002-SUNAT/K00000 (23 September 2002). Moreover, Peru does not exhibit any instructions on how to apply multiple fiscal regimes within a single concession or mining unit that SUNAT, or any Peruvian tax authority, ever provided to mining a company.

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	<p>Peru does not dispute that mining operations typically feature ongoing investments and, thus, additional investments in a concession or mining unit that are not contemplated in the feasibility study submitted to obtain the mining stability agreement are common. <i>See</i> Claimant’s Memorial ¶¶ 310, 345; Otto ¶¶ 23, 32-34, 50. Therefore, with respect to Request 1(a)-(b), it is likely that prior to the 2006-2007 Royalty Assessments, SUNAT issued resolutions or reports interpreting the application of stability benefits to investments that other mining titleholders made to improve their operations, which were not contained in the investment program of the feasibility study submitted to obtain the mining stability agreement. With respect to Request 1(c), it is likely that Peru provided instructions regarding the calculation of tax obligations to taxpayers, including mining companies that made additional investments in a concession or mining unit that were not contemplated in the feasibility study submitted to obtain the mining stability agreement. Request No. 1 is narrowly tailored in terms of subject matter to target these documents—the case files, administrative files, and instructions are specific sets of documents that are likely to be contained in a readily identifiable location.</p> <p>Peru and its witnesses have not articulated any time frames during which SUNAT allegedly applied multiple regimes within a single concession or mining unit. Therefore, Freeport has taken the most reasonable approach under the circumstances by limiting its request to the time period spanning from 30 November 1992, the date on which MINEM approved the feasibility study for the Compañía Minera Yanacocha S.R.L. mining stability agreement referenced in Ex. CE-38, to 16 August 2009, the date on which SUNAT first adopted Peru’s novel and restrictive interpretation of the Stability Agreement in the 2006-2007 Royalty Assessments. Ex. CE-38, SUNAT Resolution No. 055-014-0001290/SUNAT, 2006/07 Royalty Assessments, p. 46; Ex. CE-31, SUNAT, 2006/07 Royalty Assessments (16 August 2009)</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, related to other taxpayers, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 1.</p> <p><u>Request No. 1(a)</u></p> <ul style="list-style-type: none"> • <u>Confidentiality</u>: Respondent objects to Request No. 1(a) pursuant to Article 9(2)(e) of the IBA Rules on the basis that such Request will include documents that contain confidential and commercially sensitive information that has no bearing on the present dispute. Claimant is requesting “[c]ase files and administrative files of resolutions and reports relating to the application of” five stabilization agreements signed by entities that are not parties to this arbitration (the “Five Stabilization Agreements”).

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Pursuant to Article 85 of the Peruvian Tax Code,¹ Respondent cannot share with third parties the confidential information of other taxpayers, including the taxpayer's "amount and source of income, expenses, taxable income" "or any other data related to [the taxpayers]." The requested documents can be expected to contain (i) confidential information about the taxpayers (including the names of the taxpayers, and their taxable income), and (ii) "other data related [to the taxpayers]"² (including commercially sensitive information of Claimant's competitors in the mining sector). The type of information contained in the documents Claimant seeks does not fall into any of the exceptions to Article 85 of the Peruvian Tax Code. Therefore, Respondent cannot disclose the requested documents, especially to Claimant, which is either a direct competitor of, or, at a minimum, in the same economic sector as, the companies that applied for the Five Stabilization Agreements.

- **Lack of specificity**: Respondent also objects to Request No. 1(a) on the basis that Claimant has failed to describe in sufficient detail a narrow and specific category of documents as required by Article 3(3)(a) of the IBA Rules. The "narrow and specific" standard necessitates that a request be tailored and "limited in time and subject matter."³ However, Claimant has failed to provide a sufficiently limited Request.

First, Claimant's Request is overly broad, in that it seeks all the "[c]ase files and administrative files of resolutions and reports relating to the application of" the Five Stabilization Agreements. As noted in Respondent's General Objections, it is *not* possible to construct a targeted search for documents that '*relate*' to a subject, and search functionality is unlikely to resolve this issue (particularly in this case where Claimant seeks documents created over a period of 17 years).

Second, this Request is unspecific in that it will cover any and all documents related to the application of the Five Stabilization Agreements. Indeed, Claimant has decided not to limit its Request to Peru's or SUNAT's application of the stability guarantees that Claimant puts at issue in this Request (*see* Respondent's Counter-Memorial ¶¶ 13, 23; *see also* Request 1 *supra*). Therefore, many of the requested documents will be entirely unrelated to the relevant issues in dispute in this arbitration. For instance, this Request will cover, *inter alia*, laws and regulations that are attached to the administrative case files, internal communications among SUNAT staff unrelated to their interpretation of the stability guarantees, or documents that discuss the

¹ See Exhibit CA-14, Peruvian Tax Code, Supreme Decree No. 133-2013-EF, June 22, 2013, at Art. 85 ("Article 85°.- TAX RESERVATION The amount and source of income, expenses, taxable income or any other data related [to the taxpayers], when contained in the returns and information obtained by any means from taxpayers, responsible parties or third parties, as well as the processing of the complaints referred to in Article 192, shall be considered confidential information and may only be used by the Tax Administration for its own purposes") (emphasis added).

² See Exhibit CA-14, Peruvian Tax Code, Supreme Decree No. 133-2013-EF, June 22, 2013, at Art. 85.

³ Nathan O'Malley, *Document Production under Art. 3 of the 2010 IBA Rules of Evidence*, International Arbitration Law Review 186, 187 (2010). See also *International Thunderbird Gaming Corp. v. United Mexican States* (UNCITRAL/NAFTA), Procedural Order No. 2, July 31, 2003, at 2.

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general administrative or legal regimes applied to the projects of the Five Stabilization Agreements but that do not discuss the application of the stability guarantees.

- **Unreasonably burdensome to produce**: Respondent also objects to Request No. 1(a) pursuant to Article 9(2)(c) of the IBA Rules on the basis that fulfilling such a Request would be unreasonably burdensome for Respondent. Claimant is asking Respondent to produce “*all* case files and administrative case files of resolutions and reports,” most of which will not be in electronic format, regarding the application of the Five Stabilization Agreements (*i.e.*, probably thousands of pages), created over a period of 17 years that ended more than a decade ago (*i.e.*, some of the files would be nearly 30 years old). Claimant’s request amounts to a fishing expedition. Also, it is overly burdensome for Respondent to have to try to identify every document “relating” to the application of the Five Stabilization Agreement over a period of 17 years that began three decades ago.
- **Lack of relevance and materiality**: Respondent partially objects to Request No. 1(a) on the basis that some of the documents it seeks would not be relevant to the outcome of this dispute as required under Article 3(3)(b) of the IBA Rules (*see also* Article 9(2)(a) of the IBA Rules). Many of the documents that Claimant requests would be entirely unrelated to “SUNAT’s . . . interpretation of stability benefits” or “Peru’s prior practice” interpreting stabilization agreements. Claimant’s Request is an impermissible fishing expedition in which Claimant hopes to find any inconsistency in any stabilization agreement that would—even minimally—support Claimant’s case. Also, as noted in Respondent’s General Objections on page 4 above, draft resolutions and draft reports are irrelevant since they are not determinative of the final content of the resolutions or reports.
- **Procedural economy and fairness**: Respondent also objects to Request No. 1(a) on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. As noted in Respondent’s General Objections (*see supra* para. 5, p. 5), this is an international arbitration and expansive discovery in the guise of document requests is not permitted. As the IBA Task Force explains, “Expansive American- or English-style discovery is generally inappropriate in international arbitration. Rather, requests for documents to be produced should be carefully tailored to issues that are relevant and material to the determination of the case.”⁴ As discussed, this Request will cover *any and all* documents in the case files and administrative files related to the application of each one of Five Stabilization Agreements, even if the documents are *entirely unrelated* to “SUNAT’s . . . interpretation of stability benefits” or “Peru’s prior practice” interpreting stabilization agreements that Claimant puts at issue in this Request. Claimant is fishing for information that it hopes exists that it could potentially use to support its case. Such a Request is inappropriate in these proceedings.

⁴ IBA Task Force for the Revision of the IBA Rules on the Taking of Evidence in International Arbitration, *Commentary on the revised text of the 2020 IBA Rules of the Taking of Evidence in International Arbitration* (January 2021) at 8, available at <https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D>.

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- **Possession, custody, or control:** Respondent also objects (in part) to Request Nos. 1(a)(iii), (iv), and (v) on the basis of Article 3(3)(c) of the IBA Rules in light of the fact that copies of the stabilization agreements themselves are available to the public and can be accessed online through MINEM’s website ([link](#)) and, thus, are already available to Claimant.

Request No. 1(b)

- **Partial agreed production:** With respect to the documents demonstrating the time frame during which the administrative case files were publicly available, Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
- **Confidentiality:** With respect to the other documents requested by Claimant in Request No. 1(b), Respondent objects pursuant to Article 9(2)(e) of the IBA Rules on the basis that such Request will include documents that contain privileged and commercially sensitive information that have no bearing on the present dispute. Claimant is requesting “[t]he entire administrative case files” of two inquiries made by individual taxpayers to SUNAT. In the two reports that Claimant cites in support of this Request (Exhibits RE-26 and RE-27), SUNAT responds in a general manner to the taxpayers’ inquiries, but it does not disclose the names of the taxpayers making the request, nor any confidential information about the taxpayers. Pursuant to Article 85 of the Peruvian Tax Code,⁵ Respondent cannot share with third parties the confidential information of other taxpayers, including the taxpayer’s “amount and source of income, expenses, taxable income” “or any other data related [to the taxpayers].” The requested documents can be expected to contain (i) confidential information about the taxpayers (including the names of the taxpayers, and their taxable income), and (ii) “other data related [to the taxpayers]”⁶ (including commercially sensitive information of Claimant’s competitors in the mining sector). This information does not fall into any of the exceptions to Article 85 of the Peruvian Tax Code which might permit the disclosure of otherwise protected information. Therefore, Respondent cannot disclose the requested documents, especially to Claimant, which is either a direct competitor of, or at a minimum, in the same economic sector as, the individuals that applied for the two listed stabilization agreements.
- **Lack of specificity:** Respondent also objects to the remaining documents requested in Request No. 1(b) on the basis that Claimant has failed to describe in sufficient detail a narrow and specific category of documents as required by Article 3(3)(a) of the IBA Rules. The “narrow and specific” standard necessitates that a request be tailored and “limited in time and subject

⁵ See Exhibit CA-14, Peruvian Tax Code, Supreme Decree No. 133-2013-EF, June 22, 2013, at Art. 85 (“Article 85.- TAX RESERVATION The amount and source of income, expenses, taxable income or any other data related [to the taxpayers], when contained in the returns and information obtained by any means from taxpayers, responsible parties or third parties, as well as the processing of the complaints referred to in Article 192, shall be considered confidential information and may only be used by the Tax Administration for its own purposes”) (emphasis added).

⁶ See Exhibit CA-14, Peruvian Tax Code, Supreme Decree No. 133-2013-EF, June 22, 2013, at Art. 85.

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matter.”⁷ However, Claimant has failed to limit the subject matter of this Request. In particular, Claimant’s Request is overly broad in that it seeks “[t]he entire administrative case files of Ex. RE-26, Report No. 263-2002-SUNAT/K00000 . . . and Ex. RE-27, Report No. 166-2007-SUNAT/2B0000.” This Request is unspecific, and it will cover any and all documents included in the administrative case files even if the documents are entirely unrelated to SUNAT’s or Peru’s practice interpreting stabilization agreements that Claimant puts at issue in this Request. The requested documents could include, *inter alia*, laws and regulations that are attached to the administrative case files, internal communications among SUNAT staff unrelated to their interpretation of the stability guarantees, and information about the taxpayers that raised the underlying questions of SUNAT’s Reports No. 263-2002-SUNAT/K00000 and No. 166-2007-SUNAT/2B0000. Also, this Request is phrased so broadly that it may contain an overlap with Requests No. 1(a)(i) and (ii). Finally, Claimant is seeking “the entire administrative case files” of two reports that are dated September 23, 2002 and September 20, 2007. However, under Request No. 1(b), Claimant is seeking documents from November 30, 1992 to August 16, 2009. The time frame of issuance of this Request is overly broad.

- **Relevance and materiality:** Respondent also partially objects to Request No. 1(b) on the basis that some of the documents it seeks would not be relevant to the outcome of this dispute as required under Article 3(3)(b) of the IBA Rules (*see also* Article 9(2)(a) of the IBA Rules). Many of the documents Claimant requests would be entirely unrelated to “SUNAT’s . . . interpretation of stability benefits” or “Peru’s prior practice” interpreting stabilization agreements. Claimant’s Request is an impermissible fishing expedition in which Claimant hopes to find any inconsistency in any stabilization agreement that would support Claimant’s case.

Request No. 1 (c)

- **Existence of the requested documents:** Respondent objects in part to Request No. 1(c) on the basis that Claimant has failed to reasonably establish the existence of the requested documents (*see* Article 3(3)(a)(ii) of the IBA Rules). Claimant argues that “it is likely that Peru provided instructions regarding the calculation of tax obligations to taxpayers [*i.e.*, a *Cartilla de Instrucciones*], including mining companies that made additional investments in a concession or mining unit that were not contemplated in the feasibility study.”
- **Possession, custody, or control:** Respondent partially objects to Request No. 1(c) on the basis that Claimant has failed to show that the *Cartilla de Instrucciones* is not in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. Claimant’s predecessor Phelps Dodge, through SMCV, made an additional investment in the Cerro Verde Mine

⁷ Nathan O'Malley, *Document Production under Art. 3 of the 2010 IBA Rules of Evidence*, International Arbitration Law Review 186, 187 (2010). *See also International Thunderbird Gaming Corp. v. United Mexican States* (UNCITRAL/NAFTA), Procedural Order No. 2, July 31, 2003, at 2.

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when it invested in the Concentrator Project. If Peru had issued a *Cartilla de Instrucciones* to taxpayers with additional investments in a concession, then Phelps Dodge and SMCV should have received the *Cartilla de Instrucciones*, and therefore Claimant should be in possession, custody, or control of such instructions. Claimant has failed to demonstrate why Phelps Dodge or SMCV are not in the possession, custody, and control of the *Cartilla de Instrucciones*, and more generally whether such *Cartilla de Instrucciones* exists.

Request No. 1 (d)

- **Lack of specificity**: Respondent objects to Request No. 1(d) on the basis that Claimant has failed to describe in sufficient detail a narrow and specific category of documents as required by Article 3(3)(a) of the IBA Rules. Claimant’s Request is overly broad in that it seeks all “documents *concerning* the scope of stability agreements under the Mining Law and Regulations” over a period of 17 years that began three decades ago. As noted in Respondent’s General Objections, it is *not* possible to construct a targeted search for documents that ‘*concern*’ a subject, and search functionality is unlikely to resolve this issue (particularly in this case were Claimant seeks documents created over a period of 17 years that ended more than 12 years ago).
- **Lack of relevance**: Respondent also objects to Request No. 1(d) on the basis that some of the documents it seeks would not be relevant to the outcome of this dispute as required under Article 3(3)(b) of the IBA Rules (*see also* Article 9(2)(a) of the IBA Rules). The only stabilization agreement at issue in this arbitration is the 1998 Stabilization Agreement. The Tribunal does not have to decide what the scope of stabilization agreements in general are; it only has to decide what the scope of the 1998 Stabilization Agreement is.
- **Unreasonably burdensome to produce**: Respondent also objects to Request No. 1(d) pursuant to Article 9(2)(c) of the IBA Rules on the basis that fulfilling such a Request would be unreasonably burdensome for Respondent. Claimant is asking Respondent to produce all “documents *concerning* the scope of stability agreements under the Mining Law and Regulations,” most of which will not be in electronic format, and which were created over a period of 17 years that ended more than a decade ago (*i.e.*, some of the files would be nearly 30 years old). Claimant’s Request amounts to a fishing expedition. Also, it is impractical and overly burdensome for Respondent to identify every document “*concerning*” the scope of stability agreements under the Mining Law and Regulations over a period of 17 years.
- **Procedural economy and fairness**: Respondent also objects to Request No. 1(d) on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. This is an international arbitration and expansive discovery in the guise of document requests is not permitted. As the IBA Task Force

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	<p>explains, “Expansive American- or English-style discovery is generally inappropriate in international arbitration. Rather, requests for documents to be produced should be carefully tailored to issues that are relevant and material to the determination of the case.”⁸ As discussed, this Request will cover <u>all</u> “documents <i>concerning</i> the scope of stability agreements under the Mining Law and Regulations,” even if the documents are <i>entirely unrelated</i> to “SUNAT’s . . . interpretation of stability benefits” or “Peru’s prior practice” interpreting stabilization agreements that Claimant puts at issue in this Request. Claimant is fishing for information that it hopes exists that it could potentially use to support its case. Such a Request is inappropriate in these proceedings.</p>
<p>Requesting party reply</p>	<p><u>Request No. 1(a)</u></p> <ul style="list-style-type: none"> • <u>Confidentiality</u>: Peru’s objection to Request No. 1(a) is without merit, to the extent that it is based on provisions of Peru’s internal law. Pursuant to Articles 16.4 and 27.4 of Procedural Order No. 1, the TPA and the IBA Rules govern the production of evidence, not Peru’s internal law. In the event that the Tribunal orders production subject to evidentiary privileges set forth in the IBA Rules or the TPA, arbitration counsel for Peru must conduct an independent review of the relevant documents and determine whether those evidentiary privileges apply and provide a privilege log identifying any information withheld from disclosure based on those evidentiary privileges. Without prejudice to Freeport’s reply to Peru’s objection to Request No. 1(a) on the grounds of confidentiality, and the General Replies, Freeport proposes that Peru redact “confidential and commercially sensitive information that ha[s] no bearing on the present dispute,” from any documents that are responsive to Request No. 1(a). • <u>Specificity</u>: Respondent’s objection on the grounds that Request 1(a) is overbroad and unspecific is plainly without merit. Peru claims that “Claimant has decided not to limit its Request to Peru’s or SUNAT’s application of the stability guarantees that Claimant puts at issue in this Request.” Yet, Request No. 1(a) is limited in subject matter to the specific “[c]ase files and administrative files of resolutions and reports relating to the application of” the five mining stability agreements. Each of the case files and administrative files of these resolutions and reports are a specific set of documents that are likely to be contained in readily identifiable location. Peru’s objection relates, in reality, not to any lack of specificity in Request 1(a) but to the lack of specificity in its own submissions. In its submissions, Peru and its witnesses cite these five mining stability agreements to support Peru’s claim that Peru has “consistently” interpreted the Mining Law and Regulations to limit stability to the investment project set forth in the feasibility study. <i>See, e.g.</i>, Respondent’s Counter-Memorial ¶ 23, 43-60, 128-30, 139-41, 276, 559-67, 568-71; Bedoya ¶ 28; Camacho ¶ 15; Exs. RE-26, RE-27, CE-38, CE-46, CE-88. However, Peru and its witnesses provide no

⁸ IBA Task Force for the Revision of the IBA Rules on the Taking of Evidence in International Arbitration, *Commentary on the revised text of the 2020 IBA Rules of the Taking of Evidence in International Arbitration* (January 2021) at 8, available at <https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D>.

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documents demonstrating that Peru actually applied different fiscal, legal, and administrative regimes within a single concession or mining unit. Respondent's Counter-Memorial ¶ 139-41, 276; Bedoya ¶ 28; Camacho ¶ 15. With respect to the mining stability agreements referenced in Request Nos. 1(a)(iii)-(v), Peru fails to exhibit any resolutions or reports to support its assertions at all. Bedoya ¶ 28; Camacho ¶ 15. Similarly, Peru's objection on the grounds that Request 1(a) seeks documents "over a period of 17 years" is a result of Peru's own failure to articulate any time frames during which SUNAT allegedly applied multiple regimes within a single concession or mining unit. Thus, as explained in Freeport's justification for Request No. 1, Freeport has taken the most reasonable approach under the circumstances by limiting its request to the time period spanning from 30 November 1992, the date on which MINEM approved the feasibility study for the Compañía Minera Yanacocha S.R.L. mining stability agreement referenced in **Ex. CE-38**, to 16 August 2009, the date on which SUNAT first adopted Peru's novel and restrictive interpretation of the Stability Agreement in the 2006-2007 Royalty Assessments. **Ex. CE-38**, SUNAT Resolution No. 055-014-0001290/SUNAT, 2006/07 Royalty Assessments, p. 46; **Ex. CE-31**, SUNAT, 2006/07 Royalty Assessments (16 August 2009).

- **Burden to produce**: Even if some of the specified case files and administrative files contain "thousands of pages" as Peru claims, they are specific sets of documents that are likely to be contained in a readily identifiable location. The burden of reviewing the files to redact "confidential and commercially sensitive information that ha[s] no bearing on the present dispute" is justified given the relevance and materiality of the requested information.
- **Relevance and materiality**: Peru does not dispute the relevance and materiality of resolutions and reports relating to the application of the five mining stability agreements. The entire case files and administrative files of the resolutions and reports are necessary to give context to the reports and resolutions themselves.
- **Procedural economy and fairness**: Peru's objection on the grounds of procedural economy and fairness is baseless. Each of the case files and administrative files of the specified resolutions and reports are a specific set of documents that are likely to be contained in a readily identifiable location. Peru fails to explain why producing a readily identifiable set of case and administrative files would be contrary to procedural economy. Nor has Peru explained why it is unfair for Freeport to request documents related to the only mining stability agreements that Peru relies on in support of its claim that Peru has consistently limited stability benefits to specific investments within a concession or mining unit. *See, e.g.*, Respondent's Counter-Memorial ¶¶ 23, 43-60, 128-30, 139-41, 276, 559-67, 568-71; Bedoya ¶ 28; Camacho ¶ 15; **Exs. RE-26, RE-27, CE-38, CE-46, CE-88**. It is Peru's attempt to cherry pick documents related to those mining stability agreements, not Freeport's request, that is unfair.

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- **Possession, custody, or control**: Peru’s partial objection to Request No. 1(a)(iii), (iv), and (v) on the grounds of possession, custody, or control is nothing more than attempt to distract from the fact that Freeport’s request is wholly justified. Request No. 1(a)(iii), (iv), and (v) expressly target documents “relating to the application of” the specified mining stability agreements, not “copies of the stabilization agreements themselves.”

Request No. 1(b)

- **Confidentiality**: Freeport incorporates by reference its reply to Peru’s “confidentiality” objection to Request No. 1(a) above. Without prejudice to Freeport’s reply to Peru’s objection to Request No. 1(b) on the grounds of confidentiality, and the General Replies, Freeport proposes that Peru redact “confidential and commercially sensitive information that ha[s] no bearing on the present dispute,” from any documents that are responsive to Request No. 1(b).
- **Specificity**: Freeport incorporates by reference its reply to Peru’s “lack of specificity” objection to Request No. 1(a) above.
- **Relevance and materiality**: Freeport incorporates by reference its reply to Peru’s “relevance and materiality” objection to Request No. 1(a) above.

Request No. 1 (c)

- **Existence of the requested documents**: There is no merit to Peru’s claim that Freeport “has failed to reasonably establish the existence of the” the *Cartilla de Instrucciones*. Peru does not actually deny that the *Cartilla de Instrucciones* exists. Nor can Peru do so because taxpayers require instructions to pay fiscal obligations using the *Programa de Declaración Telemáticas*. Moreover, Peru does not dispute Freeport’s claim that the application of multiple fiscal, legal, and administrative regimes within a single mining unit would require particularly detailed guidance from the tax authorities, nor rebut the documentary evidence showing that, in 2005, SUNAT issued instructions to taxpayers explaining how to submit information regarding their “*Production Unit(s)*,” not their investment projects, for purposes of determining royalty obligations. **Ex. CE-482**. It is reasonably likely that the *Cartilla de Instrucciones* exists and that it will similarly support Freeport’s claim that SUNAT instructed taxpayers to calculate their royalty obligations by applying mining stability agreements to production units, not investment projects.
- **Possession, custody, or control**: After a reasonable search, Freeport has been unable to locate a copy of the *Cartilla de Instrucciones* within the possession, custody, or control of Freeport or SMCV.

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	<p><u>Request No. 1 (d)</u></p> <ul style="list-style-type: none"> • <u>Specificity</u>: Peru’s objection that Request No. 1(d) lacks specificity is without merit. Request No. 1(d) concerns the subject at the center of this dispute; whether the Mining Law and Regulations limit stability guarantees to specific investment projects. • <u>Relevance</u>: There is no merit to Peru’s relevance objection on the grounds that “[t]he only stabilization agreement at issue in this arbitration is the 1998 Stabilization Agreement” and “[t]he Tribunal does not have to decide what the scope of stabilization agreements in general are.” The Parties agree that mining stability agreements are form contracts that necessarily incorporate the stability guarantees set forth in the Mining Law and Regulations. Claimant’s Memorial ¶ 322; Vega ¶¶ 31, 59; Bullard ¶ 21; Eguiguren ¶ 40; Morales ¶ 16; CA-1, Art. 86. Thus, documents reflecting the Government’s interpretation of the scope of the stability guarantees set forth in the Mining Law and Regulations are material to determining the scope of the Stability Agreement. It is for this reason that Peru asserts (without providing any support) that it consistently limited the five mining stability agreements identified in Request 1(a) to the investment projects that qualified the applicants to obtain those mining stability agreements. • <u>Burden to produce</u>: The burden that Peru identifies in its objection is wholly justified in light of the high degree of relevance and materiality of the requested documents. • <u>Procedural economy and fairness</u>: The burden that Peru identifies in its objection is wholly justified in light of the high degree of relevance and materiality of the requested documents. • <u>Amended Request</u>: Without prejudice to Freeport’s replies to Peru’s objections to Request No. 1(d), and the General Replies, Freeport will limit Request No. 1(d) to documents directly discussing whether mining stability agreements applied to investments within a concession or mining unit that were not part of the investment plan that qualified the mining company to obtain the mining stability agreement.
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Claimant’s limitation of sub-request 1(d) to documents directly discussing whether mining stability agreements applied to investments within a concession or mining unit that were not part of the investment plan that qualified the mining company to obtain the mining stability agreement.</p>

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	<p>The Tribunal also takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents that it is able to locate demonstrating the time frame during which the administrative case files of Ex. RE-26 and Ex.RE-27 were publicly available. Accordingly, the Tribunal orders Respondent to produce such Documents.</p> <p>The Tribunal also orders the production of the Cartilla de Instrucciones for the use of the Programa de Declaración Telemáticas applicable to mining companies for payment of royalties.</p> <p>The Tribunal rejects the remainder of Request No. 1 as overly broad.</p>
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Document Request No.	2
Documents or category of requested documents	<p>Documents prepared, sent, or received by Claudia Gabriela Bedoya Arbañil containing legal analysis with respect to the scope of the Stability Agreement or the scope of stability guarantees under the Mining Law and Regulations, in connection with:</p> <ul style="list-style-type: none"> a) The 2006-2007 Royalty Assessments; b) The 2008 Royalty Assessments; or c) The 2006 GST Assessments. <p>Time frame of issuance: 19 June 2008 to 27 July 2011.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 50-57, 128-29, 134-36, 171, 175, 301-04, 310, 313-25, 332-34, 345, 370-71; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 80; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Choque ¶ 14; Otto ¶¶ 23, 32-34, 50; Exs. CE-38, CE-46, CE-88.</p> <p>Respondent’s Counter-Memorial ¶¶ 21, 23, 43-60, 128-30, 559-67, 568-71; Polo ¶¶ 15-25; Isasi ¶¶ 20, 24, 55; Cruz ¶¶ 19-22; Tovar ¶¶ 19-22, 34-36, 54-55; Bedoya ¶ 16, 28, 44-45; Exs. RE-26, RE-27.</p> <p>(2) <i>See</i> justification for Request No. 1 above. Freeport submits that, in the 2006-2007 Royalty Assessments, SUNAT first adopted the novel and restrictive interpretation that, due to political pressure, MINEM Legal Director, Felipe Isasi, authored in the June 2006 Report. Claimant’s Memorial ¶¶ 171, 175.</p> <p>Ms. Bedoya testifies that SUNAT’s resolutions in the 2006-2007 Royalty Cases were based on independent legal analysis and were not a “mechanical copy” of the reasoning in the June 2006 Report. Bedoya ¶¶ 16, 44-45. However, Ms. Bedoya does not submit any documentary evidence of independent legal analysis by SUNAT.</p>

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	<p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 2.</p> <ul style="list-style-type: none"> • Possession, custody, or control: Respondent partially objects to Request No. 2 on the basis that Claimant has failed to show that all the documents requested are not in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. <i>First</i>, there is already relevant legal analyses on the record connected to (a) the 2006-2007 Royalty Assessments (<i>see</i> Report No. 110-P-2010 SUNAT/2J0400 included in Exhibit CE-38 at p. 3 pdf <i>et seq.</i>); (b) the 2008 Royalty Assessments (<i>see</i> Report No. 012-P-2011-SUNAT/2J0400 included in Exhibit CE-46 at p. 3 pdf <i>et seq.</i>); and (c) the 2006 GST Assessments (<i>see</i> Report No. 222-P-2011 SUNAT/2J400 included in Exhibit CE-604 at p. 3 pdf <i>et seq.</i>). This legal analyses are therefore already in Claimant’s possession. <i>Second</i>, SMCV filed the administrative challenges against SUNAT’s tax assessments that prompted the resolutions that Claimant cites in this Request (<i>i.e.</i>, SMCV was a party in the three Royalty Assessments). Therefore, SMCV has access to the case files of the three Royalty Assessments, which <u>contain all the documents</u> considered for the resolution of the administrative challenges. Claimant is SMCV’s majority shareholder and is acting on behalf of SMCV in this arbitration. As such, the requested documents should be in Claimant’s possession, custody, or control. • Partial agreed production: With respect to the documents that are not already in Claimant’s possession, custody, or control, Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
<p>Requesting party reply</p>	<p>Possession, custody, or control: Peru’s objection is without merit to the extent it presumes that the “case files” for the 2006-2007 and 2008 Royalty Cases contain “<u>all the documents</u> considered for the resolution of the administrative challenges.” For example, the case file is unlikely to contain internal Government correspondence that may contain legal analysis upon which the assessments or the requests for reconsideration were based.</p> <p>Without prejudice to the General Replies, Freeport agrees to Peru’s partial agreed production provided that it includes all documents considered for the preparation of the 2006-2007 Royalty Assessments, 2008 Royalty Assessments, and the 2006 GST Assessments or the corresponding resolutions denying SMCV’s requests for reconsideration.</p>

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Decision of the Tribunal	The Tribunal takes note of Respondent's agreement, subject to its general objections, to voluntarily produce any Documents it is able to locate responsive to Request No. 2 not already in Claimant's possession, custody or control. Accordingly, the Tribunal orders Respondent to produce such Documents.
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Document Request No.	3
Documents or category of requested documents	<p>Documents prepared, sent, or received by Felipe Isasi concerning the scope of the Stability Agreement or the scope of stability guarantees under the Mining Law and Regulations, including but not limited to:</p> <ul style="list-style-type: none"> a) Records of communications with representatives of SMCV, including communications concerning: the Roundtable Discussions in 2006; or meetings with Julia Torreblanca in or around July 2008. b) Communications or records of communications with: <ul style="list-style-type: none"> i. the Minister of Mines, the Vice Minister of Mines, or the Director General of Mining; ii. members of Congress, including Congressmen Javier Diez Canseco or Alejandro Oré Mora; iii. other mining companies; or iv. MEF officials. c) Documents referencing, or related to the preparation or transmission of: <ul style="list-style-type: none"> i. the April 2005 Report, Ex. CE-494, MINEM, Report No. 153-2005-MEM/OGAJ (14 April 2005); ii. the September 2005 Report, Ex. CE-512, MINEM, Report No. 385-2005-MEM/OGJ (22 September 2005); or iii. the June 2006 Report, Ex. CE-534, MINEM, Report No. 156-2006-MEM/OGJ (16 June 2006). d) Communications or records of communications concerning Congressional presentations by MINEM officials, including: <ul style="list-style-type: none"> i. the June 2005 Congressional Presentation; or

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	<p style="text-align: center;">ii. the May 2006 Congressional Presentations.</p> <p>Time frame of issuance: From 1 July 2004 to 31 July 2008.</p>
<p>Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p>(1) Claimant’s Memorial ¶¶ 50-57, 128-29, 134-36, 171, 301-04, 310, 313-25, 328-34, 345, 373-77; 370-71; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 63-81; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Choque ¶ 14; Otto ¶¶ 23, 32-34, 50; Exs. CE-377, CE-494, CE-507, CE-508, CE-512, CE-515, CE-519, CE-534.</p> <p>Respondent’s Counter-Memorial ¶¶ 13, 21, 23, 43-60, 128-30, 175, 202, 259, 276, 559-67, 568-71; Polo ¶¶ 15-25; Isasi ¶¶ 7, 20, 24, 39-45, 53-55, 57, 61-68, 70-71, 73; Cruz ¶¶ 19-22; Tovar ¶¶ 19-22, 34-36, 54-55; Exs. RE-3, RE-29.</p> <p>(2) <i>See</i> justification for Request No. 1 above. This information is relevant and material to Freeport’s claims that the restrictive interpretation of the stability benefits that Mr. Isasi adopted in the June 2006 Report was politically motivated and inconsistent with previous and subsequent MINEM interpretations of the Mining Law and Regulations. <i>See</i> Claimant’s Memorial ¶¶ 150–52, 367-71; Torreblanca ¶¶ 63-81. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Isasi’s testimony.</p> <p>Freeport submits testimony from Maria Chappuis, Julia Torreblanca, Randy Davenport, and Cristián Morán and documentary evidence demonstrating that MINEM consistently applied stability benefits to entire concessions, mining units, and EAUs including, <i>inter alia</i>: (i) a 1997 internal MINEM memo stating that the 1994 Stability Agreement would cease to apply after SMCV signed the 1998 Stability Agreement because two different tax regimes could not “co-exist” within SMCV’s “Economic Administrative Unit;” (ii) a November 2001 resolution by the Mining Council concerning Parcoy, indicating that Parcoy’s stability guarantees covered “the Parcoy EAU, which is where the investments of the Parcoy Project were made;” (iii) the preliminary approval to expand the Beneficiation Concession to include the Concentrator in October 2004; (iv) approval of SMCV’s use of the profit reinvestment benefit to finance the construction of the Concentrator in December 2004; (v) an April 2005 MINEM report authored by Mr. Isasi; and (vi) communications with representatives of SMCV. <i>See</i> Claimant’s Memorial ¶¶ 329-30; Chappuis ¶¶ 28, 45, 52-55; Torreblanca ¶¶ 31-32, 53; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Exs. CE-377, CE-494, CE-512. Freeport contends that Mr. Isasi, MINEM’s Director of Legal Affairs, first adopted the novel and restrictive interpretation in the 16 June 2006 Report in response to political pressure, including from Congressman Diez Canseco, who threatened to file a constitutional complaint against Minister Sánchez Mejía unless MINEM revoked SMCV’s reinvestment benefit and ordered SMCV to pay royalties, and Congressman Oré, who demanded information about the Stability Agreement. <i>See</i> Claimant’s Memorial ¶¶ 373-77; Exs. CE-507, CE-508, CE-515, CE-519. Moreover, Freeport maintains that the Report was inconsistent with previous and subsequent positions MINEM took on the scope of stability benefits, including in</p>

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	<p>Mr. Isasi’s own April 2005 Report. <i>See</i> Claimant’s Memorial ¶¶ 134-36; Torreblanca ¶¶ 63-81; Exs. CE-494, CE-512, CE-534. For example, Ms. Torreblanca testifies that during a meeting with Mr. Isasi in or around July 2008, he “agreed that SMCV’s legal position was very solid” but told her that “it would be preferable for [SMCV], from a political and social perspective, to pay royalties.” Torreblanca ¶ 71.</p> <p>Mr. Isasi testifies “that his position, and MINEM’s official position, has always been consistent.” Respondent’s Counter-Memorial ¶ 175, Isasi ¶¶ 54-55. He claims that the inapplicability of the Stability Agreement to the Concentrator should have been apparent to SMCV by the time of the Roundtable Discussions. Isasi ¶¶ 61-68. Moreover, both Peru and Mr. Isasi deny that Mr. Isasi’s “views were susceptible to political pressure.” Respondent’s Counter-Memorial ¶¶ 202, 259; Isasi ¶¶ 53, 71, 73. Mr. Isasi specifically denies that MINEM was influenced by political pressure from Congressman Diez Canseco and claims that he was not aware of Congressman Diez Canseco’s “threat” to file a constitutional complaint against Minister Sánchez. Isasi ¶¶ 39-45. He recalls meeting with Ms. Torreblanca in or around July 2008, but denies offering a political or social justification for SMCV to pay royalties. Isasi ¶ 70. He claims that in the meeting he explained that MINEM’s position was based on the language of the Stability Agreement and the Mining Law. Isasi ¶ 70.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 3.</p> <p><u>Request No. 3(a)</u></p> <ul style="list-style-type: none"> • Possession, custody, or control: Respondent partially objects to Request No. 3(a) on the basis that Claimant has failed to show that the “communications concerning the Roundtable Discussions in 2006; or meetings with Julia Torreblanca in or around July 2008” are not in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. Claimant is SMCV’s majority shareholder, and is acting on behalf of SMCV in this arbitration, and Ms. Torreblanca is an SMCV employee who is also one of Claimant’s witnesses in this arbitration (<i>see</i> CWS-11, paras. 6-7). As such, the communications with SMCV or Ms. Torreblanca clearly should be in Claimant’s possession, custody, or control. <p><u>Request No. 3(b)</u></p> <ul style="list-style-type: none"> • Possession, custody, or control: Respondent partially objects to Request No. 3(b) on the basis that Claimant has failed to show that all the documents requested are not in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the

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IBA Rules. The documents that are part of the stabilization agreements signed with other mining companies (Request No. 3(b)(iii)) during Mr. Isasi's tenure as Vice-Minister of Mines are available to the public and can be accessed through MINEM's website ([link](#)).

- **Confidentiality**: Also, Respondent partially objects to Request No. 3(b)(iii) on the basis that some of the documents requested are likely to contain commercially sensitive and confidential information of third parties and, therefore, need not be produced consistent with Article 9(2)(b) and (e) of the IBA Rules. The communications that Felipe Isasi had with other mining companies are exchanges with a third party under an unrelated contract. As such, they likely contain commercially sensitive information pertaining to Claimant's or SMCV's competitors. Pursuant to Article 85 of the Peruvian Tax Code,⁹ Respondent cannot share with third parties the confidential information of other taxpayers, including the taxpayer's "amount and source of income, expenses, taxable income" "or any other data related [to the taxpayers]." The requested documents can be expected to contain (i) confidential information about the taxpayers (including the names of the taxpayers, and their taxable income), and (ii) "other data related to [the taxpayers]"¹⁰ (including commercially sensitive information of Claimant's competitors in the mining sector). This information does not fall into any of the exceptions to Article 85 of the Peruvian Tax Code which might permit the disclosure of otherwise protected information. Therefore, Respondent cannot disclose the requested documents, especially to Claimant, which is either a direct competitor of, or at a minimum in the same economic sector as, the mining companies that had conversations or exchanged opinions with Mr. Isasi regarding the stability guarantees under the Mining Law and Regulations.
- **Partial agreed production**: Respondent does not object to Request No. 3(b)(i), (ii), and (iv). Respondent is reviewing its files and, subject to its general objections noted on page 4 above, will produce to Claimant any responsive documents that it is able to locate. Also, Respondent will produce to Claimant any documents responsive to Request No. 3(b)(iii), subject to its general objections noted on page 4 above, as long as the documents are not commercially sensitive and/or confidential, and/or are available to the public.

Request No. 3(c)

⁹ See Exhibit CA-14, Peruvian Tax Code, Supreme Decree No. 133-2013-EF, June 22, 2013, at Art. 85 ("Article 85°.- TAX RESERVATION The amount and source of income, expenses, taxable income or any other data related [to the taxpayers], when contained in the returns and information obtained by any means from taxpayers, responsible parties or third parties, as well as the processing of the complaints referred to in Article 192, shall be considered confidential information and may only be used by the Tax Administration for its own purposes")(emphasis added).

¹⁰ See Exhibit CA-14, Peruvian Tax Code, Supreme Decree No. 133-2013-EF, June 22, 2013, at Art. 85.

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	<ul style="list-style-type: none"> • <u>Agreed production</u>: Respondent does not object to Request No. 3(c). Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate. <p><u>Request No. 3(d)</u></p> <ul style="list-style-type: none"> • <u>Agreed production</u>: Respondent does not object to Request No. 3(d). Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
<p>Requesting party reply</p>	<p><u>Request No. 3(a)</u></p> <ul style="list-style-type: none"> • <u>Possession, custody, or control</u>: Peru’s objection ignores the fact that it is unlikely that “records of communications” with Ms. Torreblanca, such as, for example, notes or summaries of meetings that Mr. Isasi or other MINEM officials prepared, are within Freeport’s or SMCV’s possession, custody, or control. <p><u>Request No. 3(b)</u></p> <ul style="list-style-type: none"> • <u>Possession, custody, or control</u>: There is no merit to Peru’s objection that Claimant has failed to show that all the documents requested are not in Claimant’s possession, custody, or control. Request 3(b) seeks MINEM correspondence regarding the scope of stability guarantees under the Mining Law and Regulations, not publicly available copies of mining stability agreements. • <u>Confidentiality</u>: Peru’s objection to Request No. 3(b) is without merit, to the extent that it is based on provisions of Peru’s internal law. Pursuant to Articles 16.4 and 27.4 of Procedural Order No. 1, the TPA and the IBA Rules govern the production of evidence, not Peru’s internal law. In the event that the Tribunal orders production subject to evidentiary privileges set forth in the IBA Rules or the TPA, arbitration counsel for Peru must conduct an independent review of the relevant documents and determine whether those evidentiary privileges apply and provide a privilege log identifying any information withheld from disclosure based on those evidentiary privileges. Without prejudice to Freeport’s reply to Peru’s objection to Request No. 3(b) on the grounds of confidentiality, and the General Replies, Freeport proposes that Peru redact “confidential and commercially sensitive information that ha[s] no bearing on the present dispute” from any documents that are responsive to Request No. 3(b). <p><u>Request No. 3(c)</u>: Without prejudice to the General Replies, Freeport agrees to Peru’s partial agreed production.</p>

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	<p><u>Request No. 3(d)</u>: Without prejudice to the General Replies, Freeport agrees to Peru’s partial agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce the following documents it is able to locate and which were prepared, sent, or received by Felipe Isasi concerning the scope of the Stability Agreement or the scope of stability guarantees under the Mining Law and Regulations:</p> <ul style="list-style-type: none"> • Communications or records of communications with: <ol style="list-style-type: none"> i. the Minister of Mines, the Vice Minister of Mines, or the Director General of Mining; ii. members of Congress, including Congressmen Javier Diez Canseco or Alejandro Oré Mora; iii. MEF officials; • Documents referencing, or related to the preparation or transmission of: <ol style="list-style-type: none"> i. the April 2005 Report, Ex. CE-494, MINEM, Report No. 153-2005-MEM/OGAJ (14 April 2005); ii. the September 2005 Report, Ex. CE-512, MINEM, Report No. 385-2005-MEM/OGJ (22 September 2005); or iii. the June 2006 Report, Ex. CE-534, MINEM, Report No. 156-2006-MEM/OGJ (16 June 2006); • Communications or records of communications concerning Congressional presentations by MINEM officials, including: <ol style="list-style-type: none"> i. the June 2005 Congressional Presentation; or ii. the May 2006 Congressional Presentations. <p>Accordingly, the Tribunal orders Respondent to produce such Documents.</p> <p>The Tribunal also orders Respondent to produce the Documents responsive to Request 3(a), i.e. records of communications with representatives of SMCV, including communications concerning: the Roundtable Discussions in 2006; or meetings with Julia</p>

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	<p>Torreblanca in or around July 2008. The Tribunal is of the view that while Ms. Torreblanca may have herself kept records of communications, such records would not necessarily be identical to the records of Mr. Isasi or other MINEM officials. Accordingly, Respondent's objection based on possession, custody or control is rejected.</p> <p>The remainder of Claimant's Request No. 3 is rejected as overly broad.</p>
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Document Request No.	4
Documents or category of requested documents	<p>Documents prepared, sent, or received by Oswaldo Tovar concerning:</p> <p>a) SMCV’s request to use the profit reinvestment benefit; or</p> <p>b) SMCV’s request to construct the Concentrator and expand the Beneficiation Concession.</p> <p>Time frame of issuance: From 1 January 2004 to 31 October 2006.</p>
<p>Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p>(1) Claimant’s Memorial ¶¶ 50-57, 134-36, 171, 301-04, 310, 313-25, 328-34, 345, 373-77, 370-71; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 63-81; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Choque ¶ 14; Otto ¶¶ 23, 32-34, 50; Exs. CE-377, CE-494, CE-512, CE-534.</p> <p>Respondent’s Counter-Memorial ¶¶ 13, 21, 23, 43-60, 128-30, 175, 202, 259, 559-67, 568-71; Polo ¶¶ 15-25; Isasi ¶¶ 7, 20, 24, 43, 53-55, 57, 61-68, 70-71, 73; Cruz ¶¶ 19-22; Tovar ¶¶ 2, 9, 11, 14, 19-22, 27, 34-36, 39, 53-55, 65-66; Bedoya ¶ 42; Eguiguren ¶ 114; Morales ¶ 89; Exs. RE-4, RE-5, RE-107.</p> <p>(2) <i>See</i> justification for Request Nos. 1 & 3 above. This information is relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Tovar’s testimony.</p> <p>In support of its argument that stability guarantees are limited to specific investment projects, Peru offers testimony from Mr. Oswaldo Tovar, former MINEM Director of Mining Promotion, who testifies that he was involved in the review and approval of SMCV’s requests to apply the profit reinvestment benefit and expand the Beneficiation Concession in 2004. Tovar ¶ 2. Mr. Tovar claims that Vice Minister César Polo “clearly advised” Mr. Tovar and his colleagues in the DGM “that the Concentrator was not covered by the Stabilization Agreement.” Tovar ¶ 14. He also testifies that he participated in “various meetings” with representatives of SMCV in 2004 and that MINEM “did not confirm . . . that the Stabilization Agreement covered the Concentrator project.” Tovar ¶ 11. He further claims that he regularly met to discuss issues relating to stability agreements with MINEM officials, including MINEM’s Office of Legal Advisory, who worked collaboratively with him and shared opinions. Tovar ¶ 53. However, Mr. Tovar does not exhibit</p>

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	<p>documentary evidence to support any of these assertions. Mr. Tovar denies that MINEM’s approval of SMCV’s requests to apply the profit reinvestment benefit and expand the Beneficiation Concession in 2004 confirmed that the Stability Agreement applied to the entire Cerro Verde Mining Unit. Tovar ¶¶ 9, 35-36. <i>See also</i> Bedoya ¶ 42. He denies that he and Ms. Chappuis agreed that the Stability Agreement protected the entire Cerro Verde Mining Unit while DGM was considering SMCV’s request to apply the reinvestment benefit in the third quarter of 2004. Tovar ¶ 39. Moreover, contrary to the testimony of Peru’s Constitutional and Contract Law experts Francisco Eguiguren and Rómulo Morales, Mr. Tovar contends that the scope of a mining stability agreement cannot be modified, by amendment or otherwise. <i>Compare</i> Eguiguren ¶ 114, Morales ¶ 89, <i>with</i> Tovar ¶¶ 19, 27.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested document</p>	<p>Agreed production: Respondent does not object to Request No. 4. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate and which were prepared, sent, or received by Oswaldo Tovar concerning:</p> <p>(a) SMCV’s request to use the profit reinvestment benefit; or</p> <p>(b) SMCV’s request to construct the Concentrator and expand the Beneficiation Concession.</p> <p>Accordingly, the Tribunal orders Respondent to produce such Documents.</p>

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Document Request No.	5
Documents or category of requested documents	<p>Documents prepared, sent, or received by César Polo concerning the scope of the Stability Agreement or stability guarantees under the Mining Law and Regulations, including but not limited to:</p> <ul style="list-style-type: none"> a) Communications or records of communications with the Minister of Mines, the Vice Minister of Mines, the Director General of Mining, or the MINEM General Director of the General Legal Advisory Office; b) Communications or records of communications with SUNAT; or c) Communications or records of communications with members of Congress, including Congressmen Javier Diez Canseco or Alejandro Oré Mora. <p>Time frame of issuance: From 1 August 2001 to 31 May 2005.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 50-57, 108, 134-36, 171, 301-04, 310, 313-25, 328-34, 345, 373-77, 370-71; Chappuis ¶¶ 21, 28, 45, 51, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 63-81; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Choque ¶ 14; Otto ¶¶ 23, 32-34, 50.</p> <p>Respondent’s Counter-Memorial ¶¶ 13, 21, 23, 43-60, 128-30, 149, 175, 202, 259, 276, 559-67, 568-71; Polo ¶¶ 15-25, 38; Isasi ¶¶ 7, 20, 24, 43, 53-54, 57, 61-68, 70-71; Cruz ¶¶ 19-22; Tovar ¶¶ 11, 19-22, 34-36, 54-55.</p> <p>(2) <i>See</i> justification for Request Nos. 1 & 4 above. This information is relevant and material to Freeport’s claims that Mr. Polo’s statements suggesting that the Stability Agreement would not cover the Concentrator were inconsistent with previous and subsequent MINEM interpretations of the Stability Agreement, Mining Law, and Regulations and were the result of political pressure. <i>See</i> Claimant’s Memorial ¶¶ 134-36, 373-77; Torreblanca ¶¶ 63-81. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Polo’s testimony.</p> <p>Freeport maintains that statements by the former Vice Minister of Mines, César Polo, that the Stability Agreement would not cover the Concentrator were both politically motivated and inconsistent with MINEM’s previous interpretation of the scope of stability benefits.</p>

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	<p><i>See</i> Claimant’s Memorial ¶¶ 108, 328; Chappuis ¶ 21, 51, 53. Ms. Chappuis testifies that she “saw [Mr. Polo’s] view more as politically motivated than legally, technically, or factually justified.” Chappuis ¶ 53.</p> <p>Mr. Polo testifies that he was “aware of the debates that took place within MINEM and Congress regarding” SMCV’s request to use the profit reinvestment benefit and the scope of the Stability Agreement. Polo ¶ 38. However, he claims that “MINEM’s position was always the same: The Leaching Project was the project stabilized by the Stabilization Agreement and the Primary Sulfides Project was a new investment project, which . . . does not enjoy the stabilized regime.” Polo ¶ 38. Peru argues that Mr. Polo’s “opinion cannot be dismissed as merely ‘politically motivated.’” Respondent’s Counter-Memorial ¶ 149.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Agreed production: Respondent does not object to Request No. 5. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate and which were prepared, sent, or received by César Polo concerning the scope of the Stability Agreement or stability guarantees under the Mining Law and Regulations, including but not limited to:</p> <p>(a) Communications or records of communications with the Minister of Mines, the Vice Minister of Mines, the Director General of Mining, or the MINEM General Director of the General Legal Advisory Office;</p> <p>(b) Communications or records of communications with SUNAT; or</p>

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	<p>(c) Communications or records of communications with members of Congress, including Congressmen Javier Diez Canseco or Alejandro Oré Mora.</p> <p>Accordingly, the Tribunal orders Respondent to produce such Documents.</p>
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Document Request No.	6
Documents or category of requested documents	<p>The following documents in the possession of MINEM:</p> <ul style="list-style-type: none"> a) Administrative files, as well as documents referencing, or referenced in, or related to the preparation or transmission of: <ul style="list-style-type: none"> i. the April 2005 Report, Ex. CE-494, MINEM, Report No. 153-2005-MEM/OGAJ (14 April 2005); ii. the September 2005 Report, Ex. CE-512, MINEM, Report No. 385-2005-MEM/OGJ (22 September 2005); iii. Ex. CE-515, MINEM, Report No. 1725-2005-MEM/DM (3 October 2005); iv. Ex. CE-519, MINEM, Report No. 2004-2005-MEM/DM (8 November 2005); or v. the June 2006 Report, Ex. CE-534, MINEM, Report No. 156-2006-MEM/OGJ (16 June 2006). b) Documents concerning SMCV's request to use the profit reinvestment benefit, including communications or records of communications with MEF employees or officials or members of Congress. c) Documents concerning SMCV's request to expand the Beneficiation Concession to include the Concentrator, including communications or records of communications with MEF employees or officials or members of Congress. <p>Time frame of issuance: From 3 July 2003 to 30 July 2006.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant's Memorial ¶¶ 50-57, 134-46, 171, 301-04, 313-25, 328-34, 345, 373-77; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 63-81; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Exs. CE-356, CE-377, CE-494, CE-512, CE-515, CE-519, CE-534, CE-629.</p> <p>Respondent's Counter-Memorial ¶¶ 13, 23, 62, 112, 128-30, 154-57, 175, 202, 259, 276, 559-67, 568-71; Isasi ¶¶ 7, 20, 24, 39-45, 53-55, 57, 68, 70-71, 73; Cruz ¶¶ 19-22; Tovar ¶¶ 4, 19-31, 34-36, 54-55; Ex. RE-23.</p>

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(2) *See* justification for Requests Nos. 1, 3, 4, & 5 above. This information is relevant and material to Freeport's claims that MINEM's novel and restrictive interpretation of stability benefits under the Mining Law and Regulations beginning in the June 2006 Report (**Ex. CE-534**) was inconsistent with Peru's prior practice.

Request 6(a) seeks documents related to the five MINEM reports that Mr. Isasi authored concerning the scope of stability guarantees, the central issue in dispute in this case. *See, e.g.*, Claimant's Memorial ¶¶ 7-10, 23; Respondent's Counter-Memorial ¶¶ 8-15, 20-21. Peru's witness, Mr. Camacho, claims that only MINEM has the power to interpret the scope of stability guarantees. Camacho ¶¶ 29-30. The five MINEM reports directly concern MINEM's position on the scope of stability guarantees during the relevant times. Mr. Isasi discusses those reports at length in his witness statement. Isasi ¶¶ 12-45, 52-57. The Parties dispute the correct interpretation of the first four reports, as well as whether the June 2006 Report reflects a change in MINEM's position resulting from political pressure. *See, e.g.*, Claimant's Memorial ¶¶ 134-46, 329039, 373-77; Respondent's Counter-Memorial ¶¶ 196-200, 253; Isasi ¶¶ 39-45, 53, 71, 73. The administrative case files of the reports and the documents referenced in the reports are likely to contain highly relevant information related to MINEM's contemporaneous internal position on the scope of stability guarantees and any prior legal analysis or practice upon which MINEM's internal position was based. Documents related to the preparation and transmission of the five reports are relevant and material to the disputed issue of whether the preparation of the reports was accompanied by political pressure to collect royalties from SMCV in violation of the Stability Agreement. *See* Claimant's Memorial ¶¶ 134-46, 373-77; Torreblanca ¶¶ 63-81; Isasi ¶¶ 39-45, 53, 71, 73. Similarly, documents referencing the five reports are likely to demonstrate whether MINEM officials and employees viewed the positions in the reports as consistent or inconsistent with MINEM's prior interpretations of the scope of stability guarantees and prior practice.

Request 6(b) and 6(c) concern two MINEM regulatory approvals: (i) the approval of SMCV's request to use the profit reinvestment benefit; and (ii) the approval of SMCV's request to expand the Beneficiation Concession to include the Concentrator. Freeport argues that these two regulatory approvals constituted MINEM confirmations that the Stability Agreement applied to the entire Cerro Verde Mining Unit. Claimant's Memorial ¶¶ 329-30. Peru claims that the two approvals did not relate to the scope of the Stability Agreement. *See, e.g.* Respondent's Counter-Memorial ¶¶ 112, 154-57; Tovar ¶ 4, 19-31.

MINEM documents concerning the two approvals are likely to reflect MINEM's contemporaneous understanding of the implications of the two approvals on the issue of whether the Concentrator was covered by the Stability Agreement. Freeport's request is narrowly tailored in terms of custodian, time range, and subject matter.

The requested information is not at Freeport's disposal because it is internal governmental documentation, related to other taxpayers that is not publicly available, which Peru is in a position to access without undue burden.

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<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 6.</p> <p><u>Request No. 6(a)</u></p> <ul style="list-style-type: none"> • <u>Lack of relevance and materiality</u>: Respondent partially objects to Request No. 6(a) on the basis that Claimant has failed to show how all the documents requested are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). <p><i>First</i>, Claimant relies on reasons stated for Request Nos. 1, 3, 4 & 5 to justify its Request. In those Requests, Claimant asserts that the documents it seeks are relevant to its claims that “SUNAT’s . . . interpretation of stability benefits under the Mining Law and Regulations beginning in the 2006-2007 Royalty Assessments was inconsistent with Peru’s prior practice” (Request No. 1), that “the restrictive interpretation of the stability benefits that Mr. Isasi adopted in the June 2006 Report was politically motivated and inconsistent with previous and subsequent MINEM interpretations of the Mining Law and Regulations” (Request No. 3), that “Mr. Polo’s statements suggesting that the Stability Agreement would not cover the Concentrator were inconsistent with previous and subsequent MINEM interpretations of the Stability Agreement, Mining Law, and Regulations and were the result of political pressure,” (Request No. 5), and to “the Tribunal’s assessment of the credibility and reliability of Mr. Tovar’s testimony” (Request No. 4). However, Claimant fails to explain how the requested documents in this Request No. 6 are relevant for any of the referenced claims.</p> <p><i>Second</i>, Claimant argues that any and <u>all</u> of the “administrative case files of the reports and the documents referenced in the reports” as well as <u>all</u> documents in MINEM’s possession that refer to any of the reports over a three-year period (“referencing, or referenced in”) are relevant and material because they “contain highly relevant information related to MINEM’s contemporaneous internal position on the <u>scope of stability guarantees</u> and any prior legal analysis or practice upon which MINEM’s internal position was based.” However, Claimant does not limit its request to documents that discuss “MINEM’s contemporaneous internal position regarding the scope of stability. . .” Therefore, most of the requested documents are necessarily going to be irrelevant for this dispute.</p> <p><i>Third</i>, Claimant argues that any document somehow “related to the preparation or transmission of” the five reports “[is] relevant and material to the disputed issue of whether the preparation of the reports was accompanied by political pressure to collect royalties from SMCV in violation of the Stability Agreement.” Claimant’s Request is an impermissible fishing expedition in which Claimant hopes to find any inconsistency in Peru’s actions even remotely related to MINEM’s reports that Claimant hopes can support its case. Claimant cites to Ms. Torreblanca’s witness statement and Mr. Isasi’s witness statement as examples</p>
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of evidence demonstrating that MINEM adopted an allegedly new approach as the result of political pressure, but it fails to explain how the witness statements prove Claimant’s allegation. In any case, Claimant cannot rely on its own witness’s testimony to argue that documents will show that the preparation of the report was accompanied by political pressure (and Mr. Isasi only replies to Ms. Torrebanca’s unsubstantiated arguments).

In any event, whether or not Ms. Torreblanca’s witness statement would prove Claimant’s allegation, Respondent is not obliged to produce evidence to Claimant to support its substantive claims.¹¹ Claimant should submit sufficient evidence to support its own claims. If Claimant does not have sufficient evidence to support its claims, then its claims must fail. In this Request, Claimant is impermissibly fishing for information that it hopes exists that it could potentially use to support its case. Such a Request is inappropriate in these proceedings. Also, Claimant is seeking documents containing internal discussions and drafts leading to the five *final* reports (*i.e.*, “documents . . . related to the preparation or transmission of [the five reports]”). As noted in Respondent’s General Objections on page 4 above, draft reports, or preliminary discussions are irrelevant to assess Peruvian government official’s opinion on a given topic. In this case, draft reports are not determinative of MINEM’s position; only the five final reports are relevant to assess MINEM’s position on the issues discussed in the five reports.

- **Lack of specificity**: Respondent objects to Request No. 6(a) on the basis that Claimant has failed to describe in sufficient detail a narrow and specific category of documents as required by Article 3(3)(a) of the IBA Rules. Claimant’s Request is overly broad in that it seeks “all documents in the possession of MINEM” that refer to any of the five reports, or over a three-year period (“referencing, or referenced in”), and any document somehow “related to the preparation or transmission of” the five reports over a three year period, and it does not limit the request to documents “discussing the scope of stability guarantees.”
- **Possession, custody, or control**: Respondent also objects to Request No. 6(a) on the basis that Claimant has failed to show that all the documents requested are not in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. Claimant asks for “documents . . . referenced in . . .” a series of reports including Exhibits CE-494, CE-512, CE-515, CE-519, and CE-534. Many of the documents referenced in such reports, such as resolutions, laws, stabilization agreements, or news articles are available to the public and can be accessed through MINEM’s website ([link](#)), through other websites of the Peruvian Government (*e.g.*, Perú’s Congress website ([link](#))), or more generally in Google.

Request No. 6(b)

¹¹ Article 3: Documents, in Tobias Zuberbühler, Dieter Hofmann, et al., IBA Rules of Evidence: Commentary on the IBA Rules on the Taking of Evidence in International Arbitration (Second Edition) (Schulthess Juristische Medien AG 2022) pp. 29 – 102, at 49.

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	<ul style="list-style-type: none"> • <u>Agreed production</u>: Respondent does not object to Request No. 6(b). Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate. <p><u>Request No. 6(c)</u></p> <ul style="list-style-type: none"> • <u>Agreed production</u>: Respondent does not object to Request No. 6(c). Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
<p>Requesting party reply</p>	<p><u>Request No. 6(a)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: The grounds on which Peru claims that the requested information is not relevant and material are not credible. <p><i>First</i>, Peru’s assertion that Freeport “fails to explain” how documents relating to the five Isasi reports “are relevant” ignores entirely the justification Freeport offers for Request 6(a) above. In addition to relying on its justifications for Requests No. 1, 3, 4 & 5, Freeport clearly explained that documents related to the five Isasi reports are highly relevant and material because they will show: (i) “MINEM’s contemporaneous internal position on the scope of stability guarantees and any prior legal analysis or practice upon which MINEM’s internal position was based;” (ii) “whether the preparation of the reports was accompanied by political pressure to collect royalties from SMCV in violation of the Stability Agreement;” and (iii) “whether MINEM officials and employees viewed the positions in the reports as consistent or inconsistent with MINEM’s prior interpretations of the scope of stability guarantees and prior practice.”</p> <p>The scope of stability guarantees is the central issue in dispute in this case. <i>See, e.g.</i>, Claimant’s Memorial ¶¶ 6-9, 20-21; Respondent’s Counter-Memorial ¶¶ 8-15, 20-21. Peru’s witness, Mr. Camacho, claims that only MINEM has the power to interpret the scope of stability guarantees. Camacho ¶¶ 29-30. The five Isasi reports directly concern MINEM’s position on the scope of stability guarantees during the relevant times. Mr. Isasi discusses those reports at length in his witness statement. Isasi ¶¶ 12-45, 52-57. The Parties dispute the correct interpretation of the five MINEM reports, as well as whether the June 2006 report reflects a change in MINEM’s position resulting from political pressure. <i>See, e.g.</i>, Claimant’s Memorial ¶¶ 142-44, 329-30, 373-77; Respondent’s Counter-Memorial ¶¶ 201-205, 259; Isasi ¶¶ 39-45, 53, 71, 73. The evidentiary record conclusively disproves Peru’s claim that Freeport bases its allegation of political pressure on “Ms. Torreblanca’s unsubstantiated arguments.” Freeport has marshalled extensive evidence of intense political pressure on MINEM to collect royalties from SMCV in violation of the Stability Agreement, including by a <i>Congressional committee that Peru convened for the express purpose of investigating</i></p>

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SMCV, with no basis whatsoever. Claimant’s Memorial ¶¶ 130-39, 159, 169, 373-77. *See also* Exs. CE-429, CE-464, CE-456, CE-489, CE-506, CE-508, CE-509, CE-515, CE-516, CE-517, CE-519-20, CE-525, CE-535, CE-572, CE-603.

Second, Peru’s argument that it “is not obliged to produce evidence to Claimant to support [Claimant’s] substantive claims” is antithetical to the IBA Rules and international arbitral practice, and is entirely inconsistent with Peru’s own document requests, which generally seek to adduce evidence to support Peru’s own defenses. The purpose of document production in international arbitration is to allow parties to request documents that “are relevant to the case and material to its outcome.” IBA Rules, Article 3(3)(b). Documents that are expected to support the requesting party’s “substantive claims” could not fall more squarely within that definition.

Finally, Peru’s objection that “draft reports, or preliminary discussions are irrelevant to assess Peruvian government official’s opinion on a given topic” misses the point entirely. Freeport does not seek these documents because they are “determinative of MINEM’s position” but, rather, because they will show the motivations for the positions MINEM took in the five reports.

Thus Peru’s relevance and materiality objection rests solely on the baseless grounds that Request No. 6(a) arguably captures irrelevant and immaterial documents as well as relevant and material ones. This is better characterized as an objection to the breadth of Request No. 6(a). However, Request 6(a) is not overbroad for the reasons set forth below.

- **Specificity**: There is no merit to Peru’s claim that Freeport “has failed to describe in sufficient detail a narrow and specific category of documents.” Request 6(a) is limited to documents concerning five specifically identified reports. Each of the administrative files of the specified reports is a specific set of documents that are contained in a readily identifiable location. Documents referenced in the reports are generally identified by a unique identification number which makes them practicable to locate. *See, e.g.*, Ex. CE-534, MINEM, Report No. 156-2006-MEM/OGJ (16 June 2006) (referencing other MINEM reports and other documents by number and date). Moreover, documents referencing or transmitting the reports likely do so by reference to each report’s unique identification number, making such documents practicable to locate.
- **Possession, custody, or control**: There is no merit to Peru’s objection that Claimant has failed to show that all the documents requested are not in Claimant’s possession, custody, or control. Request 6(a) seeks internal MINEM documents that are not publicly available.

Request No. 6(b): Without prejudice to the General Replies, Freeport agrees to Peru’s partial agreed production.

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	<p><u>Request No. 6(c)</u>: Without prejudice to the General Replies, Freeport agrees to Peru’s partial agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce the following documents it is able to locate:</p> <ul style="list-style-type: none"> • Documents concerning SMCV’s request to use the profit reinvestment benefit, including communications or records of communications with MEF employees or officials or members of Congress; • Documents concerning SMCV’s request to expand the Beneficiation Concession to include the Concentrator, including communications or records of communications with MEF employees or officials or members of Congress. <p>Accordingly, the Tribunal orders Respondent to produce such Documents.</p> <p>The Tribunal also orders the production of the administrative files of:</p> <ol style="list-style-type: none"> i. the April 2005 Report, Ex. CE-494, MINEM, Report No. 153-2005-MEM/OGAJ (14 April 2005); ii. the September 2005 Report, Ex. CE-512, MINEM, Report No. 385-2005-MEM/OGJ (22 September 2005); iii. Ex. CE-515, MINEM, Report No. 1725-2005-MEM/DM (3 October 2005); iv. Ex. CE-519, MINEM, Report No. 2004-2005-MEM/DM (8 November 2005); or v. the June 2006 Report, Ex. CE-534, MINEM, Report No. 156-2006-MEM/OGJ (16 June 2006). <p>The Tribunal rejects the remainder of Claimant’s Request No. 6 as overly broad.</p>

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Document Request No.	7
Documents or category of requested documents	<p>Communications or records of communications concerning the scope of the Stability Agreement or the scope of stability guarantees under the Mining Law and Regulations between the Minister of Mines, the Vice Minister of Mines, the Director General of Mining, or the MINEM General Director of the General Legal Advisory Office and employees or officials of SUNAT, including documents related to the transmission of: (i) the April 2005 Report; (ii) the September 2005 Report; or (iii) the June 2006 Report to Claudia Gabriela Bedoya Arbañil or Colón Haraldo Cruz Negrón</p> <p>Time frame of issuance: From 1 January 2005 to 9 August 2011.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 50-57, 134-36, 171, 175, 301-04, 310, 313-25, 328-34, 345, 370-71; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Exs. CE-356, CE-377, CE-494, CE-512, CE-568, CE-570, CE-629, CE-842, CE-883. Respondent’s Counter-Memorial ¶¶ 13, 21, 23, 62, 128-30, 170, 276, 559-67, 568-71; Isasi ¶¶ 7, 20, 24, 43, 54-55, 57, 68, 71; Cruz ¶¶ 13, 19-22; Tovar ¶¶ 19-22, 34-36, 54-55; Bedoya ¶¶ 16, 45; Ex. RE-26, RE-27.</p> <p>(2) <i>See</i> justification for Request No. 1, 2, & 3 above. This information is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Cruz and Ms. Bedoya’s testimony.</p> <p>Freeport submits that prior to the 2006-2007 Royalty Assessments “SUNAT clearly assumed that stability guarantees applied to concessions and mining units.” Claimant’s Memorial ¶ 326. Freeport submits that, in the 2006-2007 Royalty Assessments, SUNAT first adopted the novel and restrictive interpretation that, due to political pressure, Mr. Isasi authored in the June 2006 Report. Claimant’s Memorial ¶¶ 171, 175. In support of this assertion, SMCV submits documentary evidence demonstrating that: (i) in 2005 Haraldo Cruz, SUNAT’s Regional Intendent for Arequipa, sent a form requesting information about SMCV’s “Production Unit(s)” for the purposes of determining the applicability of the Royalty Law to SMCV; (ii) in 2007, SMCV, SUNAT, and MINEM exchanged reports observing that the final list of companies obliged to pay royalties would be based on information that MINEM would provide on “ownership of concessions and EAUs;” and (iii) in 2012 SUNAT issued a report stating that “mining-activity owners that have signed [stability agreements] will enjoy a stabilized tax system applicable solely to the concession or economic-administrative unit for which said agreement has been signed.” Claimant’s Memorial ¶ 318 (citing Exs. CE-842, CE-568, CE-570, CE-883).</p>

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	<p>Peru claims that “SUNAT had no power to establish or interpret the scope of the Stabilization Agreement.” Respondent’s Counter-Memorial ¶ 170. Similarly, Mr. Cruz testifies that “it is not the responsibility of SUNAT to establish which companies were subject or not to the payment of royalties. That task belongs to the Ministry of Energy and Mines.” Cruz ¶ 13. Ms. Bedoya acknowledges that during SUNAT’s audit of SMCV for 2006-2007 and 2008 royalties, SUNAT “requested” the June 2006 Report from MINEM. Bedoya ¶ 45. However, she claims that SUNAT conducted an “independent legal analysis” of the “the Mining Law, accompanying regulations, and the terms of the Stabilization Agreement” and only “requested the [the June 2006 Report] as part of its own analysis and due diligence in order to gather the sector’s opinion.” Bedoya ¶¶ 16, 45.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, related to other taxpayers that is not publicly available, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Agreed production: Respondent does not object to Request No. 7. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce communications or records of communications that it is able to locate concerning the scope of the Stability Agreement or the scope of stability guarantees under the Mining Law and Regulations between the Minister of Mines, the Vice Minister of Mines, the Director General of Mining, or the MINEM General Director of the General Legal Advisory Office and employees or officials of SUNAT, including documents related to the transmission of: (i) the April 2005 Report; (ii) the September 2005 Report; or (iii) the June 2006 Report to Claudia Gabriela Bedoya Arbañil or Colón Haraldo Cruz Negrón. Accordingly, the Tribunal orders Respondent to produce such Documents.</p>

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Document Request No.	8
Documents or category of requested documents	<p>Communications or records of communications concerning the scope of the Stability Agreement or stability guarantees under the Mining Law and Regulations between the Minister of Mines, the Vice Minister of Mines, the Director General of Mining, or the MINEM General Director of the General Legal Advisory Office and members of Congress, including Congressmen Javier Diez Canseco, Alejandro Oré Mora, or members of the Working Group of the Congressional Energy and Mines Commission convened to investigate SMCV.</p> <p>Time frame of issuance: From 1 April 2004 to 19 June 2008.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 50-57, 130-39, 134-36, 171, 301-04, 310, 313-25, 328-34, 345, 373-77, 370-71; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 71, 63-81; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Choque ¶ 14; Otto ¶¶ 23, 32-34, 50; Exs. CE-377, CE-494, CE-500, CE-506-12, CE-515, CE-517, CE-519-20, CE-523, CE-525, CE-534.</p> <p>Respondent’s Counter-Memorial ¶¶ 13, 21, 23, 43-60, 128-30, 175, 193, 202, 259, 276, 559-67, 568-71; Polo ¶¶ 15-25; Isasi ¶¶ 7, 20, 24, 39-45, 53-55, 57, 61-68, 70-71, 73; Cruz ¶¶ 19-22; Tovar ¶¶ 19-22, 34-36, 54-55; Exs. RE-3, RE-29.</p> <p>(2) <i>See</i> justification for Requests Nos. 1, 3, & 5 above. Freeport contends that Peru adopted its novel and restrictive interpretation of the Stability Agreement as a result of political pressure targeted at SMCV, MINEM, SUNAT, MEF, and specific Government Officials. <i>See</i> Claimant’s Memorial ¶¶ 373-77. Freeport submits witness testimony and documentary evidence demonstrating that, contemporaneous with the adoption of the Royalty Law and a rise in copper prices, members of Congress, including Congressmen Javier Diez Canseco and Alejandro Oré Mora, initiated a campaign that included, <i>inter alia</i>: (i) public statements criticizing SMCV, MINEM, and other government authorities for SMCV’s non-payment of royalties and use of the profit reinvestment benefit; (ii) threats to file a constitutional complaint against Minister Sánchez Mejía unless MINEM revoked SMCV’s reinvestment benefit and ordered SMCV to pay royalties; (iii) demands for information relating to the Stability Agreement and the reinvestment of profits approval; and (iv) the creation of the Working Group of the Congressional Energy and Mines Commission to “investigate the alleged tax benefits that SMCV may have received.” Claimant’s Memorial ¶¶ 130-39. <i>See also</i> Exs. CE-500, CE-506-12, CE-515, CE-517, CE-519-20, CE-523, CE-525.</p>

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	<p>Peru maintains that Government Officials, including Minister Sánchez Mejía, did not “give in to the political pressure,” and that their position on the scope of SMCV’s Stability Agreement has always been consistent. <i>See, e.g.</i>, Respondent’s Memorial ¶ 193.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, related to other taxpayers that is not publicly available, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p><u>Agreed production:</u> Respondent does not object to Request No. 8. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce communications or records of communications that it is able to locate concerning the scope of the Stability Agreement or stability guarantees under the Mining Law and Regulations between the Minister of Mines, the Vice Minister of Mines, the Director General of Mining, or the MINEM General Director of the General Legal Advisory Office and members of Congress, including Congressmen Javier Diez Canseco, Alejandro Oré Mora, or members of the Working Group of the Congressional Energy and Mines Commission convened to investigate SMCV. Accordingly, the Tribunal orders Respondent to produce such Documents.</p>

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Document Request No.	9
Documents or category of requested documents	<p>The following documents prepared, sent, or received by MEF employees or officials concerning the scope of the Stability Agreement or the scope of stability guarantees under the Mining Law and Regulations:</p> <ul style="list-style-type: none"> a) Documents referencing the April 2005 Report, Ex. CE-494, MINEM, Report No. 153-2005-MEM/OGAJ (14 April 2005), or related to its preparation or transmission. b) Documents referencing the September 2005 Report, Ex. CE-512, MINEM, Report No. 385-2005-MEM/OGJ (22 September 2005), or related to its preparation or transmission. c) Documents referencing the June 2006 Report, Ex. CE-534, MINEM, Report No. 156-2006-MEM/OGJ (16 June 2006), or related to its preparation or transmission. d) Documents referencing, or referenced in Ex. CE-629, MEF, Report No. 206-2011-EF/61.01 (14 October 2011), or related to its preparation or transmission, including: <ul style="list-style-type: none"> i. Official Letter No. 096-2011-EM/DM; and ii. Note No. 2246-2011-EF/42.01. e) Communications or records of communications with Congressmen Javier Diez Canseco, Alejandro Oré Mora, or members of the Congressional Energy and Mines Commission. <p>Time frame of issuance: From 23 June 2004 to 30 November 2011.</p>
Relevance and materiality: (1) para ref to submissions	<p>(1) Claimant’s Memorial ¶¶ 50-57, 134-46, 171, 192, 301-04, 310, 313-15, 328-34, 345, 373-77, 370-71; Chappuis ¶¶ 21, 28, 45-46, 52-55; Vega ¶¶ 34-40; Torreblanca ¶¶ 31-32, 53, 81; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25; Exs. CE-356, CE-377, CE-494, CE-512, CE-629.</p>

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<p>(2) comments</p>	<p>Respondent’s Counter-Memorial ¶¶ 13, 21, 23, 43-60, 62, 128-30, 175, 202, 259, 262, 276, 271-79, 568-71; Isasi ¶¶ 7, 20, 24, 43, 53-55, 57, 68, 71; Cruz ¶¶ 19-22; Tovar ¶¶ 19-22, 34-36, 54-55; Camacho ¶¶ 30-31; Bedoya ¶¶ 16, 44-46; Ex. RE-23.</p> <p>(2) <i>See</i> justification for Request Nos. 1, 3, & 8 above. This information is relevant and material to Freeport’s claims that MEF adopted inconsistent interpretations of stability benefits under the Mining Law and Regulations as a result of political pressure to collect royalties from SMCV. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Camacho’s and Ms. Bedoya’s testimony.</p> <p>Freeport submits evidence demonstrating that the novel and restrictive interpretation of the Stability Agreement that Peruvian ministries, including the MEF, adopted was the result of political pressure to collect royalties from SMCV. <i>See Exs. CE-507, CE-508, CE-515, CE-519</i>. Additionally, Freeport submits evidence of inconsistent MEF positions after Mr. Isasi’s June 2006 Report. Ms. Torreblanca testifies that around November 2009, she met with Marisol Guiulfo, the Vice-Minister of Economy, and Liliana Chipoco, the General Director of Public Revenue Policy, who confirmed that SMCV “would have a very strong argument for prevailing before the Tax Tribunal.” Torreblanca ¶ 81. Moreover, in an October 2011 opinion, MEF found that the GEM only applied to mining companies “for that which is covered by [a stability agreement].” Claimant’s Memorial ¶ 192; Ex. CE-629. Peru’s witness, Mr. Camacho, testifies that “MEF’s opinion regarding the interpretation of stabilization agreements is <u>irrelevant</u>” and that in the meeting with Ms. Torreblanca around November 2009, Ms. Guiulfo and Ms. Chipoco were “at best . . . sharing personal opinions about the possible outcome of SMCV’s administrative challenges against the assessments.” Camacho ¶¶ 30-31; Respondent’s Counter-Memorial ¶ 262. Yet, Ms. Bedoya testifies that, in the 2006-2007 Royalty Cases, SUNAT—an organ of the MEF—did not simply adopt MINEM’s position in the June 2006 Report (Ex. CE-534) that stability guarantees were limited to investment projects but, rather, reached this conclusion pursuant to an “independent legal analysis.” <i>See</i> Bedoya ¶¶ 16, 44-46. The requested documents are likely to demonstrate MEF’s contemporaneous understanding of the scope of stability guarantees and whether political pressure was applied by, or on the MEF to collect royalties from SMCV in violation of the Stability Agreement. Claimant’s Memorial ¶¶ 102, 373-77; Torreblanca ¶¶ 63-81.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, related to other taxpayers that is not publicly available, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to</p>	<p>Respondent objects to Request No. 9.</p> <ul style="list-style-type: none"> • <u>Lack of relevance and materiality</u>: Respondent objects to Request No. 9 on the basis that Claimant has failed to show how the requested documents are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules

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production of requested documents	<p>(<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant’s reason for its Request is that the documents it seeks from MEF officials are supposedly relevant to prove that “MEF adopted inconsistent interpretations of stability benefits under the Mining Law and Regulations as a result of political pressure to collect royalties from SMCV.” However, as Mr. Camacho—former General Director of MEF—explains, MEF’s opinion regarding the interpretation of stabilization agreements is <u>irrelevant</u> (<i>see</i> RWS-6, paras. 29-30). In particular, Mr. Camacho notes in his witness statement that the scope of the Stabilization Agreement “was [not] the purpose of any meeting held with SMCV” given “<u>MEF’s lack of jurisdiction on this subject</u>, to elucidate, clarify, or confirm the scope of the law or regulation specifically in the case of a single company” (<i>see</i> RWS-6, para. 29). Mr. Camacho further explains that, even if the interpretation of the 1998 Stabilization Agreement were addressed at one of the meetings between MEF and SMCV (<i>quod non</i>), “. . . MEF is <u>not the entity with legal authority to interpret legal stabilization agreements in the mining sector</u>” (<i>see</i> RWS-6, para. 30). In order to circumvent this argument, Claimant argues that Ms. Bedoya testified that SUNAT “did not simply adopt MINEM’s position in the June 2006 Report (Ex. CE-534) that stability guarantees were limited to investment projects but, rather, reached this conclusion pursuant to an ‘independent legal analysis.’” However, the latter does not modify Mr. Camacho’s statement about MEF’s (lack of) role in interpreting the agreement. In fact, making an assessment of a taxpayer’s obligations (based on a stabilization agreement for example) is not one of MEF’s functions listed in Article 3 of MEF Internal Regulations.¹² On the other hand, as provided in Regulation on the Organization and Functions of SUNAT, SUNAT is legally authorized to assess a taxpayer’s obligations and, in particular, assess the payment of a taxpayer’s fines and penalties.¹³ Indeed, MEF and SUNAT are two separate organs, with different jurisdictions, and mandates. Claimant’s argument is without merit. Therefore, the documents that Claimant seeks from MEF officials are irrelevant and not material to the outcome of this dispute.</p> <ul style="list-style-type: none">• <u>Procedural economy and fairness:</u> Respondent also objects to Request No. 9 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. As noted in Respondent’s General Objections (<i>see supra</i> para. 5, p. 5), this is an international arbitration, and expansive discovery under the guise of document requests is not permitted. As Gary Born put it: “[T]ribunals are generally very unwilling to permit parties to engage in ‘fishing expeditions’, aimed at identifying <u>possible claims or sources of further inquiry</u>” and “[t]he focus of disclosure should be on obtaining relevant and material evidence, <u>not playing guessing games</u>.”¹⁴ In this case, none of the facts on the record (other than Claimant’s personal opinion and SMCV’s employee Ms. Torreblanca’s witness statement) demonstrates Claimant’s
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¹² *See* Exhibit CA-250, MEF Internal Regulations, Ministerial Resolution 213-2020/EF/41, Article 3, at pp. 2-5.

¹³ *See* Exhibit RE-32, Regulation on the Organization and Functions of SUNAT, Approved by Supreme Decree No. 115-2002-PCM, October 23, 2002, Article 15(c), (o), and (p).

¹⁴ G. Born, *International Commercial Arbitration* (2d ed. 2014), at pp. 2359, 236 (emphasis added).

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	<p>hypothesis that “political pressure was applied by, or on the MEF to collect royalties from SMCV in violation of the Stability Agreement.” Claimant cites to Exhibits CE-507, CE-508, CE-515, CE-519 as examples of evidence demonstrating that MEF adopted an allegedly new approach as the result of political pressure, but it fails to explain how the exhibits prove Claimant’s allegation—they do not. Neither Exhibit CE-507 (a communication from Congressman Oré to Minister Sánchez Mejía) nor Exhibit CE-508 (a press article) support Claimant’s allegations. Similarly, Exhibits CE-515 and CE-519 are two MINEM reports that don’t support Claimant’s allegations that Peruvian ministries adopted a new approach as the result of political pressure.</p> <p>In the words of Gary Born, Claimant is “playing guessing games” since none of the facts on the record demonstrate Claimant’s hypothesis. This Request amounts to a fishing expedition as Claimant asks for a broad universe of documents in the <i>hopes</i> of creating a case where it has none. Claimant cannot invent a claim purely for the purposes of obtaining documents via this document production process: it must first <i>prima facie</i> make a claim and submit substantive proof of such claim, and then use the document production process to obtain documents that exist and that are relevant and material to that claim.</p> <p>In addition, given the lack of relevance of the requested documents, it would be particularly unreasonably burdensome and unfair to force Respondent to search its records for potentially responsive documents created over a period of seven years that ended more than a decade ago.</p>
<p>Requesting party reply</p>	<p><u>Relevance and materiality:</u> Peru’s objection is meritless. As set forth in Freeport’s justification for Request No. 9, the requested documents are relevant and material to Freeport’s claim that the novel and restrictive interpretation of the Stability Agreement that Peruvian ministries, including the MEF, adopted was the result of political pressure to collect royalties from SMCV. Peru’s relevance and materiality objection is fundamentally misconceived and inconsistent with the testimony of its own witness. Peru bases its objection on Mr. Camacho’s testimony that the “MEF’s opinion regarding the interpretation of stabilization agreements is <u>irrelevant.</u>” <i>First</i>, Mr. Camacho’s testimony regarding the relevance of the “MEF’s opinion regarding the interpretation of stabilization agreements,” is irrelevant. Camacho ¶¶ 29-30. The disputed issue is whether, irrespective of any internal Peruvian legal limitations on the MEF’s authority, political pressure was <i>actually</i> applied by, or on the MEF to collect royalties from SMCV in violation of the</p>

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Stability Agreement. *See* Claimant’s Memorial ¶¶ 102, 373-77; Torreblanca ¶¶ 63-81. Peru cannot rely on its own witness’s testimony or formal limitations on the MEF’s authority imposed by internal Peruvian law to make this key dispute disappear. *Second*, Ms. Bedoya testifies that in the 2006-2007 Royalty Cases, SUNAT—an organ of the MEF—did not simply adopt MINEM’s position in the June 2006 Report (Ex. CE-534) that stability guarantees were limited to investment projects but, rather, reached this conclusion pursuant to an “independent legal analysis.” *See* Bedoya ¶¶ 16, 44-46. Therefore, the Parties dispute the MEF’s role in interpreting mining stability agreements and Ms. Bedoya agrees with Claimant.

Procedural economy and fairness: Peru argues that Freeport is playing “guessing games” in Request No. 9 based on the inaccurate claim that the request is based solely on “Claimant’s personal opinion and SMCV’s employee Ms. Torreblanca’s witness statement.” First of all, Ms. Torreblanca is a witness in this proceeding and her witness statement is record evidence. Moreover, the record clearly supports her testimony that the MEF, and particularly SUNAT, an organ of the MEF, adopted the novel and restrictive interpretation of the Stability Agreement after sustained political pressure to collect royalties from SMCV in violation of the Stability Agreement. Freeport has submitted witness testimony and documentary evidence demonstrating that Peru consistently applied stability benefits to entire concessions and mining units. Claimant’s Memorial ¶¶ 313-19, 328-34, 381-82; Chappuis ¶¶ 28, 45, 52-55; Torreblanca ¶¶ 31-32, 53; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25. In 2005, members of Congress launched a campaign to collect royalties from SMCV in violation of the Stability Agreement. Claimant’s Memorial ¶¶ 130-39. *See also* Exs. CE-500, CE-506-12, CE-515, CE-517, CE-519-20, CE-523, CE-525, Torreblanca ¶¶ 63-81; Flury ¶¶ 28-31. In April and September 2005, Mr. Isasi prepared MINEM reports confirming that stabilized concessions would not be subject to the Royalty Law and concluding that SMCV was appropriately entitled to the reinvestment of profits benefit. Exs. CE-494, CE-512. In September 2005, Congressmen Diez Canseco and Oré ratcheted up the political pressure, requesting information about the Stability Agreement from MINEM, demanding that Minister Sánchez Mejía revoke SMCV’s authorization to reinvest profits and require SMCV to pay royalties, and threatening to “denounce” the Minister “constitutionally” if he failed to do so. Exs. CE-508, Ex-CE-509. One month later, Minister Sánchez Mejía sent a letter to Congressman Oré acknowledging that SMCV was entitled to use the profit investment but asserting, with no legal basis, that the Concentrator was not covered by the Stability Agreement. Ex. CE-515. That same month, the *Peruvian Congress* created a special Working Group to “investigate the [alleged tax benefits SMCV may have] received” and “adopt the appropriate measures.” Ex. CE-516. In November 2005, again, with no legal basis, Minister Sánchez Mejía sent a letter to Congressman Diez Canseco stating that the Concentrator was not covered by the Stability Agreement. Ex. CE-519. In March 2006, members of the Congressional Working Group convened to investigate SMCV reportedly decried the erroneous proposition that SMCV “does not pay taxes or fees” or “help the development in the district.” Ex. CE-525. Finally, following nearly a year of sustained political pressure, Mr. Isasi authored the June 2006 Report, which, for the first time, set forth MINEM’s position that the Stability Agreement would not apply to the Concentrator because stability guarantees are limited to specific investment projects. Ex. CE-574. In November 2007, Arequipa activist, Dante Martínez Palacios, intensified the pressure on the MEF by filing complaints against SMCV and SUNAT alleging that SMCV had

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	<p>improperly evaded royalties through “fraudulent actions” and collusion with Peruvian officials, and demanding that SUNAT assess royalties against SMCV. Claimant’s Memorial ¶ 165. Thereafter, in 2009, for the first time, SUNAT abandoned its previous extension of stability guarantees to investments that were not contained in the feasibility study submitted to obtain a stability agreement, such as SMCV’s investments to improve the leaching facilities in 2001 and 2002. Davenport ¶ 21; Ex. CE-31. Thus, this is not a situation in which a party is seeking documents to support unfounded allegations or claims. Freeport has submitted extensive evidence demonstrating that a sustained political campaign, launched after the adoption of the Royalty Law and a drastic rise in copper prices, led Peru to adopt its novel and restrictive interpretation of the Stability Agreement. The requested documents will provide additional context to existing record evidence and, therefore, are clearly relevant and material to key issues in dispute.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal orders Respondent to produce the specified documents in sub-request 9(d)(i) and (ii), namely:</p> <ul style="list-style-type: none"> • Official Letter No. 096-2011-EM/DM; • Note No. 2246-2011-EF/42.01. <p>The Tribunal rejects the remainder of Claimant’s Request No. 9 as overly broad.</p>

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Document Request No.	10
Documents or category of requested documents	<p>Audio or video recordings of the MINEM presentation to Congress on 11 March 2004 (Ex. CE-19, Evaluation of Royalty Application (11 March 2004)), and documents or recordings evidencing the television broadcasts of:</p> <ul style="list-style-type: none"> a) The June 2005 Congressional Presentation; or b) The May 2006 Congressional Presentations. <p>Time frame of issuance: From 1 March 2004 to 31 May 2006.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶ 99; Ex. CE-19.</p> <p>Respondent’s Counter-Memorial § II.D, ¶¶ 128, 182-87, 197-200; Exs. RE-3, RE-29, RE-103, RE-104.</p> <p>(2) <i>See</i> justification for Request Nos. 1 & 3 above. Freeport contends that prior to the enactment of the Royalty Law, government official repeatedly recognized that SMCV would be exempt from paying royalties. Claimant’s Memorial ¶ 99. For example, Freeport submits documentary evidence demonstrating that on 11 March 2004, MINEM delivered a presentation to Congress explaining that the “[s]cope of royalty application” would be limited by mining stability agreements and listing SMCV’s mining concession among the concessions protected by mining stability agreements. Ex. CE-19.</p> <p>Peru contends that MINEM consistently maintained the position that stability guarantees are limited to specific investment projects. <i>See</i> Respondent’s Counter-Memorial § II.D. In support of its argument, Peru presents documentary evidence and audio recordings of presentations to the Energy and Mines Congressional Committee that the Vice Minister of Mines and the MINEM Legal Director gave in June 2005 and May 2006. Respondent’s Counter-Memorial ¶¶ 182-87; 197-200; Exs. RE-3, RE-29, RE-103, RE-104. Peru contends that SMCV knew or should have known about MINEM’s position because “[t]hese presentations were televised and, thus, available to the public.” Respondent’s Counter-Memorial ¶ 128. However, Peru does not exhibit any evidence demonstrating that the presentations were televised or exhibit recordings of other sessions of the Energy and Mines Congressional Committee from around the same time.</p>

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	The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.
Agreement to produce or Summary of objections by disputing Party to production of requested documents	<u>Agreed production:</u> Respondent does not object to Request No. 10. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
Requesting party reply	Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.
Decision of the Tribunal	The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce audio or video recordings that it is able to locate of the MINEM presentation to Congress on 11 March 2004 (Ex. CE-19, Evaluation of Royalty Application (11 March 2004)), and documents or recordings evidencing the television broadcasts of: (a) The June 2005 Congressional Presentation; or (b) The May 2006 Congressional Presentations. Accordingly, the Tribunal orders Respondent to produce such Documents.

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Documents Analyzing the Economic Impact of the Stability Agreement	
Document Request No.	11
Documents or category of requested documents	<p>Documents prepared, sent, or received by MINEM or MEF projecting tax collections resulting from investments that the 1998 Stability Agreement would cover.</p> <p>Time frame of issuance: From 26 January 1996 to 13 February 1998.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 308-12; Otto ¶¶ 17, 23, 32-34, 48-50.</p> <p>Respondent’s Counter-Memorial ¶ 38; Ralbovsky ¶¶ 32, 36-38, 62.</p> <p>(2) This information is relevant and material to Freeport’s claims that stability guarantees must extend to an entire mining unit, in order to achieve their intended purpose. <i>See</i> Claimant’s Memorial ¶¶ 308-12. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Stephen Ralbovsky’s testimony.</p> <p>Freeport contends that the Mining Law and Regulations extend stability guarantees to all investments within a concession, mining unit, or EAU because it is the “only interpretation that is consistent with the Government’s stated purpose of promoting private investment in the mining sector.” <i>See</i> Claimant’s Memorial ¶ 308. Freeport offers testimony to this effect from Mr. Otto, a leading authority on mining law and taxation. <i>See</i> Otto ¶¶ 17, 23, 32-34, 48-50. Mr. Otto testifies that mining investments are “dynamic” and require ongoing investment to “update technologies, add new circuits or mills to recover additional minerals, implement new processing approaches to accommodate changing ores and technological advances, or replace trucks with conveyors.” Otto ¶¶ 23, 32-34. Therefore, if subsequent investments within a mining unit do not enjoy stability, stability guarantees would be “significantly less attractive” and less effective at attracting “the investment that the government hoped to attract with stability.” Otto ¶ 34.</p> <p>Peru contends that stabilization agreements must be “limited to specific investment projects” to allow the State to project “the amount of taxes that it expects to collect during the time of the agreement and the benefits that the investment project is expected to bring to the economic development of the country.” Respondent’s Counter-Memorial ¶ 38. Peru offers testimony from Mr. Ralbovsky, a mining</p>

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	<p>tax consultant, to this effect. <i>See</i> Ralbovsky ¶¶ 32, 36-38, 62. Mr. Ralbovsky testifies that stability was limited to the investment plan outlined in the 1996 Feasibility Study because “Peru would have wanted to see the size of the investment (<i>i.e.</i> foregone tax revenue) it was making by entering into the Stability Agreement” and would not have “invest[ed] in a stability agreement with a mining company that was not going to be able to succeed.” Ralbovsky ¶ 62. However, Peru does not provide any documentary evidence of projected tax collections resulting from investments that the 1998 Stability Agreement would cover.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p><u>Agreed production:</u> Respondent does not object to Request No. 11. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents prepared, sent, or received by MINEM or MEF that it is able to locate projecting tax collections resulting from investments that the 1998 Stability Agreement would cover. Accordingly, the Tribunal orders Respondent to produce such Documents.</p>

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Documents Concerning the Drafting of the Mining Law and Regulations	
Document Request No.	12
Documents or category of requested documents	Documents related to the drafting of L.D. 708 of 1991, including any <i>exposición de motivos</i> . Time frame of issuance: From 1 August 1990 to 6 November 1991.
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 305-07; Chappuis ¶¶ 21, 23, 28, 45-46; Vega ¶¶ 34, 36, 38-40. Respondent’s Counter-Memorial ¶¶ 43, 53, 59, 562; Polo n. 4, ¶¶ 9-10, 15-19.</p> <p>(2) This information is relevant and material to Freeport’s claims that the drafters of the Mining Law intended to extend stability benefits to all investments that a mining company made in a concession, mining unit, or EAU. <i>See</i> Claimant’s Memorial ¶¶ 305-07. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Polo’s testimony.</p> <p>Freeport contends that the drafters of the Mining Law “intended to convey stability guarantees to the entire mining unit or concession in which an investor made its qualifying minimum investment.” Claimant’s Memorial ¶ 305. <i>See also id.</i> ¶¶ 314-15. Freeport offers testimony to this effect from Ms. Chappuis, who participated in drafting L.D. 708, and Ms. Vega, who consolidated L.D. 708 into the Mining Law. Chappuis ¶¶ 21, 28, 45-46; Vega ¶¶ 34, 36, 38-40. Ms. Chappuis testifies that the drafters of L.D. 708, intended Articles 7 and 11 (which later became Articles 79 and 83 of the Mining Law, respectively) to “make clear that stability would benefit only the concession or mining unit that was the target of the investment, to the exclusion of other mining units or non-mining activities.” Chappuis ¶ 21. She further testifies that it was not the intent of the drafters “to limit the scope of stability to the initial investment included in the feasibility study’s investment program, or to the initial ‘activities’ that the mining company had to carry out to be entitled to enter into a stability agreement.” Chappuis ¶ 23.</p> <p>Peru contends that the drafters of L.D. 708 “only intended to provide stability to the investment project for which the agreement was signed.” Respondent’s Counter-Memorial ¶ 562. <i>See also id.</i> ¶¶ 43, 59. Peru presents testimony from Mr. Polo, former Vice-Minister of Mines, who testifies that “one of [his] functions . . . was to propose draft regulations that were necessary in the area of the mining</p>

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	<p>sector.” Polo n. 4. Mr. Polo was involved in drafting L.D. 708. Polo ¶¶ 9-10, 15-19. He testifies that he proposed Article 79 of L.D. 708 “precisely for the purpose of clarifying that the benefits of a stabilization agreement apply only to the activities related to the investment project for which the agreement was approved and signed, nothing more.” Respondent’s Counter-Memorial ¶ 53 (citing Polo ¶ 18). However, Mr. Polo does not provide any documentary evidence to support this assertion.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Agreed production: Respondent does not object to Request No. 12. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents that it is able to locate related to the drafting of L.D. 708 of 1991, including any <i>exposición de motivos</i>. Accordingly, the Tribunal orders Respondent to produce such Documents.</p>

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Document Request No.	13
Documents or category of requested documents	Documents related to the drafting of the Mining Law, including any <i>exposición de motivos</i> . Time frame of issuance: From 1 January 1992 to 3 June 1992.
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 305-07; Chappuis ¶¶ 21, 23, 28, 45–46; Vega ¶¶ 34, 36, 38-40. Respondent’s Counter-Memorial ¶¶ 43, 53, 59, 562, 567; Polo ¶¶ 9-10, 15-25, 31-33.</p> <p>(2) <i>See</i> justification for Request No. 12 above.</p> <p>Ms. Vega explains that the provisions of the Mining Law make clear that “stability guarantees extended broadly to all investments that a mining company made within the concessions or unit covered by its stability agreement.” Vega ¶ 34. She recalls that, while she was preparing the Mining Law, she “consulted with Vice- Minister Patsías, and on some occasions with Minister Yoshiyama, regarding the intent behind certain provisions.” Vega ¶ 24. She further testifies that she “specifically discussed” whether “we should incorporate the broad definition of EAU [in Article 82 of the Mining Law] . . . and in particular the concept of a ‘single production unit’ encompassing both mining and beneficiation concessions” with Vice-Minister Patsías, who “agreed that it was essential.” Vega ¶ 38.</p> <p>Mr. Polo testifies that Article 82 of the Mining Law did not extend stability benefits to “all the activities and investments that were made within the set of mining concessions where the project was located.” Polo ¶ 31. However, he does not provide any documentary evidence to support this assertion. Peru argues that Mr. Polo’s statement is “more convincing” than Ms. Vega’s because Ms. Vega “just moved Mr. Polo’s words from L.D. 708 to the TUO.” Respondent’s Counter-Memorial ¶ 567.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>

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<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 13:</p> <ul style="list-style-type: none"> • <u>Lack of Specificity (in part)</u>: Respondent partially objects to Request No. 13 on the basis that it lacks specificity as required under Article 3(3)(a) of the IBA Rules. Claimant’s Request is overly broad as it includes <u>all</u> documents “related to the drafting of the Mining Law” (without limitation) regardless of whether those are related to stability agreements or stability guarantees (which are addressed specifically in Title IX of the Mining Law, Articles 71-90). • <u>Relevance (in part)</u>: Respondent partially objects to Request No. 13 on the basis that some of the documents it seeks would not be relevant to the outcome of this dispute as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Most of the documents Claimant requests would be unrelated to stabilization agreements or stability guarantees (which are addressed specifically in Title IX of the Mining Law, Articles 71-90), and thus are irrelevant and immaterial to this dispute. • <u>Partial agreed production</u>: With respect to the documents related to the drafting of the Mining Law that are specifically related to stabilization agreements or stability guarantees, Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
<p>Requesting party reply</p>	<p><u>Specificity</u>: Freeport’s request is not overbroad. Just as each provision of the Mining Law must be read in the context of the Mining Law as a whole, the drafting history of provisions relating to the scope of stability guarantees must be read in the context of the drafting history of the Mining Law as a whole. Reading parts of the drafting history in isolation may suggest unreasonable results that could only be resolved by other parts of the legislative history. Moreover, the drafting history of the Mining Law is a specific set of documents likely to be contained in a readily identifiable location.</p> <p><u>Relevance</u>: Freeport’s request does not seek documents that are not material to the outcome of this dispute for the reasons set forth above in Freeport’s reply to Peru’s objection on the grounds of “lack of specificity.”</p> <p>Without prejudice to Freeport’s replies to Peru’s partial objections to Request No. 13, and the General Replies, Freeport agrees to Peru’s partial agreed production provided that it includes documents related to the drafting of Title IX (Articles 71-90), Article 44, and Article 101 of the Mining Law.</p>

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Decision of the Tribunal	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate related to the drafting of the Mining Law that are specifically related to stabilization agreements or stability guarantees. Accordingly, the Tribunal orders Respondent to produce such Documents.</p> <p>The Tribunal also orders Respondent to produce the remainder of Claimant’s Request No. 13.</p>
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Document Request No.	14
Documents or category of requested documents	Documents related to the drafting of the Regulations, including any <i>exposición de motivos</i> . Time frame of issuance: From 1 January 1992 to 7 June 1993.
Relevance and materiality: (1) para ref to submissions (2) comments	(1) Claimant’s Memorial ¶¶ 305-07; Chappuis ¶¶ 21, 23, 28, 45–46; Vega ¶¶ 34, 36, 38-40. Respondent’s Counter-Memorial ¶¶ 43, 53, 59, 562, 567; Polo ¶¶ 9-10, 15-25, 31-33. (2) <i>See</i> justification for Request Nos. 12 & 13 above. The Regulations, entitled “Regulations of Title Nine of the General Mining Law, referring to the Guarantees and Measures to Promote Investment in the Mining Activity,” implement Title IX of the Mining Law, which concerns stability guarantees. Therefore, the drafting history of the Regulations is relevant and material to the disputed issue of the intended scope of stability guarantees under the Mining Law and Regulations. The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.
Agreement to produce or Summary of objections by disputing Party to production of requested documents	Respondent partially objects to Request No. 14. <ul style="list-style-type: none"> • <u>Lack of specificity (in part)</u>: Respondent partially objects to Request No. 14 on the basis that it lacks specificity as required under Article 3(3)(a) of the IBA Rules. In particular, Claimant’s Request is overly broad as it includes <u>all</u> documents “related to the drafting of the Regulations” without limitation (<i>i.e.</i>, it is not limited to the documents related to stabilization agreements or stability guarantees). The Regulations cover a wide range of subject matters. • <u>Lack of relevance (in part)</u>: Respondent partially objects to Request No. 14 on the basis that some of the documents it seeks would not be relevant to the outcome of this dispute as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a))

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	<p>of the IBA Rules). The Regulations cover a wide range of subject matters. Most of these documents are probably unrelated to stabilization agreements or stability guarantees, and thus they are irrelevant for this dispute.</p> <ul style="list-style-type: none"> • <u>Procedural economy and fairness</u>: Respondent also objects to Request No. 14 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. Given the limited relevance of the requested documents, and the overly broad Request, it would be unreasonably burdensome and it would affect the fairness and equality of the procedure for Respondent to search its records for <i>all</i> documents “related to the drafting of the Regulations,” particularly given the historical time frame of the Request (a period of time nearly 30 years ago). • <u>Partial agreed production</u>: With respect to the documents related to the drafting of the portions of the Regulations that are related to stabilization agreements or stability guarantees, Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
<p>Requesting party reply</p>	<p><u>Specificity</u>: Freeport’s request is not overbroad. The Regulations, entitled “Regulations of Title Nine of the General Mining Law, referring to the Guarantees and Measures to Promote Investment in the Mining Activity,” solely implement Title IX of the Mining Law, which concerns stability guarantees in its entirety. Thus, contrary to Peru’s claim, the entire drafting history of the Regulations is related to stability guarantees.</p> <p><u>Relevance</u>: Freeport’s request does not seek documents that are irrelevant to the outcome of this dispute for the reasons set forth above in Freeport’s reply to Peru’s objection on the grounds of “lack of specificity.”</p> <p><u>Procedural economy and fairness</u>: Freeport’s request does not seek documents that are of “limited relevance” to the outcome of this dispute for the reasons set forth above in Freeport’s reply to Peru’s objection on the grounds of “lack of specificity.”</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate related to the drafting of the portions of the Regulations that are related to stabilization agreements or stability guarantees. Accordingly, the Tribunal orders Respondent to produce such Documents.</p> <p>The Tribunal also orders Respondent to produce the remainder of Claimant’s Request No. 14.</p>

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Documents Concerning the 2006-2007 and 2008 Royalty Cases	
Document Request No.	15
Documents or category of requested documents	<p>Documents prepared, sent, or received by Zoraida Olano Silva concerning SMCV’s challenges to the 2006-2007 and 2008 Royalty Assessments, including SMCV’s requests for the waiver of penalties and interest. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Communications or records of communications between Ms. Olano Silva and the Tax Tribunal Technical Office concerning Ms. Villanueva’s alleged assignment to assist Chamber No. 1 with the 2008 Royalty Case. b) Communications or records of communications with Ursula Villanueva concerning SMCV’s challenge to the 2006-2007 and 2008 Royalty Assessments, including records of a meeting between Ms. Olano Silva and Ms. Villanueva on or around 22 March 2013. c) Communications or records of communications with the <i>vocales</i> of Chamber No. 1 (Licette Zuñiga Dulanto, Lorena Amico de las Casas, and Alberto Ramírez Mío) concerning the 2008 Royalty Case, including records of a meeting between Ms. Olano Silva and Ms. Zuñiga Dulanto on or around 24 May 2013. d) Communications or records of communications with the <i>vocales</i> of Chamber No. 10 (Carlos Moreano Valdivia, Luis Cayo Quispe, and Jorge Sarmiento Díaz) concerning the 2006-2007 Royalty Case, including records of a meeting between Ms. Olano Silva and Mr. Cayo Quispe on or about 24 May 2013. <p>Time frame of issuance: 12 May 2010 to 15 July 2013.</p>
Relevance and materiality: (1) para ref to submissions	(1) Claimant’s Memorial ¶¶ 196-211, 386-93; Estrada ¶¶ 40-58; Exs. CE-81, CE-83, CE-648, CE-650, CE-651, CE-652, CE-653, CE-654, CE-655, CE-679.

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(2) comments	<p>Respondent’s Counter-Memorial ¶¶ 281, 302-313; Olano Silva ¶¶ 46, 48-49, 61.</p> <p>(2) This information is relevant and material to Freeport’s claims that the Tax Tribunal’s resolutions in the 2006-2007 and 2008 Royalty Cases were part of a tainted, arbitrary, and unjust process that failed to comport with Peru’s treaty obligations. <i>See</i> Claimant’s Memorial ¶¶ 202-17. It is also relevant and material to the Tribunal’s assessment of credibility and reliability of Ms. Olano Silva’s testimony.</p> <p>Freeport maintains that the 2006-2007 and 2008 Royalty Cases featured serious irregularities, including the inappropriate intervention of the Tax Tribunal president, Ms. Olano Silva, who had no authority to resolve cases. <i>See</i> Claimant’s Memorial ¶¶ 196-11. Freeport has submitted documentary evidence and testimony from Mr. Estrada demonstrating that Ms. Olano Silva did not allow the Tax Tribunal chambers to which the 2006-2007 and 2008 Royalty Cases were assigned, to independently and impartially resolve the cases. <i>See</i> Claimant’s Memorial ¶¶ 198-210, 386-93; Estrada ¶¶ 40-58. Rather, emails exhibited by Freeport show that: (i) Ms. Olano Silva instructed her assistant, Ms. Villanueva, to prepare a draft resolution confirming SUNAT’s assessments in the 2008 Royalty Case; (ii) Ms. Villanueva had <i>ex parte</i> communication with Ms. Bedoya of SUNAT concerning the 2008 Royalty Case on 24 April 2013; (iii) on 22 March 2013, Ms. Olano Silva consulted with Ms. Villanueva on the substance of SMCV’s case, although the President of the Tax Tribunal has no authority to resolve cases; (iv) Ms. Olano Silva exerted her influence to ensure that, on 21 May 2013, Chamber No. 1 adopted the draft resolution that Ms. Villanueva prepared; (v) Chamber No. 1 adopted the resolution in the 2008 Royalty Case before holding a session with Chamber No. 10, even though that would have been “the right thing to do;” (vi) on or around 21 May 2013, Dr. Cayo, <i>vocal ponente</i> of the 2006/07 Royalty Case for Chamber No. 10 and Ms. Zuñiga Dulanto, <i>vocal ponente</i> of the 2008 Royalty case for Chamber No. 1, coordinated to discuss the two cases; (vii) Ms. Olano Silva exerted her influence to ensure that Chamber No. 10 adopted the resolution that Ms. Villanueva prepared in the 2008 Royalty Case, including in a meeting with Ms. Zuñiga Dulanto and Mr. Cayo Quispe, on or around 24 May 2013; and (iv) six days after Chamber No. 1 adopted the resolution that Mr. Villanueva drafted in the 2008 Royalty Case, Chamber No. 10 adopted a resolution in the 2006-2007 Royalty Case that “copy-pasted” it “almost verbatim.” Claimant’s Memorial ¶¶ 198, 209, 383-386(b); Exs. CE-81, CE-83, CE-648, CE-650, CE-651, CE-652, CE-653, CE-654, CE-655, CE-679.</p> <p>Peru contends that the “Tax Tribunal reviewed and analyzed SMCV’s various appeals in accordance with applicable procedures, which provide all necessary due process.” Respondent’s Counter-Memorial ¶ 281. <i>See also id.</i> ¶¶ 302-313. Ms. Olano Silva testifies that she assigned Ms. Villanueva to Chamber No. 1 to assist in deciding the 2008 Royalty Case at the request of Chamber No. 1 because there was a “shortage of specialized staff.” Olano Silva ¶ 46. She further testifies that on 22 March 2013, she met with Ms. Villanueva and advised her that, “she be exhaustive in the research preparation of the legal foundation for the decision in the 2008 case, regardless of the outcome, since I understood the dispute to be particularly contentious.” Olano Silva ¶ 49. She claims that she “never ordered her to</p>
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	<p>decide the case one way or another.” Olano Silva ¶ 48. She further denies that she exerted her influence to impose the resolution in the 2008 Royalty Case on Chamber No. 10. Olano Silva ¶ 61. She claims that the extent of her involvement in Chamber No. 10’s resolution of the 2006-2007 Royalty Case was limited to assure “the effective communication between the chambers so that it could be determined whether there was a uniformity of criteria or, alternatively, whether it was necessary to call the Plenary Chamber.” Olano Silva ¶ 61. However, Peru submits no documentary evidence in support of these assertions.</p> <p>The requested documents are relevant and material because they will provide additional context to existing evidence concerning key issues in dispute. Moreover, Request No. 15 is narrowly crafted to target specific communications involving President Olano Silva the existence of which are supported by the evidentiary record.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent objects to Request No. 15.</p> <ul style="list-style-type: none"> • <u>Procedural economy and fairness</u>: Respondent objects to Request No. 15 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. Achieving an “efficient, economical and fair process” is one of the principles underpinning the IBA Rules and is expressly stated in Preamble 1 to the IBA Rules.¹⁵ Consistent with this, Article 9(2)(g) of the IBA Rules provides express grounds for excluding the production of evidence on the basis of “considerations of procedural economy, proportionality, fairness or equality of the Parties.” As one commentator on the IBA Rules notes, “In international arbitration, procedural economy may be defined as meaning that the parties <i>spend minimal time and costs</i> properly establishing the facts.”¹⁶ <p>In this case, Perú already spent substantial time and economic resources in searching for the requested documents, at SMCV’s and Claimant’s request. On February 10, 2021, Adriana Lucía Chávez Álvarez (who Respondent understands was then a lawyer with Claimant’s counsel Estudio Rodrigo Elias & Medrano), presumably on SMCV’s and/or Claimant’s behalf, filed a series of requests for information with MEF under Perú’s Transparency law (<i>Ley de Transparencia y Acceso a la Información</i>),¹⁷ where</p>

¹⁵ See International Bar Association, IBA Rules on the Taking of Evidence in International Commercial Arbitration, Preamble, p. 5 (December 17, 2020), available at <https://www.ibanet.org/MediaHandler?id=def0807b-9fec-43ef-b624-f2cb2af7cf7b> (last visited May 26, 2022).

¹⁶ Chapter 5: Interpretation of the IBA Rules, in Reto Marghitola, *Document Production in International Arbitration*, International Arbitration Law Library, Volume 33 (Kluwer Law International; Kluwer Law International 2015), at p. 111 (emphasis added).

¹⁷ See Law N° 27806.- *Ley de Transparencia y Acceso a la Información Pública*, available at https://www.peru.gob.pe/normas/docs/ley_27806.pdf.

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she requested, among other things, all of the documents requested under Request No. 15. In particular, Ms. Chávez requested MEF to produce:

“1. Uncertified copies of all memoranda issued by the Presidency of the Tax Tribunal [*i.e.*, issued by Ms. Olano Silva from 2006 onwards (*see* RWS-5, para. 1)], in the period between 01.01.2002 and 31.12.2015, addressed to: (i) the Presidents of the Specialised Chambers of the Tax Tribunal; (ii) the Vocales of the Tax Tribunal, individually or collectively; (iii) the Advisors of the Specialised Chambers of the Tax Tribunal, individually or collectively; (iv) the Technical Office of the Tax Tribunal; and (v) the Accounting Advisory Office of the Tax Tribunal, as well as the annexes referred to in the aforementioned memoranda, if applicable . . . ”¹⁸

“2. Uncertified copies of all memoranda issued by the Presidency of the Tax Tribunal [*i.e.*, issued by Ms. Olano Silva from 2006 onwards (*see* RWS-5, para. 1)], in the period between 01.01.2010 and 31.12.2015, addressed to: (i) the Administrative Office; (ii) its advisors or advisors to the President (including senior advisors); and (iii) the National Superintendency of Customs and Taxes (“SUNAT”) . . . ”¹⁹

“4. Uncertified copies of all communications and/or written documents of the Presidency of the Tax Tribunal [*i.e.*, communications and/or written documents of Zoraida Olano Silva (*see* RWS-5, para. 1)], in the period between 01.01.2010 and 31.12.2019, on: (i) the composition of Specialised Chambers of the Tax Tribunal; (ii) the assignment of advisors to the Specialised Chambers of the Tax Tribunal; (iii) the assignment of advisors to the Tax Tribunal’s Technical Office and the Accounting Advisory Office of the Tax Tribunal; (iv) the assignment of advisors to the Presidency of the Tax Tribunal and Administrative Office; and (v) the assignment of its principal advisor and/or advisors in general for the performance of

¹⁸ Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA (March 25, 2021), para. 1, at p. 1 (“Copia simple de todos los memorandos emitidos por la Presidencia del Tribunal Fiscal, en el periodo comprendido entre el 01.01.2002 y el 31.12.2015, dirigidos a: (i) las Presidencias de las Salas Especializadas del Tribunal Fiscal; (ii) los Vocales del Tribunal Fiscal, de manera individual o colectiva; (iii) los Asesores de las Salas Especializadas del Tribunal Fiscal, de manera individual o colectiva; (iv) la Oficina Técnica del Tribunal Fiscal; y (v) la Oficina de Asesoría Contable del Tribunal Fiscal, así como los anexos a los que hagan referencia los memorandos indicados, de corresponder.”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala> (emphasis added).

¹⁹ Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA (March 25, 2021), para. 2, at p. 1 (“Copia simple de todos los memorandos emitidos por la Presidencia del Tribunal Fiscal, en el periodo comprendido entre el 01.01.2010 y el 31.12.2015, dirigidos a: (i) la Vocabía Administrativa; (ii) sus asesores o asesoras de Presidencia (incluidos los asesores principales); y (iii) la Administración Tributaria Superintendencia Nacional de Administración Tributaria y Aduanas (en adelante, “SUNAT”).”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala> (emphasis added).

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	<p style="text-align: center;">various special tasks within the Specialised Chambers, Technical Office and/or Administrative Office of the Fiscal Tribunal. . . .”²⁰</p> <p>These broad requests cover the “Documents prepared, sent, or received by Zoraida Olano Silva concerning SMCV’s challenges to the 2006-2007 and 2008 Royalty Assessments” specified in this Request No. 15. Perú and MEF’s officials already spent hours of their time and Perú’s taxpayers’ money searching for the documents that Ms. Chávez requested on SMCV’s and/or Claimant’s behalf. MEF had to review its backup systems, and request the documents responsive to Ms. Chávez’s requests to MEF’s Central Archive through a cumbersome, costly, and long process.²¹</p> <p>Claimant is now trying to “double-dip” in this arbitration proceeding and see whether it might obtain more documents that are potentially relevant for its case, other than the documents that it already obtained by filing the above requests with MEF under Perú’s Transparency Law. This is impermissible under the IBA Rules. Claimant is forcing Perú to spend <i>double</i> the amount of time and to devote <i>double</i> the economic resources to repeat a search for documents concerning SMCV’s challenges to the 2006-2007 and 2008 Royalty Assessments “across all current and former MEF email backup systems,”—documents which may not even exist. It is relevant to note that retrieving data from backup systems is a highly expensive process. In this context, and given the requests that Ms. Chávez filed with MEF (presumably on SMCV’s and/or Claimant’s behalf), it would be unreasonably burdensome, and it would affect the procedural economy and fairness of the proceedings for Respondent to search <i>once again</i> for the requested documents under Request No. 15.</p>
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²⁰ Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA (March 25, 2021), para. 1, at p. 2 (“*Copia simple de todas las comunicaciones y/o disposiciones escritas de la Presidencia del Tribunal Fiscal, en el periodo comprendido entre el 01.01.2010 y el 31.12.2019, sobre: (i) la conformación de Salas Especializadas del Tribunal Fiscal; (ii) la asignación de asesores a las Salas Especializadas del Tribunal Fiscal; (iii) la asignación de asesores a la Oficina Técnica del Tribunal Fiscal y Oficina de Asesoría Contable del Tribunal Fiscal; (iv) la asignación de asesores a la Presidencia del Tribunal Fiscal y Vocalía Administrativa; y (v) la asignación de su asesor principal y/o asesores en general para el desarrollo de diversos trabajos especiales dentro de las Salas Especializadas, Oficina Técnica y/o Vocalía Administrativa del Tribunal Fiscal.*”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala> (emphasis added).

²¹ See Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA (March 25, 2021), at p. 2 (“*Al respecto, de acuerdo con las disposiciones sobre gestión documental en el Ministerio de Economía y Finanzas, a cargo de la Oficina General de Servicios al Usuario, el Tribunal Fiscal cumple con los lineamientos que regulan la transferencia de la documentación con una antigüedad mayor a 2 años al Archivo Central del MEF, por lo que la documentación solicitada que corresponde hasta el 2018 se encuentra en el Archivo del MEF y para solicitarla es necesario seguir un procedimiento que considera la identificación de los documentos mediante una clasificación de series documentales, documento de transferencia, N° de caja, paquete, tipo de documento, derivación y otros. Esta información es registrada en un Formato de Transferencia que debe ser remitido al Archivo por las personas designadas como responsables para tal fin. Identificadas las cajas que contienen la información solicitada, éstas son entregadas a las personas responsables para la identificación respectiva*”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala> (emphasis added).

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- **Possession, custody, or control:** Respondent objects to Request No. 15 on the basis that Claimant has failed to show that the documents it requests are not already in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules.

First, Ms. Chávez (presumably on SMCV’s or Claimant’s behalf) already requested that MEF, pursuant to Peru’s Transparency Law, produce the documents Claimant now seeks again under Request No. 15, and MEF produced documents pursuant to Ms. Chávez’s requests. Claimant has not articulated any basis to believe MEF can now access additional documents concerning SMCV’s challenges to the 2006-2007 and 2008 Royalty Assessments. Claimant uses this opportunity to speculate about additional emails sent during a period of more than three years—documents that may not even exist. This Request amounts to a fishing expedition by Claimant in an attempt to construct a case on the basis of documents that it *hopes* to find in Respondent’s files.

Second, Claimant was able to collect and put into the record some of the documents it requests.

First, Claimant requests “[c]ommunications or records of communications [prepared, sent, or received by Ms. Olano] with Ursula Villanueva concerning SMCV’s challenge to the 2006-2007 and 2008 Royalty Assessments, including records of a meeting between Ms. Olano Silva and Ms. Villanueva on or around 22 March 2013” (Request No. 15(b)). Claimant has already exhibited an email between Ms. Villanueva and Ms. Olano Silva dated March 22, 2013 (*see* Exhibit CE-648, where Ms. Olano and Ms. Villanueva are the only two parties copied in the email).

Second, Claimant requests “[c]ommunications or records of communications [prepared, sent, or received by Ms. Olano] with the *vocales* of Chamber No. 1 . . . concerning the 2008 Royalty Case, including records of a meeting between Ms. Olano Silva and Ms. Zuñiga Dulanto on or around 24 May 2013” (Request No. 15(c)). Claimant has already exhibited emails between Ms. Olano and Ms. Zuñiga (*vocal* of Chamber No. 1) on or about May 2013, concerning the 2008 Royalty Case (*see* Exhibits CE-654, CE-679).

Third, Claimant requests “[c]ommunications or records of communications [prepared, sent or received by Ms. Olano] with the *vocales* of Chamber No. 10 . . . concerning the 2006-2007 Royalty Case, including records of a meeting between Ms. Olano Silva and Mr. Cayo Quispe on or about 24 May 2013” (Request No. 15(d)). Claimant has already exhibited emails between Ms. Olano and Mr. Moreano (*vocal* of Chamber No. 10) (*see* Exhibits CE-650, CE-651, CE-652, and CE-653), and between Ms. Olano and Mr. Cayo Quispe (*vocal* of Chamber No. 10) on or about May 24, 2013, concerning the 2006-2007 Royalty Case (*see* Exhibits CE-654, CE-655).

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	<p>Thus, Claimant has demonstrated that it has access to some of the documents it is requesting, and it is not Respondent’s responsibility to compile further such documents for Claimant.</p> <ul style="list-style-type: none"> • <u>Privilege, confidentiality:</u> Respondent partially objects to Request No. 15 pursuant to Articles 9(2)(b) and (e), and 9(4) of the IBA Rules on the basis that the requested documents will necessarily include confidential and/or privileged information that Peruvian government officials are not legally allowed to disclose. Article 16-A of the Transparency and Access to Public Information Law Regulation (“Transparency Law Regulation”) provides that: <p style="margin-left: 40px;">“The information contained in e-mails of public officials and civil servants is publicly accessible, as long as it is institutional information of a <i>public nature</i>. The request for information must be brought to the attention of the official or civil servant who is the holder of the e-mail, who must provide the requested information. The <i>information contained in emails that are secret, reserved and confidential</i>, in accordance with the provisions of Articles 15, 16 and 17 of the Single Ordered Text of Law No. 27806, Law on Transparency and Access to Public Information, approved by Supreme Decree No. 043-2003-PCM, <i>is not publicly accessible</i>.”²²</p> <p style="text-align: center;">Therefore, Respondent can only produce in this arbitration “institutional information of a public nature.”</p>
<p>Requesting party reply</p>	<p><u>Procedural economy and fairness:</u> Peru’s objection is without merit. As reflected in Freeport’s General Objections, the Transparency Law contains exceptions to disclosure that are not applicable in this proceeding. Freeport’s request requires only that arbitration counsel for Peru identify and produce the documents that Peru withheld in the transparency proceeding, to which Peru refers, on grounds that are not applicable in this proceeding. This is not a burdensome request as Peru presumably maintained a record of documents that were withheld from disclosure in the transparency proceeding and the grounds on which they were withheld.</p>

²² Transparency Law Regulation, approved by Supreme Decree N° 072-2003-PCM, Article 16-A (Amended by Supreme Decree N° 011-2018-JUS of 14 November 2018) (emphasis added) (“*La información contenida en correos electrónicos de los funcionarios y servidores públicos es de acceso público, siempre que se trate de información institucional de naturaleza pública. El pedido de información debe ponerse en conocimiento del funcionario o servidor público titular del correo electrónico, quién debe proporcionar la información solicitada. No es de acceso público la información contenida en correos electrónicos que tengan carácter de secreta, reservada y confidencial, de acuerdo a lo previsto en los artículos 15, 16 y 17 del Texto Único Ordenado de la Ley N° 27806, Ley de Transparencia y Acceso a la Información Pública, aprobado por Decreto Supremo N° 043-2003-PCM*”), available at <https://cdn.www.gob.pe/uploads/document/file/1276419/Reglamento%20de%20la%20Ley%20de%20Transparencia%20y%20Acceso%20a%20la%20Informaci%C3%B3n%20P%C3%ABlica%20.pdf> (emphasis added).

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	<p><u>Possession, custody, or control:</u> Peru’s objection is meritless to the extent that it seeks to avoid disclosure of documents that are not in Freeport’s or SMCV’s possession, custody, or control. There is no way for Freeport to determine whether, in the transparency proceeding, the MEF withheld documents responsive to Request No. 15 on grounds that are solely applicable under the Transparency Law. Documents responsive to Request No. 15 that the MEF withheld in the transparency proceeding are not in Freeport’s or SMCV’s possession, custody, or control.</p> <p><u>Privilege, confidentiality:</u> Peru’s objection is without merit, to the extent that it is based on provisions of Peru’s internal law. Peru cannot avoid disclosure on the grounds that it has designated documents as “secret,” “reserved,” or “confidential” under Peruvian law, perhaps for the very reason that they are relevant and material to the disputed issues in this proceeding. Peru’s position is antithetical to basic principles of fairness and equality of arms. Pursuant to Articles 16.4 and 27.4 of Procedural Order No. 1, the TPA and the IBA Rules govern the production of evidence, not Peru’s internal law. In the event that the Tribunal orders production subject to evidentiary privileges set forth in the IBA Rules or the TPA, arbitration counsel for Peru must conduct an independent review of the relevant documents and determine whether those evidentiary privileges apply and provide a privilege log identifying any information withheld from disclosure based on those evidentiary privileges. Moreover, Peru offers a selective and misleading interpretation of the Transparency Law. Under Article 3 of the Law, all information held by the State, including emails, is presumptively “public” information and the exceptions to disclosure set forth in Articles 15, 16, and 17 are exhaustive and must be interpreted restrictively.²³ Without prejudice to Freeport’s reply to Peru’s objection to Request No. 15 on the grounds of privilege, and the General Replies, Freeport proposes that Peru redact privileged and confidential “information that ha[s] no bearing on the present dispute,” from any documents that are responsive to Request No. 15.</p> <p>Without prejudice to Freeport’s replies to Peru’s objections to Request No. 15, and the General Replies, Freeport will limit Request No. 15 to sub-requests 15(a)-15(d).</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Claimant’s limitation of Request No. 15 to sub-requests 15(a)-(d) and orders Respondent to produce any Documents responsive to sub-requests 15(a)-(d) not already produced in the transparency proceedings. The Tribunal finds that it is not unreasonably burdensome for Respondent to identify the Documents withheld in the transparency proceedings and produce them in this arbitration.</p>

²³ Transparency and Access to Information Law, Law No. 27806, approved by Supreme Decree No. 043-2003-PCM, Art. 3, available at <https://www.gob.pe/institucion/fisal/informes-publicaciones/2022299-texto-unico-ordenado-de-la-ley-n-27806-ley-de-transparencia-y-acceso-a-la-informacion-publica>; see also *id.* Art. 18 (requiring preservation of public information).

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Document Request No.	16
Documents or category of requested documents	<p>Documents prepared, sent, or received by Ursula Villanueva concerning SMCV’s challenge to the 2006-2007 and 2008 Royalty Assessments, including SMCV’s requests for the waiver of penalties and interest. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Communications or records of communications with Ms. Olano Silva concerning Ms. Villanueva’s alleged assignment to assist Chamber No. 1 with the 2008 Royalty Case; b) Communications or records of communications with Ms. Olano Silva concerning SMCV’s challenge to the 2006-2007 and 2008 Royalty Assessments, including records of a meeting between Ms. Olano Silva and Ms. Villanueva on or around 22 March 2013; c) Communications or records of communications with the <i>vocales</i> of Chamber No. 1 (Ms. Zuñiga Dulanto, Ms. Amico de las Casas, and Mr. Ramírez Mío) concerning the 2008 Royalty Case; d) Communications or records of communications with the <i>vocales</i> of Chamber No. 10 (Mr. Moreano Valdivia, Mr. Cayo Quispe, and Mr. Sarmiento Díaz) concerning the 2006-2007 Royalty Case; and e) Communications or records of communications between Ms. Villanueva and SUNAT concerning the 2006-2007 or 2008 Royalty Case. <p>Time frame of issuance: 12 May 2010 to 15 July 2013.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 196-211, 386-93; Estrada ¶¶ 40-58; Exs. CE-81, CE-83, CE-648, CE-650, CE-651, CE-652, CE-653, CE-654, CE-655, CE-679.</p> <p>Respondent’s Counter-Memorial ¶¶ 281, 302-313; Olano Silva ¶¶ 46, 48-49, 61.</p>

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	<p>(2) <i>See</i> justification for Request No. 15 above. Request No. 16 is narrowly crafted to target specific communications involving Ms. Villanueva the existence of which are supported by the evidentiary record.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent objects to Request No. 16.</p> <ul style="list-style-type: none"> • <u>Procedural economy and fairness</u>: Respondent objects to Request No. 16 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. Achieving an “efficient, economical and fair process” is one of the principles underpinning the IBA Rules and is expressly stated in Preamble 1 to the IBA Rules.²⁴ Consistent with this, Article 9(2)(g) of the IBA Rules provides express grounds for excluding the production of evidence on the basis of “considerations of procedural economy, proportionality, fairness or equality of the Parties.” As one commentator on the IBA Rules notes, “In international arbitration, procedural economy may be defined as meaning that the parties <i>spend minimal time and costs</i> properly establishing the facts.”²⁵ <p>In this case, Perú already spent substantial time and economic resources in searching for the requested documents, at SMCV’s and/or Claimant’s request. As explained in Request No. 15, on February 10, 2021, Ms. Chávez, presumably on Claimant’s and/or SMCV’s behalf, filed several requests for documents with MEF under Perú’s Transparency law (<i>Ley de Transparencia y Acceso a la Información</i>)²⁶ the responses to which likely contain some of the documents requested under Request No. 16. In addition, on March 8, 2021, Ms. Chávez requested that MEF produce the following documents which includes all of the documents requested under Request No. 16:</p> <p style="padding-left: 40px;">“Emails from Peruvian government official Úrsula Villanueva Arias (‘Official Villanueva’) [assistant to Ms. Olano Silva] for the period from <u>01.01.2010 to 31.12.2018</u>, received and addressed from the account uvillanueva@mef.gob.pe, to the following recipients:</p>

²⁴ *See* International Bar Association, IBA Rules on the Taking of Evidence in International Commercial Arbitration, Preamble, p. 5 (December 17, 2020), available at <https://www.ibanet.org/MediaHandler?id=def0807b-9fec-43ef-b624-f2cb2af7cf7b> (last visited May 26, 2022).

²⁵ Chapter 5: Interpretation of the IBA Rules, in Reto Marghitola, Document Production in International Arbitration, International Arbitration Law Library, Volume 33 (©Kluwer Law International; Kluwer Law International 2015), at p. 111 (emphasis added).

²⁶ *See* Law N° 27806.- *Ley de Transparencia y Acceso a la Información Pública*, available at https://www.peru.gob.pe/normas/docs/ley_27806.pdf.

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- Presidency of the Fiscal Tribunal.
- Members of the Tax Tribunal.
- Advisors to the Presidency of the Tax Tribunal
- Advisors of the Technical Office of the Tax Tribunal
- Advisors to the Specialised Chambers.
- Heads of the Technical Office and Heads of the Accounting Office.
- Officials of the Ministry of Economy and Finance (MEF) or Officials of the Ministry of Economy and Finance (MEF).
- Officials of the National Superintendency of Customs and Taxes (SUNAT), especially Superintendents, Quartermasters, and other officials with management positions . . .²⁷

This broad request includes all the “Documents prepared, sent, or received by Ursula Villanueva concerning SMCV’s challenge to the 2006-2007 and 2008 Royalty Assessments” specified in Request No. 16. Perú and MEF officials already spent hours of their time and Perú’s taxpayers’ money searching for the documents that Claimant requested. MEF’s *Oficina de Infraestructura Tecnológica* (OIT), had to restore Ms. Villanueva’s email.²⁸ Then, Ms. Villanueva went through the emails and determined, pursuant to Article 16-A11 of the Regulation of the Transparency Law, which emails were responsive to the request (*i.e.*, the emails that were responsive, that contained public information (*información de naturaleza pública*), and that were not privileged or confidential).²⁹ The OIT, and Ms. Villanueva confirmed (i) that MEF was only able to locate emails from 2017 and 2018 and (ii) that the emails prior to 2017 could not be restored.³⁰

Claimant is now trying to “double-dip” in this arbitration proceeding and see whether it might obtain more documents that are potentially relevant for its case, other than the documents that it already obtained by filing the above requests with MEF under the Transparency Law. This is impermissible under the IBA Rules. Claimant is forcing Perú to spend double the amount of

²⁷ Resolution No. 001009-2021-JUS/TTAIP-SEGUNDA SALA, dated May 7, 2021, at p. 1 (“*Todo el archivo de respaldo (backup) de los correos electrónicos sobre información institucional de naturaleza pública, del periodo comprendido entre el 01.01.2010 y el 31.12.2018, recibidos y dirigidos por la entonces funcionaria de la Oficina Técnica y Asesora de la Presidencia del Tribunal Fiscal Úrsula Villanueva Arias, desde la cuenta uvillanueva@mef.gob.pe o cualquier otra cuenta de correo que haya sido utilizada por la indicada funcionaria del Tribunal Fiscal, a los siguientes destinatarios, y sus correspondientes respuestas o cadenas de respuestas: Presidencia del Tribunal Fiscal; Vocales del Tribunal Fiscal; Asesores de Presidencia del Tribunal Fiscal; Asesores de Oficina Técnica del Tribunal Fiscal; Asesores de Salas Especializadas; Jefes de Oficina Técnica y de Asesoría Contable; Funcionarios del Ministerio de Economía y Finanzas (MEF); Funcionarios de la Superintendencia Nacional de Administración Tributaria (SUNAT), en especial Superintendentes, Intendentes, y demás funcionarios con cargos de dirección*”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2808252-001009-2021-jus-ttaip-segunda-sala> (emphasis added).

²⁸ See Memorandum N° 2694-2021-EF/45.02 from Úrsula Villanueva (November 12, 2021), at p. 2.

²⁹ See Memorandum N° 2694-2021-EF/45.02 from Úrsula Villanueva (November 12, 2021), at p. 2.

³⁰ See Resolution No. 000146-2022-JUS/TTAIP-PRIMERA SALA (January 14, 2022), at pp. 3, 6.

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time and to devote *double* the economic resources to repeat a search for additional documents concerning SMCV's challenges to the 2006-2007 and 2008 Royalty Assessments "across all current and former MEF email backup systems,"—documents which may not even exist. It is relevant to note that retrieving data from backup systems is a highly expensive process. In this context, and given the requests that Ms. Chávez filed with MEF (presumably on SMCV's and/or Claimant's behalf), it would be unreasonably burdensome and it would affect the procedural economy and fairness of the proceedings for Respondent to search *once again* for the requested documents under Request No. 16.

- **Possession, custody, or control:** Respondent objects to Request No. 16 on the basis that Claimant has failed to show that the documents it requests are not already in Claimant's possession, custody, or control as required under Article 3(3)(c) of the IBA Rules.

First, Ms. Chávez (presumably on SMCV's and/or Claimant's behalf) already requested that MEF, pursuant to Peru's Transparency Law, produce the documents it now seeks again under Request No. 16, and MEF produced documents pursuant to Ms. Chávez's requests. Claimant has not articulated any basis to believe that MEF can now access more information concerning SMCV's challenges to the 2006-2007 and 2008 Royalty Assessments. Claimant uses this opportunity to speculate about additional emails sent during a period of more than three years which most likely do not even exist. This Request amounts to a fishing expedition by Claimant in an attempt to construct a case on the basis of documents that it *hopes* to find in Respondent's files.

Second, Claimant was able to collect and put into the record some of the documents it requests.

First, Claimant requests "[c]ommunications or records of communications [prepared, sent, or received by Ms. Villanueva] with Ms. Olano Silva concerning SMCV's challenge to the 2006-2007 and 2008 Royalty Assessments, including records of a meeting between Ms. Olano Silva and Ms. Villanueva on or around 22 March 2013" (Request No. 16(b)). Claimant has already exhibited an email between Ms. Villanueva and Ms. Olano Silva dated March 22, 2013 (*see* Exhibit CE-648, where Ms. Olano and Ms. Villanueva are the only two parties copied in the email).

Second, Claimant requests "[c]ommunications or records of communications [prepared, sent, or received by Ms. Villanueva] with the *vocales* of Chamber No. 1 (Ms. Zuñiga Dulanto, Ms. Amico de las Casas, and Mr. Ramírez Mío) concerning the 2008 Royalty Case" (Request No. 16(c)). Claimant has already exhibited emails between Ms. Villanueva and Ms. Zuñiga (*vocal* of Chamber No. 1) concerning the 2008 Royalty Case (*see* Exhibit CE-679).

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	<p><u>Third</u>, Claimant requests “[c]ommunications or records of communications [prepared, sent, or received by Ms. Villanueva] between Ms. Villanueva and SUNAT concerning the 2006-2007 or 2008 Royalty Case” (Request No. 16(e)). Claimant has already exhibited an email between SUNAT and Ms. Ms. Villanueva concerning the 2006-2007 and the 2008 Royalty Case (<i>see</i> Exhibit CE-81).</p> <p>Thus, Claimant has demonstrated that it has access to some of the documents it is requesting, and it is not Respondent’s responsibility to compile further such documents for Claimant.</p> <ul style="list-style-type: none"> • <u>Privilege, confidentiality</u>: Respondent objects on the same grounds set forth in response to Request No. 15 above.
<p>Requesting party reply</p>	<p><u>Procedural economy and fairness</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]rocedural economy and fairness” above.</p> <p><u>Possession, custody, or control</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]ossession, custody, or control” above.</p> <p><u>Privilege, confidentiality</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]rivilege, confidentiality” above.</p> <p>Without prejudice to Freeport’s replies to Peru’s objections to Request No. 16, and the General Replies, Freeport will limit Request No. 16 to sub-requests 16(a)-16(e).</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Claimant’s limitation of Request No. 16 to sub-requests 16(a)-(e) and orders Respondent to produce any Documents responsive to sub-requests 16(a)-(e) not already produced in the transparency proceedings. The Tribunal finds that it is not unreasonably burdensome for Respondent to identify the Documents withheld in the transparency proceedings and produce them in this arbitration.</p>

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Document Request No.	17
<p>Documents or category of requested documents</p>	<p>Documents prepared, sent, or received by the <i>vocales</i> of Chamber No. 10, Carlos Moreano Valdivia, Luis Cayo Quispe, and Jorge Sarmiento Díaz, concerning SMCV’s challenge to the 2006-2007 Royalty Assessments, including SMCV’s request for the waiver of penalties and interest. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Draft resolutions prepared in relation to the 2006-2007 Royalty Case; b) Communications or records of communications with any of the <i>vocales</i> of Chamber No. 1 (Ms. Zuñiga Dulanto, Ms. Amico de las Casas, and Mr. Ramírez Mío), concerning SMCV’s challenges to the 2006-2007 and / or 2008 Royalty Assessments, including records of meetings between Mr. Cayo Quispe and Ms. Zuñiga Dulanto on or around 21 May 2013 or 24 May 2013; c) Communications or records of communications with Ms. Olano Silva, including records of a meeting between Ms. Olano Silva and Ms. Zuñiga Dulanto on or about 24 May 2013; and d) Communications or records of communications with law clerks assigned to Chamber No. 10 in relation to the 2006-2007 Royalty Case. <p>Time frame of issuance: 12 May 2010 to 15 July 2013.</p>
<p>Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p>(1) Claimant’s Memorial ¶¶ 196-211, 386-93; Estrada ¶¶ 40-58; Exs. CE-81, CE-83, CE-648, CE-650, CE-651, CE-652, CE-653, CE-654, CE-655, CE-679.</p> <p>Respondent’s Counter-Memorial ¶¶ 281, 302-313; Olano Silva ¶¶ 46, 48-49, 61.</p> <p>(2) <i>See</i> justification for Request No. 15 above. Request No. 17 is narrowly crafted to target draft resolutions and specific communications involving the <i>vocales</i> of Chamber No. 10, the existence of which are supported by the evidentiary record. With respect to Request No. 17(a), draft resolutions that Chamber No. 10 prepared in the 2006-2007 Royalty Case will shed light on whether</p>

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	<p>Chamber No. 10 performed proper deliberations or simply adopted the draft resolution that President Olano Silva instructed Ms. Villanueva to prepare.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 17.</p> <p><u>Request No. 17(a)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality:</u> Respondent objects to Request No. 17(a) on the basis that Claimant has failed to show how the requested documents under Request No. 17(a) are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant’s proffered reason for its Request is that the draft resolutions prepared in relation to the 2006-2007 Royalty Case are “relevant and material to Freeport’s claims that the Tax Tribunal’s resolutio[n] in the 2006-2007 Royalty Case . . . w[as] [allegedly] part of a tainted, arbitrary, and unjust process”(see Request No. 15 above) and “will shed light on whether Chamber No. 10 performed proper deliberations or simply adopted the draft resolution that President Olano Silva instructed Ms. Villanueva to prepare.” Claimant’s arguments are without merit. <p><i>First</i>, as noted in Respondent’s General Objections on pages 4-5 above, draft resolutions are irrelevant since they are not determinative of the final content of the resolution of the Tax Tribunal. Furthermore, draft resolutions will not shed light on the deliberations that, in Claimant’s view, could prove that the “Tribunal’s resolutio[n] in the 2006-2007 Royalty Case . . . w[as] [allegedly] part of a tainted, arbitrary, and unjust process” (<i>see</i> Request No. 15 above). Claimant is simply seeking internal documents which it is speculating might possibly contain information that it hopes will support its case.</p> <p><i>Second</i>, in any case, Claimant has failed to show any basis for its assertion that Ms. Olano obliged Chamber No. 10 to “adop[t] the draft resolution that President Olano Silva instructed Ms. Villanueva to prepare.” As Respondent explained in its Counter-Memorial, the fact that the decisions in the 2006-2007 and 2008 Royalty Assessment cases were similar is not evidence that Ms. Olano obliged Chamber No. 10 to adopt a resolution (<i>see</i> Counter-Memorial, paras. 307-312). Notably, in light of the fact that the dispute at issue in the two cases—that is, whether the 1998 Stabilization Agreement included or excluded the Concentrator Project—was essentially the same other than the change in tax year, the standards applied in both cases indeed should have been the same. As Ms. Olano explains, had the two Chambers applied different standards to reach their decisions, the Plenary Chamber would have been called to decide which standard should be used consistently in both cases (<i>see</i> RWS-5, para. 56).</p>

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- **Possession, custody, or control**: Respondent objects to Request No. 17(a) on the basis that Claimant has failed to show that the documents it requests are in Respondent’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. As Respondent explains in its General Objections, public officials in Perú are only required to file and retain the final version of official documents. Public entities take action through official documents such as memos, resolutions, or reports. Therefore, it is unlikely that documents such as draft resolutions are in Respondent’s possession, custody, or control.
- **Procedural economy and fairness**: Also, Claimant is seeking through Request No. 17(a) to obtain internal drafts of the resolutions prepared in relation to the 2006-2007 Royalty Case, speculating that such documents could contain information that it can use to support its case. However, in international arbitration, document production is not intended as an avenue for Claimant to conduct an audit to see “whether” documents are useful for Claimant’s case. Claimant’s Request No. 17(a) is an impermissible attempt to introduce US-style discovery into these arbitral proceedings, rather than following a document production exercise pursuant to the IBA Rules.
- **Privilege, confidentiality**: Respondent objects on the same grounds set forth in response to Request No. 15 above.

Requests No. 17(b) and (c)

Procedural economy and fairness: Respondent objects on the same grounds set forth to Request No. 15 above. The broad requests to MEF by Ms. Chávez (presumably on SMCV’s and/or Claimant’s behalf) described in Respondent’s Objections to Request No. 15 cover most of the “Documents prepared, sent, or received by the *vocales* of Chamber No. 10, Carlos Moreano Valdivia, Luis Cayo Quispe, and Jorge Sarmiento Díaz, concerning SMCV’s challenge to the 2006-2007 Royalty Assessments” specified in Request No. 17. Perú and MEF officials already spent hours of their time and Perú’s taxpayers’ money searching for the documents that Ms. Chávez requested. MEF had to review its backup systems, and request the documents to MEF’s Central Archive through a cumbersome, costly, and long process.³¹ Claimant is now trying to “double-dip” in this arbitration proceeding and see whether it might obtain more documents that are potentially relevant for its case, other than the documents that it already obtained by filing the above requests with MEF under Perú’s Transparency Law. This is impermissible under the IBA Rules. Claimant is forcing Perú to spend *double* the amount of time and to devote *double* the economic resources to repeat

³¹ See Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA, dated March 25, 2021, at p. 2 (“*Al respecto, de acuerdo con las disposiciones sobre gestión documental en el Ministerio de Economía y Finanzas, a cargo de la Oficina General de Servicios al Usuario, el Tribunal Fiscal cumple con los lineamientos que regulan la transferencia de la documentación con una antigüedad mayor a 2 años al Archivo Central del MEF, por lo que la documentación solicitada que corresponde hasta el 2018 se encuentra en el Archivo del MEF y para solicitarla es necesario seguir un procedimiento que considera la identificación de los documentos mediante una clasificación de series documentales, documento de transferencia, N° de caja, paquete, tipo de documento, derivación y otros. Esta información es registrada en un Formato de Transferencia que debe ser remitido al Archivo por las personas designadas como responsables para tal fin. Identificadas las cajas que contienen la información solicitada, éstas son entregadas a las personas responsables para la identificación respectiva*”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala> (emphasis added).

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a search for documents concerning SMCV’s challenges to the 2006-2007 Assessments “across all current and former MEF email backup systems”—documents which may not even exist. It is relevant to note that retrieving data from backup systems is a highly expensive process. In this context, and given the requests that Ms. Chávez filed with MEF (presumably on SMCV’s and/or Claimant’s behalf), it would be unreasonably burdensome, and it would affect the procedural economy and fairness of the proceedings for Respondent to search *once again* for the requested documents under Request No. 17.

- **Possession, custody, or control:** Respondent also objects to Request No. 17 on the basis that Claimant has failed to show that the documents it requests are not already in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules.

First, Ms. Chávez (presumably on SMCV’s or Claimant’s behalf) already requested that MEF, pursuant to Peru’s Transparency Law, produce most of the documents it now seeks again under Request No. 17, and MEF produced documents pursuant to Ms. Chávez requests. Claimant has not articulated any basis to believe MEF can now access additional documents concerning SMCV’s challenges to the 2006-2007 Assessments. Claimant uses this opportunity to speculate about additional emails sent during a period of more than three years—documents which may not even exist. This Request amounts to a fishing expedition by Claimant in an attempt to construct a case on the basis of documents that it *hopes* to find in Respondent’s files.

Second, Claimant was able to collect and put into the record some of the documents it requests.

First, Claimant requests “[c]ommunications or records of communications [prepared, sent, or received by the *vocales* of Chamber No. 10] with any of the *vocales* of Chamber No. 1 concerning SMCV’s challenges to the 2006-2007 and / or 2008 Royalty Assessments, including records of meetings between Mr. Cayo Quispe and Ms. Zuñiga Dulanto on or around 21 May 2013 or 24 May 2013” (Request No. 17(b)). Claimant has already exhibited an email between Mr. Cayo Quispe (*vocal* of Chamber No. 10) and Ms. Zuñiga (*vocal* of Chamber No. 1) dated May 24, 2013 (*see* Exhibit CE-654).

Second, Claimant requests “[c]ommunications or records of communications [prepared, sent, or received by the *vocales* of Chamber No. 10] with Ms. Olano Silva, including records of a meeting between Ms. Olano Silva and Ms. Zuñiga Dulanto on or about 24 May 2013” (Request No. 17(c)). Claimant has already exhibited communications between Mr. Moreano (*vocal* of Chamber No. 10) and Ms. Olano on or around May 24, 2013 (*see* Exhibits CE-650, CE-651, CE-652, CE-653).

Thus, Claimant has demonstrated that it has access to some of the documents it is requesting, and it is not Respondent’s responsibility to compile further such documents for Claimant.

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	<ul style="list-style-type: none"> • <u>Privilege, confidentiality</u>: Respondent objects on the same grounds set forth in response to Request No. 15 above. <p><u>Request No. 17(d)</u></p> <ul style="list-style-type: none"> • <u>Partial agreed production</u>: With respect to Request 17(d), Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
<p>Requesting party reply</p>	<p><u>Request No. 17(a)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: There is no merit to Peru’s objection that draft resolutions Chamber No. 10 prepared in the 2006-2007 Royalty Case are irrelevant and immaterial to Freeport’s claim that “the Tax Tribunal’s resolutions in the 2006-2007 and 2008 Royalty Cases were part of a tainted, arbitrary, and unjust process.” <p><i>First</i>, for the reasons forth in the General Replies, there is no merit to Peru’s argument that “draft resolutions are irrelevant since they are not determinative of the final content of the resolution of the Tax Tribunal.” As set forth in its justification for Request No. 15, Freeport claims that President Olano Silva improperly interfered with the resolution of the 2006-2007 and 2008 Royalty Cases by, <i>inter alia</i>, instructing “her assistant, Ms. Villanueva, to prepare a draft resolution confirming SUNAT’s assessments in the 2008 Royalty Case” and exerting “her influence to ensure that Chamber No. 10,” adopted that resolution in the 2006-2007 Royalty Case. Freeport seeks draft resolutions not to demonstrate the final content of the resolution in the 2006-2007 Royalty Case, but because they are relevant and material to the question of whether Chamber No. 10 conducted genuine deliberations.</p> <p><i>Second</i>, contrary to Peru’s claim, Freeport has offered ample evidence supporting “its assertion that Ms. Olano obliged Chamber No. 10 to ‘adop[t] the draft resolution that President Olano Silva instructed Ms. Villanueva to prepare.’” Freeport has exhibited emails showing that Chamber No. 1 adopted the draft resolution President Olano Silva instructed Ms. Villanueva to prepare in the 2008 Royalty Case <i>before</i> holding a session with Chamber No. 10, even though, as Mr. Moreano of Chamber 10 stated at the time, first holding a session with Chamber No. 10 would have been “the right thing to do.” Ex. CE-652. President Olano Silva apparently had no interest in “confirming coordination” between Chambers No. 1 and No. 10 prior to Chamber No. 1’s adoption of Ms. Villanueva’s draft resolution. Olano ¶ 60. Freeport has exhibited emails showing that it was only <i>after</i> Chamber No. 1 adopted Ms. Villanueva’s draft resolution that President Olano Silva intervened in Chamber No. 10’s preparation of the resolution in the 2006-2007 Royalty Case (Ex. CE-654, CE-655), purportedly to “confirm[] coordination between Chambers 1 and 10 . . . in order to maintain uniformity in the legal criteria of the Tribunal.” Olano ¶¶ 60-61. Yet, only <i>after</i> Chambers issue conflicting resolutions does the Tax Tribunal President have the responsibility to address conflicting criteria. Ex. CA-186, p. 12; Olano ¶ 56. A few days after President Olano Silva’s improper intervention, Chamber No. 10 issued a copy-paste version of</p>

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the Chamber No. 1 resolution that the President had instructed Ms. Villanueva to prepare. **Ex. CE-88.** Moreover, neither Peru nor President Olano Silva in her witness statement engage with the fact that the resolution in the 2006-2007 Royalty Case was not merely similar to the resolution in the 2008 Royalty Case, it was a copy-paste job.

- **Possession, custody, or control:** Peru’s objection that it is not in possession, custody, or control of draft Tax Tribunal resolutions is baseless. As set forth in the General Replies, Government agencies are required to retain, and refrain from destroying, information in any format.³² Moreover, Freeport understands that, as a matter of practice, Tax Tribunal drafts are often retained. *See, e.g., Ex. CE-714.*
- **Procedural economy and fairness:** Request No. 17(a) cannot be credibly characterized as “conduct[ing] an audit to see ‘whether’ documents are useful for Claimant’s case,” as Peru claims. This is not a situation in which a party is seeking documents to support unfounded allegations or claims. As set forth in Freeport’s justification for Request No. 17, Freeport maintains that it has submitted documentary evidence sufficient to establish due process violations in the 2006-2007 and 2008 Royalty Cases and Peru contests this claim. Thus, documents that will provide additional context to the existing record are clearly relevant and material to key issues in dispute. Request Nos. 17(a) is narrowly crafted to target draft resolutions, the existence of which is supported by the evidentiary record. Peru does not attempt to explain how it would somehow be contrary to procedural economy or unfair to produce the requested documents.
- **Privilege, confidentiality:** Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]rivilege, confidentiality” above.

Requests No. 17(b) and (c)

- **Procedural economy and fairness:** Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]rocedural economy and fairness” above.
- **Possession, custody, or control:** Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]ossession, custody, or control” above.

³² See Transparency and Access to Information Law, Law No. 27806, approved by Supreme Decree No. 043-2003-PCM, Art. 21, available at <https://www.gob.pe/institucion/fisal/informes-publicaciones/2022299-texto-unico-ordenado-de-la-ley-n-27806-ley-de-transparencia-y-acceso-a-la-informacion-publica>.

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	<ul style="list-style-type: none"> • <u>Privilege, confidentiality</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]rivilege, confidentiality” above. <p><u>Requests No. 17(d)</u></p> <ul style="list-style-type: none"> • <u>Partial agreed production</u>: Without prejudice to the General Replies, Freeport agrees to Peru’s partial agreed production. <p>Without prejudice to Freeport’s replies to Peru’s objections to Request No. 17, and the General Replies, Freeport will limit Request No. 17 to sub-requests 17(a)-17(d).</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Claimant’s limitation of Request No. 17 to sub-requests 17(a)-(d). The Tribunal also takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce communications or records of communications it is able to locate with law clerks assigned to Chamber No. 10 in relation to the 2006-2007 Royalty Case. Accordingly, the Tribunal orders Respondent to produce such Documents.</p> <p>The Tribunal also orders Respondent to produce all other Documents responsive to sub-request 17(a)-(c) not already produced in the transparency proceedings. The Tribunal finds that it is not unreasonably burdensome for Respondent to identify the Documents withheld in the transparency proceedings and produce them in this arbitration.</p>

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Document Request No.	18
Documents or category of requested documents	<p>Documents prepared, sent, or received by the <i>vocales</i> of Chamber No. 1, Licette Zuñiga Dulanto, Lorena Amico de las Casas, and Alberto Ramírez Mío, concerning SMCV’s challenge to the 2008 Royalty Assessments, including SMCV’s request for the waiver of penalties and interest. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Draft resolutions prepared in relation to the 2008 Royalty Case; b) Communications or records of communications with any of the <i>vocales</i> of Chamber No. 10 (Mr. Moreano Valdivia, Mr. Cayo Quispe, and Mr. Sarmiento Díaz), concerning SMCV’s challenges to the 2006-2007 and / or 2008 Royalty Assessments, including records of meetings between Mr. Cayo Quispe and Ms. Zuñiga Dulanto on or around 21 May 2013 or 24 May 2013; c) Communications or records of communications with Ms. Olano Silva, including records of a meeting between Ms. Olano Silva and Ms. Zuñiga Dulanto on or around 24 May 2013; and d) Communications or records of communications with law clerks assigned to Chamber No. 1 in relation to the 2008 Royalty Case. <p>Time frame of issuance: 12 May 2010 to 15 July 2013.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 196-211, 386-93; Estrada ¶¶ 40-58; Exs. CE-81, CE-83, CE-648, CE-650, CE-651, CE-652, CE-653, CE-654, CE-655, CE-679.</p> <p>Respondent’s Counter-Memorial ¶¶ 281, 302-313; Olano Silva ¶ 46, 48-49, 61.</p> <p>(2) <i>See</i> justification for Request No. 15 above.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>

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<p>Agreement to produce or</p> <p>Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 18.</p> <p><u>Request No. 18(a)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality:</u> Respondent objects to Request No. 18(a) on the basis that Claimant has failed to show how the requested documents are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant’s proffered reason for its Request is that the draft resolutions prepared in relation to the 2008 Royalty Case are “relevant and material to Freeport’s claims that the Tax Tribunal’s resolutio[n] in the . . . 2008 Royalty Case w[as] [allegedly] part of a tainted, arbitrary, and unjust process” (<i>see</i> Request No. 15 above). Claimant’s arguments are without merit. <p><i>First</i>, as noted in Respondent’s General Objections on pages 4-5 above, draft resolutions are irrelevant since they are not determinative of the final content of the resolution of the Tax Tribunal. Furthermore, draft resolutions will not shed light on the deliberations that, in Claimant’s view, could prove that the “Tribunal’s resolutio[n] in the 2006-2007 Royalty Case . . . w[as] [allegedly] part of a tainted, arbitrary, and unjust process” (<i>see</i> Request No. 15 above). Claimant is simply seeking internal documents which it is speculating might possibly contain information that it hopes will support its case. .</p> <p><i>Second</i>, in any case, Claimant has failed to show any relevant basis for its assertion that “the Tax Tribunal’s resolutio[n] in the . . . 2008 Royalty Case w[as] [allegedly] part of a tainted, arbitrary, and unjust process.” As Respondent explained in its Counter-Memorial, (i) Claimant relies on Mr. Estrada’s witness testimony to conclude that Ms. Olano, inappropriately interfered in the resolution of the 2008, but Mr. Estrada did not have firsthand knowledge of the facts (<i>see</i> Respondent’s Counter-Memorial, para. 301); and (ii) Ms. Olano correctly assigned Ms. Villanueva (an assistant to the Chamber) to help with the case (<i>see</i> Respondent’s Counter-Memorial, paras. 302-303).</p> <ul style="list-style-type: none"> • <u>Possession, custody, or control:</u> Respondent objects to Request No. 18(a) on the basis that Claimant has failed to show that the documents it requests are in Respondent’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. As Respondent explains in its General Objections, public officials in Perú are only required to file and retain the final version of official documents. Public entities take action through official documents such as memos, resolutions, or reports. Therefore, it is unlikely that documents such as draft resolutions are in Respondent’s possession, custody, or control. • <u>Procedural economy and fairness:</u> Also, Claimant is seeking through Request No. 18(a) to obtain internal drafts of the resolutions prepared in relation to the 2008 Royalty Case, speculating that such documents could contain information that it can use to support its case. However, in international arbitration, document production is not intended as an avenue for Claimant to
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conduct an audit to see “whether” documents are useful for Claimant’s case. Claimant’s Request No. 18(a), is an impermissible attempt to introduce US-style discovery into these arbitral proceedings, rather than following a document production exercise pursuant to the IBA Rules.

Requests No. 18(b) and (c)

- **Procedural economy and fairness:** Respondent objects on the same grounds as for Request No. 15 above. The broad requests to MEF by Ms. Chávez (presumably on SMCV’s and/or Claimant’s behalf) described in Respondent’s Objections to Request No. 15 cover most of the “Documents prepared, sent, or received by the *vocales* of Chamber No. 10, Carlos Moreano Valdivia, Luis Cayo Quispe, and Jorge Sarmiento Díaz, concerning SMCV’s challenge to the 2008 Royalty Assessments,” specified in this Request No. 18. Perú and MEF officials already spent hours of their time and Perú’s taxpayers’ money searching for the documents that Claimant requested. MEF had to review its backup systems, and request the documents to MEF’s Central Archive through a cumbersome, costly, and long process.³³

Claimant is now trying to “double-dip” in this arbitration proceeding and see whether it might obtain more documents that are potentially relevant for its case, other than the documents that it already obtained by filing the above requests with MEF under Perú’s Transparency Law. This is impermissible under the IBA Rules. Claimant is forcing Perú to spend *double* the amount of time and to devote *double* the economic resources to repeat a search for documents concerning SMCV’s challenges to the 2008 and 2008 Royalty Assessments “across all current and former MEF email backup systems,”—documents which may not even exist. It is relevant to note that retrieving data from backup systems is a highly expensive process. In this context, and given the requests that Ms. Chávez filed with MEF (presumably on SMCV’s and/or Claimant’s behalf), it would be unreasonably burdensome, and it would affect the procedural economy and fairness of the proceedings for Respondent to search *once again* for the requested documents under Request No. 18.

³³ See Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA, dated March 25, 2021, at p. 2 (“*Al respecto, de acuerdo con las disposiciones sobre gestión documental en el Ministerio de Economía y Finanzas, a cargo de la Oficina General de Servicios al Usuario, el Tribunal Fiscal cumple con los lineamientos que regulan la transferencia de la documentación con una antigüedad mayor a 2 años al Archivo Central del MEF, por lo que la documentación solicitada que corresponde hasta el 2018 se encuentra en el Archivo del MEF y para solicitarla es necesario seguir un procedimiento que considera la identificación de los documentos mediante una clasificación de series documentales, documento de transferencia, N° de caja, paquete, tipo de documento, derivación y otros. Esta información es registrada en un Formato de Transferencia que debe ser remitido al Archivo por las personas designadas como responsables para tal fin. Identificadas las cajas que contienen la información solicitada, éstas son entregadas a las personas responsables para la identificación respectiva*”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala> (emphasis added).

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- **Possession, custody, or control:** Respondent objects to Request No. 18 on the basis that Claimant has failed to show that the documents it requests are not already in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules.

First, Ms. Chávez (presumably on SMCV’s or Claimant’s behalf) already requested that MEF, pursuant to Peru’s Transparency Law, produce the documents it now seeks again under Request. No. 15, and MEF produced documents pursuant to Ms. Chávez’s requests. Respondent has not articulated any basis to believe MEF can now access additional documents concerning SMCV’s challenges to the 2008 Royalty Assessments. Claimant uses this opportunity to speculate about additional emails sent during a period of more than three years that may not even exist. This Request amounts to a fishing expedition by Claimant in an attempt to construct a case on the basis of documents that it *hopes* to find in Respondent’s files.

Second, Claimant was able to collect and put into the record some of the documents it requests.

First, Claimant requests “[c]ommunications or records of communications [prepared, sent, or received by the *vocales* of Chamber No. 1] with any of the *vocales* of Chamber No. 10 . . . concerning SMCV’s challenges to the 2006-2007 and / or 2008 Royalty Assessments, including records of meetings between Mr. Cayo Quispe and Ms. Zuñiga Dulanto on or around 21 May 2013 or 24 May 2013” (Request No. 18 (b)).

Second, Claimant requests “[c]ommunications or records of communications [prepared, sent, or received by the *vocales* of Chamber No. 1] with Ms. Olano Silva, including records of a meeting between Ms. Olano Silva and Ms. Zuñiga Dulanto on or around 24 May 2013” (Request No. 18 (c)). Claimant has already exhibited communications between Mr. Moreano (*vocal* of Chamber No. 10) and Ms. Olano on or about May 24, 2013 (*see* Exhibits CE-650, CE-651, CE-652, CE-653).

Thus, Claimant has demonstrated that it has access to some of the documents it is requesting, and it is not Respondent’s responsibility to compile further such documents for Claimant.

- **Privilege, confidentiality:** Respondent objects on the same grounds set forth in response to Request No. 15 above.

Request No. 18(d)

- **Partial agreed production:** With respect to Request No. 18(d), Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.

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Requesting party reply	<p>Peru’s responses and objections to Request No. 18 mirror its responses and objections to Request No. 17 and are, therefore, baseless for the same reasons set forth above in Freeport’s replies to Peru’s responses and objections to Request No. 17.</p> <p>Without prejudice to Freeport’s replies to Peru’s objections to Request No. 18, and the General Replies, Freeport will limit Request No. 18 to sub-requests 18(a)-18(d).</p>
Decision of the Tribunal	<p>The Tribunal takes note of Claimant’s limitation of Request No. 18 to sub-requests 18(a)-(d). The Tribunal also takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce communications or records of communications it is able to locate with law clerks assigned to Chamber No. 1 in relation to the 2008 Royalty Case. Accordingly, the Tribunal orders Respondent to produce such Documents.</p> <p>The Tribunal also orders Respondent to produce all other Documents responsive to sub-request 18(a)-(c) not already produced in the transparency proceedings. The Tribunal finds that it is not unreasonably burdensome for Respondent to identify the Documents withheld in the transparency proceedings and produce them in this arbitration.</p>

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Documents Concerning Victor Mejía Ninacondor’s role in the 2010-2011 Royalty Case	
Document Request No.	19
Documents or category of requested documents	<p>Documents concerning the assignment of the 2010-2011 Royalty Case to Victor Mejía Ninacondor as <i>vocal ponente</i>. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Communications or records of communications between Ms. Olano Silva and / or her assistants and the Tax Tribunal Technical Office; b) Documents concerning the process by which the cases from the Major Taxpayers Superintendency were reassigned; c) Communications or records of communications between Ms. Olano Silva and / or her assistants and the <i>vocales</i> of Chamber No. 2 (Mr. Mejía Ninacondor, Ms. Zuñiga Dulanto, and Mr. Ramírez Mio); and d) Documents concerning SMCV’s petition for Mr. Mejía Ninacondor’s recusal, including: <ul style="list-style-type: none"> i. assessments of Mr. Mejía Ninacondor’s involvement in SMCV’s challenge to the 2006-2007 Royalty Assessments before the Appellate Court; ii. assessments of Mr. Mejía Ninacondor’s involvement in SUNAT’s assessment of the 2010-2011 Royalties against SMCV, including SUNAT’s decision on SMCV’s request for reconsideration; iii. submissions or records of submissions made by Mr. Mejía Ninacondor; iv. communications or records of communications with Mr. Mejía Ninacondor; or

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	<p style="text-align: center;">v. any drafts of the Plenary Session’s minutes or resolution dismissing SMCV’s petition for Mr. Mejía Ninacondor’s recusal, not already exhibited in this arbitration.</p> <p>Time frame of issuance: 1 April 2018 to 22 June 2018.</p>
<p>Relevance and materiality:</p> <p>(1) para ref to submissions</p> <p>(2) comments</p>	<p>(1) Claimant’s Memorial ¶¶ 243-48, 397.</p> <p>Respondent’s Counter-Memorial ¶¶ 322, 330; Olano Silva ¶¶ 67, 71.</p> <p>(2) This information is relevant and material to Freeport’s claims that the Tax Tribunal’s decision in the 2010-2011 Royalty Case was marred by conflicts of interest and procedural irregularities. <i>See</i> Claimant’s Memorial ¶¶ 249-50, 390. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Ms. Olano Silva’s testimony.</p> <p>Freeport maintains that the Tax Tribunal assigned Mr. Mejía Ninacondor to the 2010-2011 Royalty Case as <i>vocal ponente</i> days after he joined the Tax Tribunal. Claimant’s Memorial ¶ 243. Freeport submits documentary evidence showing that Mr. Mejía Ninacondor failed to meet the basic requirements of independence and impartiality because he had worked in the SUNAT department that initially confirmed the 2010-2011 Royalty Assessments and represented SUNAT in SMCV’s appeal of the 2006-2007 Royalty Assessments before the Appellate Court. Claimant’s Memorial ¶ 244; Exs. CE-694; CE-227; CE-18; CE-33; CE-107; CE-129; CE-216. Citing documentary evidence, Freeport further contends that Ms. Olano Silva improperly intervened to influence the outcome of SMCV’s petition for the recusal of Mr. Mejía Ninacondor by, <i>inter alia</i>, directing her staff to prepare draft minutes of the deliberation of the plenary chamber concluding that SMCV’s petition was unwarranted before the plenary chamber had deliberated. <i>See</i> Claimant’s Memorial ¶¶ 245-248, 397; Exs. CE-713, CE-714, CE-715, CE-716, CE-717, CE-718.</p> <p>Peru contends that the proceedings before the Tax Tribunal in the 2010-2011 Royalty Case were “procedurally sound.” Respondent’s Counter-Memorial ¶ 316. Peru argues that Mr. Mejía Ninacondor “was assigned the case through the normal course of case assignment at the time.” Respondent’s Counter-Memorial ¶ 324. Ms. Olano Silva testifies that the assignment of the 2010-2011 Royalty Case to Mr. Mejía Ninacondor “was due exclusively to the fact that case files were redistributed to those <i>vocales</i> who had a workload lower than the average.” Olano Silva ¶ 67. She further testifies that it is “usual” to circulate minutes ahead of plenary sessions which reflect decisions that have not yet been decided by the plenary. Olano Silva ¶ 71. However, Ms. Olano Silva does not provide any documentary evidence in support of her assertion.</p>

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	<p>The requested information will likely show the basis on which the Tax Tribunal assigned Mr. Mejía Ninacondor to the 2010-2011 Royalty Case as <i>vocal ponente</i> and the reasons for doing so. It will also likely show the extent to which the Plenary considered, and potentially elected to ignore, the clear evidence of bias on the part of Mr. Mejía Ninacondor.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent partially objects to Request No. 19.</p> <p><u>Requests Nos. 19(a), (c), (d)</u></p> <ul style="list-style-type: none"> • <u>Procedural economy and fairness</u>: Respondent objects on the same grounds as for Request No. 15 above. In addition to the broad requests to MEF by Ms. Chávez (presumably on SMCV’s and/or Claimant’s behalf) described in Respondent’s Objections to Requests Nos. 15 and 16 above, on February 10, 2021 Ms. Chávez filed with MEF the following additional request: <p style="margin-left: 40px;">“Non certified copy of all communications and/or written provisions of the Presidency of the Tax Tribunal, in the period between 01.01.2010 and 31.12. 2019, on: (i) the formation of Specialised Chambers of the Tax Tribunal; (ii) the assignment of advisors to the Specialised Chambers of the Tax Tribunal; (iii) the assignment of advisors to the Technical Office of the Tax Tribunal and the Accounting Advisory Office of the Tax Tribunal; (iv) the assignment of advisors to the Presidency of the Tax Tribunal and Administrative Office; and (v) the assignment of its main advisor and/or advisors in general for the development of various special tasks within the Specialised Chambers, Technical Office and/or Administrative Office of the Tax Tribunal.”³⁴</p> <p style="margin-left: 40px;">The above broad February 10, 2021 requests to MEF, together with the requests to MEF by Ms. Chávez described in Respondent’s Objections to Requests Nos. 15 and 16, cover most of the “Documents concerning the assignment of the 2010-</p>

³⁴ Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA, dated March 25, 2021, para. 4, at p. 2 (“Copia simple de todas las comunicaciones y/o disposiciones escritas de la Presidencia del Tribunal Fiscal, en el periodo comprendido entre el 01.01.2010 y el 31.12.2019, sobre: (i) la conformación de Salas Especializadas del Tribunal Fiscal; (ii) la asignación de asesores a las Salas Especializadas del Tribunal Fiscal; (iii) la asignación de asesores a la Oficina Técnica del Tribunal Fiscal y Oficina de Asesoría Contable del *Tribunal* Fiscal; (iv) la asignación de asesores a la Presidencia del Tribunal Fiscal y Vocalía Administrativa; y (v) la asignación de su asesor principal y/o asesores en general para el desarrollo de diversos trabajos especiales dentro de las Salas Especializadas, Oficina Técnica y/o Vocalía Administrativa del Tribunal Fiscal.”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala>.

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2011 Royalty Case to Victor Mejía Ninacondor as *vocal ponente*” sought under this Request No. 19. Perú and MEF officials already spent hours of their time and Perú’s taxpayers’ money in searching for the documents that Claimant requested. MEF had to review its backup systems, and request that the documents be sent to MEF’s Central Archive through a cumbersome, costly, and long process.³⁵

Claimant is now trying “double-dip” in this arbitration proceeding and see whether it might obtain more documents that are potentially relevant for its case, other than the documents that it already obtained by filing the above requests with MEF under Perú’s Transparency Law. This is impermissible under the IBA Rules. Claimant is forcing Perú to spend *double* the amount of time and to devote *double* the economic resources to repeat a search for documents concerning the assignment of the 2010-2011 Royalty Case to Victor Mejía Ninacondor as *vocal ponente* “across all current and former MEF email backup systems,”— documents which may not even exist. It is relevant to note that retrieving data from backup systems is a highly expensive process. In this context, and given the requests that Ms. Chávez filed with MEF (presumably on SMCV’s and/or Claimant’s behalf), it would be unreasonably burdensome, and it would affect the procedural economy and fairness of the proceedings for Respondent to search *once again* for the requested documents under Request No. 19.

- **Possession, custody, or control:** Respondent objects to Request No. 19 on the basis that Claimant has failed to show that the documents it requests are not already in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules.

First, Ms. Chávez (presumably on SMCV’s or Claimant’s behalf) already requested that MEF, pursuant to Peru’s Transparency Law, produce the documents it now seeks again under Request. No. 19, and MEF produced documents pursuant to Ms. Chávez’s requests. Claimant has not articulated any basis to believe MEF can now access additional documents concerning the assignment of the 2010-2011 Royalty Case to Victor Mejía Ninacondor as *vocal ponente*. Claimant uses this opportunity to speculate about additional emails sent during a period of more than three years that may not even exist. This Request amounts to a fishing expedition by Claimant in an attempt to construct a case on the basis of documents that it *hopes* to find in Respondent’s files.

³⁵ See Resolution No. 000641-2021-JUS/TTAIP-SEGUNDA SALA, dated March 25, 2021, at p. 2 (“*Al respecto, de acuerdo con las disposiciones sobre gestión documental en el Ministerio de Economía y Finanzas, a cargo de la Oficina General de Servicios al Usuario, el Tribunal Fiscal cumple con los lineamientos que regulan la transferencia de la documentación con una antigüedad mayor a 2 años al Archivo Central del MEF, por lo que la documentación solicitada que corresponde hasta el 2018 se encuentra en el Archivo del MEF y para solicitarla es necesario seguir un procedimiento que considera la identificación de los documentos mediante una clasificación de series documentales, documento de transferencia, N° de caja, paquete, tipo de documento, derivación y otros. Esta información es registrada en un Formato de Transferencia que debe ser remitido al Archivo por las personas designadas como responsables para tal fin. Identificadas las cajas que contienen la información solicitada, éstas son entregadas a las personas responsables para la identificación respectiva*”), available at <https://www.gob.pe/institucion/minjus/normas-legales/2807703-000641-2021-jus-ttaip-segunda-sala> (emphasis added).

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Second, Claimant was able to collect and put into the record some of the documents it requests.

First, Claimant requests “[c]ommunications or records of communications [concerning the assignment of the 2010-2011 Royalty Case to Victor Mejía Ninacondor as *vocal ponente*] between Ms. Olano Silva and / or her assistants and the Tax Tribunal Technical Office” (Request No. 19 (a)). Claimant has already exhibited communications between Ms. Olano and Ms. Castro Arana (Head of the Tax Tribunal Technical office) regarding SMCV’s request to recuse Mr. Mejía Ninacondor (*see* Exhibits CE-713, CE-719).

Second, Claimant requests “[c]ommunications or records of communications [concerning the assignment of the 2010-2011 Royalty Case to Victor Mejía Ninacondor as *vocal ponente*] between Ms. Olano Silva and / or her assistants and the *vocales* of Chamber No. 2 (Mr. Mejía Ninacondor, Ms. Zuñiga Dulanto, and Mr. Ramírez Mio)” (Request No. 19 (c)). Claimant has already exhibited communications between Ms. Olano and the *vocales* of Chamber No. 2 regarding SMCV’s request to recuse Mr. Mejía Ninacondor (*see* Exhibit CE-719).

Thus, Claimant has demonstrated that it has access to some of the documents it is requesting, and it is not Respondent’s responsibility to compile further such documents for Claimant.

- **Privilege, confidentiality**: Respondent objects on the same grounds set forth in response to Request No. 15 above.

Request No. 19(d)(v)

- **Relevance and materiality**: Respondent objects to Request No. 19(d)(v) on the basis that Claimant has failed to show how the requested documents are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (*see also* Article 9(2)(a) of the IBA Rules). Claimant’s reason for its Request is that the drafts of the Plenary Session’s minutes or resolution are supposedly “relevant and material to Freeport’s claims that the Tax Tribunal’s decision in the 2010-2011 Royalty Case was marred by conflicts of interest and procedural irregularities.” As noted in Respondent’s General Objections on pages 4-5 above, drafts of the minutes or resolution are irrelevant since they are not determinative of the final content of the minutes or of the resolution (which are included in the record as Exhibits CE-181, CE-714, or CE-716). The fact that Ms. Olano “directed her staff to prepare draft minutes of the deliberation of the plenary chamber” does not change this conclusion. Claimant is simply inappropriately seeking internal documents which it is speculating contain information that it hopes will support its case.

In any case, Claimant has failed to cite any evidence that shows that “Mejía Ninacondor failed to meet the basic requirements of independence and impartiality.” None of the Exhibits that Claimant cites to support this statement (Exhibits CE-713, CE-714,

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	<p>CE-715, CE-716, CE-717, CE-718) in fact support Claimant’s allegation. The exhibits merely confirm that Mejía Ninacondor worked in the SUNAT department that initially confirmed the 2010-2011 Royalty Assessments. However, as Respondent explained in its Counter-Memorial, the Plenary Chamber concluded that <i>vocal</i> Mejía did not participate in the 2010-2011 Royalty Assessment case. The Plenary Chamber’s finding was based on the fact that <i>vocal</i> Mejía’s signature was not on the decision nor did the case file reflect his involvement (<i>see</i> Respondent’s Counter-Memorial, para. 337).</p> <ul style="list-style-type: none"> • <u>Possession, custody, or control</u>: Respondent objects to Request No. 19(d)(v) on the basis that Claimant has failed to show that the documents it requests are in Respondent’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. As Respondent explains in its general objections, public officials in Peru are only required to file and retain the final version of official documents. Public entities take action through official documents such as memos, resolutions, or reports. Therefore, it is unlikely that documents such as draft resolutions are in Respondent’s possession, custody, or control. <p><u>Requests No. 19(b) and (d)(i) to (iv)</u></p> <ul style="list-style-type: none"> • <u>Partial agreed production</u>: With respect to Requests No. 19(b) and (d)(i) to (iv), Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
<p>Requesting party reply</p>	<p><u>Requests Nos. 19(a), (c), (d)</u></p> <ul style="list-style-type: none"> • <u>Procedural economy and fairness</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]rocedural economy and fairness” above. • <u>Possession, custody, or control</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]ossession, custody, or control” above. • <u>Privilege, confidentiality</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]rivilege, confidentiality” above. <p><u>Request No. 19(d)(v)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: Peru’s objection that “drafts of the minutes or resolution . . . are not determinative of the final content of the minutes or resolution” misses the point entirely. As set forth above in Freeport’s justification for Request 19,

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	<p>Freeport alleges that President Olanó Silva improperly appointed Mr. Mejía Ninacondor as <i>vocal ponente</i> in the 2010-2011 Royalty Case, even though he “failed to meet the basic requirements of independence and impartiality.” Freeport has submitted documentary evidence in support of its claim (Exs. CE-694; CE-227; CE-18; CE-33; CE-107; CE-129; CE-216), including evidence that President Olanó Silva directed “her staff to prepare draft minutes of the deliberation of the plenary chamber concluding that SMCV’s petition was unwarranted before the plenary chamber had deliberated.” <i>See</i> Claimant’s Memorial ¶¶ 245-48; Exs. CE-713, CE-714, CE-715, CE-716, CE-717, CE-718. Freeport does not seek drafts of the Plenary Session’s minutes or resolution because they are “determinative of the final outcome” of SMCV’s request for recusal but, rather, because they will show the extent to which the Plenary considered, and potentially elected to ignore, the clear evidence of bias that Freeport submits in these proceedings.</p> <ul style="list-style-type: none"> • <u>Possession, custody, or control</u>: Freeport incorporates by reference its reply to Peru’s objection to Request No. 15 on the grounds of “[p]ossession, custody, or control” above. <p><u>Requests Nos. 19(b) and (d)(i) to (iv)</u></p> <ul style="list-style-type: none"> • <u>Partial agreed production</u>: Without prejudice to the General Replies, Freeport agrees to Peru’s partial agreed production. <p>Without prejudice to Freeport’s replies to Peru’s objections to Request No. 19, and the General Replies, Freeport will limit Request No. 19 to sub-requests 19(a)-19(d).</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Claimant’s limitation of Request No. 19 to sub-requests 19(a)-(d). The Tribunal also takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce the following documents it is able to locate:</p> <ul style="list-style-type: none"> • Documents concerning the process by which the cases from the Major Taxpayers Superintendency were reassigned; • Documents concerning SMCV’s petition for Mr. Mejía Ninacondor’s recusal, including: <ol style="list-style-type: none"> i. assessments of Mr. Mejía Ninacondor’s involvement in SMCV’s challenge to the 2006-2007 Royalty Assessments before the Appellate Court;

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| | <ul style="list-style-type: none">ii. assessments of Mr. Mejía Ninacondor’s involvement in SUNAT’s assessment of the 2010-2011 Royalties against SMCV, including SUNAT’s decision on SMCV’s request for reconsideration;iii. submissions or records of submissions made by Mr. Mejía Ninacondor;iv. communications or records of communications with Mr. Mejía Ninacondor. |
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Accordingly, the Tribunal orders Respondent to produce such Documents.

With respect to sub-requests 19(a), (c) and (d)(v), the Tribunal orders Respondent to produce any such Documents not already produced in the transparency proceedings. The Tribunal finds that it is not unreasonably burdensome for Respondent to identify the Documents withheld in the transparency proceedings and produce them in this arbitration.

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Document Request No.	20
Documents or category of requested documents	<p>Documents concerning Victor Mejía Ninacondor’s involvement in SMCV’s challenge to the 2006-2007 Royalty Assessments before the Appellate Court. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to communications or records of communications with Mr. Ninacondor concerning SUNAT’s written or oral submissions to the Appellate Court, including legal briefs in case file No. 7649-2013, or any drafts thereof.</p> <p>Time frame of issuance: 2 May 2016 to 12 July 2017.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶ 244.</p> <p>Respondent’s Counter-Memorial ¶ 338; Olano Silva ¶ 78.</p> <p>(2) <i>See</i> justification for Request No. 19 above. This information is relevant and material to Freeport’s claims that the Tax Tribunal’s decision in the 2010-2011 Royalty Case was marred by conflicts of interest and procedural irregularities. <i>See</i> Claimant’s Memorial ¶ 244. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Ms. Olano Silva’s testimony.</p> <p>Freeport contends that the Tax Tribunal should not have assigned the 2010-2011 Royalty Case to Mr. Mejía Ninacondor and should have granted SMCV’s petition for recusal because his representation of SUNAT in SMCV’s appeal of the 2006-2007 Royalty Assessments before the Appellate Court gave rise to a conflict of interest. Claimant’s Memorial ¶ 244; Exs. CE-694; CE-180.</p> <p>Based on the testimony of Ms. Olano Silva, Peru contends that Mr. Mejía Ninacondor was not involved in the 2006-2007 Royalty Case before the Appellate Court. Respondent’s Counter-Memorial ¶ 338 (citing Olano Silva ¶ 78). However, Peru does not submit any documentary evidence in support of this assertion.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
Agreement to produce or	Respondent objects to Request No. 20.

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<p>Summary of objections by disputing Party to production of requested documents</p>	<ul style="list-style-type: none">• <u>Relevance and materiality:</u> Respondent objects to Request No. 20 on the basis that Claimant has failed to show how the requested documents are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant’s reason for its Request is that Mr. Mejía Ninacondor’s alleged involvement in the appeal of the 2006-2007 Royalty Assessments before the Appellate Court supposedly “is relevant and material to Freeport’s claims that the Tax Tribunal’s decision in the 2010-2011 Royalty Case was marred by conflicts of interest . . .” (<i>see</i> Request No. 19 above). Claimant believes that if the Tax Tribunal in the 2010-2011 Royalty Case had had more information regarding Mr. Mejía Ninacondor’s alleged involvement in the appeal of the 2006-2007 Royalty Assessments, probably it would have recused Mr. Mejía Ninacondor based on a conflict of interest (<i>see</i> Claimant’s Memorial, para. 244). Claimant clearly is not satisfied with the Tax Tribunal’s decision in the 2010-2011 Royalty Case and is now trying to relitigate its request to recuse Mr. Mejía Ninacondor in this arbitration, and is using this document production phase to obtain additional evidence in the hopes of supporting its attempt to discredit the Tax Tribunal’s decision. However, it is not appropriate for an arbitral tribunal to be a court of review. In addition, even if there were additional documents available concerning Mr. Mejía Ninacondor’s alleged involvement in SMCV’s challenge to the 2006-2007 Royalty Assessments, the only potentially relevant documents would be those documents that were also before the Tax Tribunal when it ruled on the recusal request—which is not the case for the documents in this Request. Separately, Claimant requests the “drafts” of the written and oral submissions in SMCV’s appeal of the 2006-2007 Royalty Assessment. As stated in Respondent’s General Objections on pages 4-5 above, drafts of submissions are irrelevant since they are not determinative of the final content of the submissions.• <u>Possession, custody, or control:</u> Respondent objects to Request No. 20 (in part) on the basis that Claimant has failed to show that the documents it requests are in Respondent’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. As Respondent explains in its general objections, public officials in Perú are only required to file and retain the final version of official documents. Public entities take action through official documents such as memos, resolutions, or reports. Therefore, it is unlikely that documents such as draft submissions are in Respondent’s possession, custody, or control.• <u>Procedural economy and fairness:</u> Respondent also objects to Request No. 20 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. This is an international arbitration and expansive discovery in the guise of document requests is not permitted. As the IBA Task Force explains, “Expansive American- or English-style discovery is generally inappropriate in international arbitration. Rather, requests for documents to be produced should be carefully tailored to issues that are relevant and material to the determination of the case.”³⁶ Claimant believes that if the Tax Tribunal in the 2010-2011 Royalty Case had had more information regarding Mr. Mejía Ninacondor’s alleged involvement in the appeal of the 2006-2007 Royalty Assessments, probably it would have recused
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³⁶ IBA Task Force for the Revision of the IBA Rules on the Taking of Evidence in International Arbitration, *Commentary on the revised text of the 2020 IBA Rules of the Taking of Evidence in International Arbitration* (January 2021) at 8, available at <https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D>.

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	<p>Mr. Mejía Ninacondor based on a conflict of interest (<i>see</i> Claimant’s Memorial, para. 244). However, Claimant has submitted <u>no evidence</u> to support this claim. Claimant attempts to fabricate a disputed issue of fact in order to conduct a fishing expedition. This is not permitted under the IBA Rules. Whether or not the requested documents would prove Claimant’s claim, Respondent is not obliged to produce evidence to Claimant to support its substantive claims. Claimant must submit sufficient evidence to support its claims. If Claimant does not have sufficient evidence to support its claims, then its claims must fail.</p>
<p>Requesting party reply</p>	<p><u>Relevance and materiality:</u> Peru’s objection fundamentally misconceives the justification for Freeport’s request and Freeport’s FET claim. Freeport does not seek in this arbitration the recusal of Mr. Ninacondor and hence does not attempt to transform the Tribunal into “a court of review.” Instead, Freeport claims that the Tax Tribunal’s failure to recuse Mr. Ninacondor, despite glaring conflicts of interest, constitutes a violation of Peru’s FET obligation. Claimant’s Memorial ¶¶ 396-97. Peru cannot justify its objection with the bald assertion that “the only potentially relevant documents would be those that were also before the Tax Tribunal when it ruled on the recusal request.” First of all, Peru has not produced the documents, if any, that the Tax Tribunal considered before rejecting SMCV’s petition for recusal. Moreover, if Mr. Ninacondor failed to adequately disclose the extent of his conflicts of interest during the recusal proceeding, then relevant documents <i>would not</i> have been before the Tax Tribunal when it ruled on the recusal request and that failure would support Freeport’s FET claim.</p> <p><u>Possession, custody, or control:</u> Peru’s objection that it is not in possession, custody, or control of drafts of briefs that SUNAT submitted to the Appellate Court in the 2006-2007 Royalty Case is baseless. As set forth in the General Replies, Government officials are required to retain, and refrain from destroying, information in any format.³⁷ Moreover, Peru cannot deny that as a matter of practice, drafts are often retained. <i>See, e.g. Ex. CE-714.</i></p> <p><u>Procedural economy and fairness:</u> Peru provides no grounds for its objection. Peru’s trite, pro-forma references to “[e]xpansive American- or English-style discovery” are inapposite. Contrary to Peru’s objection, Freeport has not made any claims about what the Tax Tribunal “probably” would have done if it “had had more information regarding Mr. Mejía Ninacondor’s alleged involvement in the appeal of the 2006-2007 Royalty Assessments.” Rather, Freeport contends that the Tax Tribunal failed to recuse Mr. Ninacondor despite his glaring conflicts of interest. Either Mr. Ninacondor failed to disclose information relating to his involvement in the appeal of the 2006-2007 Royalty Assessments or the Tax Tribunal ignored such information. <i>See</i> Claimant’s Memorial ¶¶ 246, 248. Either way, Freeport maintains that Peru violated SMCV’s due process rights. Peru’s assertion that SMCV has “submitted <u>no evidence</u> to support this claim” is incorrect. <i>SMCV has submitted Mr. Ninacondor’s entry of appearance for SUNAT in the 2006-2007 Royalty Case before the Appellate Court. Ex. CE-694.</i> Thus, SMCV’s request is the precise opposite of a “fishing expedition.” This is not a</p>

³⁷ *See* Transparency and Access to Information Law, Law No. 27806, approved by Supreme Decree No. 043-2003-PCM, Art. 21, available at <https://www.gob.pe/institucion/fisal/informes-publicaciones/2022299-texto-unico-ordenado-de-la-ley-n-27806-ley-de-transparencia-y-acceso-a-la-informacion-publica>.

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	<p>situation in which a party is seeking documents to support unfounded allegations or claims. As set forth above in Freeport’s justification for Request No. 20, Freeport maintains that it has submitted documentary evidence sufficient to establish due process violations in the 2010-2011 Royalty Case and Peru contests this claim. Thus, documents that will provide additional context to the existing record evidence are clearly relevant and material to key issues in dispute. Peru’s argument that it “is not obliged to produce evidence to Claimant to support [Claimant’s] substantive claims” is antithetical to the IBA Rules and international arbitral practice, and is entirely inconsistent with Peru’s own document requests, which generally seek to adduce evidence to support Peru’s own defenses. The purpose of document production in international arbitration is to allow parties to request documents that “are relevant to the case and material to its outcome.” IBA Rules, Article 3(3)(b). Documents that are expected to support the requesting party’s “substantive claims” could not fall more squarely within that definition.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal orders Respondent to produce communications or records of communications with Mr. Ninacondor concerning SUNAT’s written or oral submissions to the Appellate Court in the context of SMCV’s challenge to the 2006-2007 Royalty Assessments before the Appellate Court, including legal briefs in case file No. 7649-2013, or any drafts thereof, in the time frame specified by Claimant (i.e. from 2 May 2016 to 12 July 2017).</p> <p>The Tribunal rejects the remainder of Claimant’s Request No. 20 as overly broad.</p>

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Document Request No.	21
Documents or category of requested documents	<p>Documents concerning Victor Mejía Ninacondor’s involvement in SUNAT’s assessment of the 2010-2011 Royalties against SMCV. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Communications or records of communications with Mr. Ninacondor concerning SUNAT’s audit of SMCV concerning the 2010-2011 Royalties. b) Communications or records of communications with Mr. Ninacondor concerning SUNAT’s 2010-2011 Royalty Assessments against SMCV. c) Communications or records of communications with Mr. Ninacondor concerning SMCV’s request for reconsideration of the 2010-2011 Royalty Assessments. <p>Time frame of issuance: 9 June 2015 to 29 December 2016.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶ 244. Respondent’s Counter-Memorial ¶ 337.</p> <p>(2) <i>See</i> justification for Request Nos. 19 & 20 above.</p> <p>Freeport submits documentary evidence demonstrating that Mejía Ninacondor worked for the SUNAT department that initially confirmed the 2010-2011 Royalty Assessments. <i>See, e.g., CE-227; CE-18; CE-33; CE-107; CE-129; CE-216.</i> Peru does not dispute this fact but denies that he “participated in the 2010-2011 Royalty Assessment case” while he was a SUNAT employee. Respondent’s Counter-Memorial ¶ 337. Peru does not submit any documentary evidence in support of this assertion.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>

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<p>Agreement to produce or</p> <p>Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent objects to Request No. 21.</p> <ul style="list-style-type: none">• Relevance and materiality: Respondent objects to Request No. 21 on the basis that Claimant has failed to show how the requested documents are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant’s reason for its Request is that Mr. Mejía Ninacondor’s alleged participation in SUNAT’s assessment of the 2010-2011 Royalties case while he was a SUNAT employee “is relevant and material to Freeport’s claims that the Tax Tribunal’s decision in the 2010-2011 Royalty Case was marred by conflicts of interest . . .” (<i>see</i> Request No. 19 above). Claimant believes that if the Tax Tribunal in the 2010-2011 Royalty Case had had more information regarding Mr. Mejía Ninacondor’s alleged participation in SUNAT’s assessment of the 2010-2011 Royalties case, probably it would have recused Mr. Mejía Ninacondor based on a conflict of interest (<i>see</i> Claimant’s Memorial, para. 244). Claimant clearly is not satisfied with the Tax Tribunal’s decision in the 2010-2011 Royalty Case and is now trying to relitigate its request to recuse Mr. Mejía Ninacondor in this arbitration and using this document production phase to obtain additional evidence in the hopes of supporting its attempt to discredit the Tax Tribunal’s decision. However, it is not appropriate for an arbitral tribunal to be a court of review. In addition, even if there were additional documents available concerning Mr. Mejía Ninacondor’s alleged involvement in SMCV’s challenge to the 2006-2007 Royalty Assessments, the only potentially relevant documents would be those that were also before the Tax Tribunal when it ruled on the recusal request—which is not the case for the documents in this Request.• Procedural economy and fairness: Respondent also objects to Claimant’s Request No. 21 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. This is an international arbitration and expansive discovery in the guise of document requests is not permitted. As the IBA Task Force explains, “Expansive American- or English-style discovery is generally inappropriate in international arbitration. Rather, requests for documents to be produced should be carefully tailored to issues that are relevant and material to the determination of the case.”³⁸ Claimant’s reason for its Request is that Mr. Mejía Ninacondor’s alleged participation in the 2010-2011 Royalty Assessment case while he was a SUNAT employee “is relevant and material to Freeport’s claims that the Tax Tribunal’s decision in the 2010-2011 Royalty Case was marred by conflicts of interest . . .” (<i>see</i> Request No. 19 above). However, Claimant has submitted <u>no evidence</u> to support this claim. On the other hand, Perú has submitted evidence showing that Mr. Mejía Ninacondor did not participate in the proceedings (<i>see</i> Respondent’s Counter-Memorial, para. 338 (“the Plenary Chamber concluded that vocal Mejía had not participated in the 2010-2011 Royalty Assessment case”); and Exhibit CE-181, at p. 8). Claimant attempts to fabricate a disputed issue of fact in order to conduct a fishing expedition. This is not permitted
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³⁸ IBA Task Force for the Revision of the IBA Rules on the Taking of Evidence in International Arbitration, *Commentary on the revised text of the 2020 IBA Rules of the Taking of Evidence in International Arbitration* (January 2021) at 8, available at <https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D>.

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	<p>under the IBA Rules. Whether or not the requested documents would prove Claimant’s claim, Respondent is not obliged to produce evidence to Claimant to support its substantive claims. Claimant must submit sufficient evidence to support its claims. If Claimant does not have sufficient evidence to support its claims, then its claims must fail.</p>
<p>Requesting party reply</p>	<p>Peru’s responses and objections to Request No. 21 mirror its responses and objections to Request 20 and are, therefore, baseless for the same reasons set forth above in Freeport’s replies to Peru’s responses and objections to Request 20. Additionally, Freeport maintains that Peru’s contention that “Claimant has submitted <u>no evidence</u> to support” the claim that “Mr. Mejía Ninacondor worked for the SUNAT department that initially confirmed the 2010-2011 Royalty Assessments” is flatly contradicted by the evidentiary record. <i>See, e.g., CE-18, CE-33, CE-107, CE-129, CE-216, CE-227.</i> Freeport also maintains that Peru has failed to submit any evidence that “Mr. Mejía Ninacondor did not participate in the proceedings.” Peru cites only its own Counter-Memorial and <i>Claimant’s</i> Exhibit CE-181—the Tax Tribunal resolution rejecting SMCV’s petition for Mr. Mejía Ninacondor’s recusal, drafted with President Olano Silva’s intervention—for its baseless contention to the contrary.</p> <p>Without prejudice to Freeport’s replies to Peru’s objections to Request 21, and the General Replies, Freeport will limit Request No. 21 to sub-requests 21(a)-21(c).</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Claimant’s limitation of Request No. 21 to sub-requests 21(a)-(c). The Tribunal orders Respondent to produce all responsive Documents to Claimant’s sub-request 21(a)-(c).</p>

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Documents Concerning Ursula Villanueva’s Role in the Q4 2011 Royalty Case	
Document Request No.	22
Documents or category of requested documents	<p>Documents concerning the assignment of the Q4 2011 Royalty Case to Ms. Villanueva as <i>vocal ponente</i>. This request includes all emails stored across all current and former MEF email backup systems. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Communications or records of communications between Ms. Olano Silva and the Tax Tribunal Technical Office; and b) Communications or records of communications between Ms. Olano Silva and the <i>vocales</i> of Chamber No. 9 (Ms. Villanueva, Raúl Nicolas Queuña Diaz or Sarita Emperatriz Barrera Vásquez). <p>Time frame of issuance: 21 November 2018 to 18 November 2019.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 196-11, 260-61, 399; Estrada ¶¶ 40-58; Exs. CE-81, CE-83, CE-269, CE-648, CE-650, CE-651, CE-652, CE-653, CE-654, CE-655, CE-679.</p> <p>Respondent’s Counter-Memorial ¶¶ 344-46; Olano Silva ¶¶ 46, 48-49, 61.</p> <p>(2) <i>See</i> justification for Request No. 15 above. This information is relevant and material to Freeport’s claims that Ms. Olano Silva’s improper intervention in SMCV’s challenges to the Royalty Assessments before the Tax Tribunal extended to the Q4 2011 Royalty Case, which was assigned to Chamber No. 9 with Ms. Villanueva as <i>vocal ponente</i>. <i>See</i> Claimant’s Memorial ¶¶ 260-61.</p> <p>Peru contends that the assignment of the Q4 2011 Royalty Case to Ms. Villanueva’s as <i>vocal ponente</i> “did not create a conflict of interest” or “due process issue.” Respondent’s Counter-Memorial ¶ 345.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Perú is in a position to access without undue burden.</p>

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<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p><u>Agreed production:</u> Respondent does not object to Request No. 22. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate concerning the assignment of the Q4 2011 Royalty Case to Ms. Villanueva as vocal ponente, including all emails stored across all current and former MEF email backup systems. The request includes, but is not limited to:</p> <ul style="list-style-type: none"> (a) Communications or records of communications between Ms. Olano Silva and the Tax Tribunal Technical Office; and (b) Communications or records of communications between Ms. Olano Silva and the vocales of Chamber No. 9 (Ms. Villanueva, Raúl Nicolas Queuña Diaz or Sarita Emperatriz Barrera Vásquez). <p>Accordingly, the Tribunal orders Respondent to produce such Documents.</p>

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Documents Concerning the Functioning of the Tax Tribunal	
Document Request No.	23
Documents or category of requested documents	<p>Documents prepared by MEF officials or officials or employees of the Tax Tribunal concerning the Tax Tribunal’s production goals, including but not limited to lists or instructions for the prioritization of cases.</p> <p>Time frame of issuance: From 1 January 2012 to 31 December 2019.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 390(e); Estrada ¶¶ 24-25.</p> <p>Olano Silva ¶¶ 34-37, 40.</p> <p>(2) <i>See</i> justification for Request Nos. 15 above. This information is relevant and material to Freeport’s claims that unreasonable production goals and improper incentives to resolve high-value cases in favor of SUNAT jeopardized the independence, impartiality, and quality of Tax Tribunal resolutions. <i>See</i> Estrada ¶¶ 24-25. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Ms. Olano Silva’s testimony.</p> <p>Mr. Estrada testifies that the Tax Tribunal was improperly motivated to prioritize and resolve high-value cases in favor of SUNAT, due to the fact that its budget was set as a percentage of SUNAT collections. <i>See</i> Estrada ¶ 24. Mr. Estrada also testifies that heightened production goals and proposed bonus schemes at the Tax Tribunal created incentives for <i>vocales</i> and law clerks to accelerate the resolution of cases, particularly high-value cases, and to decide cases in favor of SUNAT. Estrada ¶¶ 24-25.</p> <p>Ms. Olano Silva testifies that the Tax Tribunal’s production goals were reasonable and that proposals regarding bonuses or incentives for meeting productions goals did not affect <i>vocales</i> decision-making because they were never implemented. Olano Silva ¶¶ 34-37. She further testifies that SUNAT collections did not affect case resolution. Olano Silva ¶¶ 34-37. Ms. Olano Silva also testifies that she never asked <i>vocales</i> at the Tax Tribunal to prioritize resolution of high-value cases. Olano Silva ¶ 40. Ms. Olano Silva does not provide any documentary evidence to support this assertion.</p>

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	The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Perú is in a position to access without undue burden.
Agreement to produce or Summary of objections by disputing Party to production of requested documents	Agreed production: Respondent does not object to Request No. 23. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
Requesting party reply	Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.
Decision of the Tribunal	The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate prepared by MEF officials or officials or employees of the Tax Tribunal concerning the Tax Tribunal’s production goals, including but not limited to lists or instructions for the prioritization of cases. Accordingly, the Tribunal orders Respondent to produce such Documents.

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Document Request No.	24
Documents or category of requested documents	All documents relied on in creating Annex D of RWS-5, Olano Silva Witness Statement.
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 390(e); Estrada ¶¶ 20, 24-25. Olano Silva ¶¶ 34-37, 40, Annex D.</p> <p>(2) <i>See</i> justification for Requests No. 15 & No. 23 above.</p> <p>Ms. Olano Silva annexes to her witness statement a table purporting to show that from 2011-2019 and in 2021 the Tax Tribunal resolved a greater number of cases in favor of major taxpayers, than in favor of SUNAT. Olano Silva ¶ 40, Annex D. But she provides no information concerning the criteria used to select the cases included in Annex D.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
Agreement to produce or Summary of objections by disputing Party to production of requested documents	<u>Agreed production:</u> Respondent does not object to Request No. 24. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.
Requesting party reply	Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.

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Decision of the Tribunal	The Tribunal takes note of Respondent's agreement, subject to its general objections, to voluntarily produce all documents it is able to locate which were relied on in creating Annex D of RWS-5, Olano Silva Witness Statement. Accordingly, the Tribunal orders Respondent to produce such Documents.
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Documents Concerning Projected Collections from royalties, the Voluntary Contribution Program, GEM, and SMT	
Document Request No.	25
Documents or category of requested documents	<p>Documents prepared, sent, or received by the Minister or Vice-Minister of Economy and Finance, the Minister or Vice-Minister of Mines, Prime Minister Jorge del Castillo, Minister Juan Valdivia, or Minister Luis Carranza concerning projected voluntary contribution under the Mining Program of Solidarity with the People (“PMSP”) or royalty collections. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Documents concerning the projected impact of mining stability agreements on voluntary contribution or royalty collections; b) Documents concerning projected voluntary contribution or royalty collections from SMCV; and c) Documents prepared, sent, or received by Mr. Polo concerning the March 2004 presentation to Congress by MINEM, Ex. CE-19, Evaluation of Royalty Application (11 March 2004). <p>Time frame of issuance: From 29 February 2004 to 20 December 2006.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 150-53, 334, 408(b); Castagnola ¶¶ 4, 18, 32, 38, 43, Appendices A, B; Exs. CE-19, CE-403, CE-406, CE-415.</p> <p>Respondent’s Counter-Memorial ¶ 222; Camacho ¶ 17.</p> <p>(2) This information is relevant and material to Freeport’s claims that it made contributions to the voluntary contribution program on the undisputed understanding that it was not subject to the Royalty Law. <i>See</i> Claimant’s Memorial ¶¶ 150-53, 334. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Camacho’s testimony.</p> <p>Freeport contends that SMCV willingly made contributions under the Voluntary Contribution Agreement on the good faith understanding that it was exempt from paying royalties as a result of the Stability Agreement. <i>See</i> Claimant’s Memorial ¶¶ 150-53, 334. Freeport submits documentary evidence demonstrating that “[d]uring Congressional debates about the Royalty Law, draft bills</p>

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	<p>and official statements by senior Government officials, including MINEM officials, referenced SMCV as a ‘stabilized’ company exempt from paying mining royalties, without any suggestion that it was ‘partially’ stabilized.” Claimant’s Memorial ¶ 408(b). <i>See also Exs. CE-19, CE-403, CE-406, CE-415.</i> Freeport also offers testimony from Gianfranco Castagnola, executive president at APOYO Consultoría, whose proposal for the voluntary contribution program was largely adopted by Peru. Castagnola ¶¶ 4, 18, 38. Specifically, Mr. Castagnola testifies that APOYO prepared “financial models” of voluntary contributions which assumed that SMCV was not obligated to pay any royalties because its operations were stabilized. He explains that APOYO presented its projections to high-ranking government officials, including Prime Minister Jorge del Castillo, Minister of Energy and Mines Juan Valdivia, and Minister of Economy and Finance Luis Carranza, and identified SMCV’s Concentrator investment as an investment resulting from tax stability. <i>See</i> Castagnola ¶¶ 32, 43; Appendix A, pp.7-8 (“<i>Companies</i> that pay royalties . . . credit 64.6% of these payments [against the voluntary contribution].”). Freeport submits documentary evidence corroborating Mr. Castagnola’s testimony. <i>See</i> Castagnola, Appendices A, B.</p> <p>Peru contends that the fact APOYO classified SMCV as a stabilized company “does not show that the <u>State</u> understood that all of the company’s investment projects were ‘stabilized.’” Respondent’s Counter-Memorial ¶ 222. Peru argues that it “[a]t best reflects the fact that the company did indeed have at least one stabilization agreement in place—but it says nothing about the scope of that agreement.” Respondent’s Counter-Memorial ¶ 222. Peru relies on Mr. Camacho’s testimony that the voluntary contribution program assumed that mining companies could have stabilized and unstabilized investment projects. Camacho ¶ 17. Mr. Camacho does not provide any documentary evidence to support this assertion.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p><u>Agreed production:</u> Respondent does not object to Request No. 25. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>

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Decision of the Tribunal	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate which were prepared, sent, or received by the Minister or Vice-Minister of Economy and Finance, the Minister or Vice-Minister of Mines, Prime Minister Jorge del Castillo, Minister Juan Valdivia, or Minister Luis Carranza concerning projected voluntary contribution under the Mining Program of Solidarity with the People (“PMSP”) or royalty collections, including but not limited to:</p> <ul style="list-style-type: none">a) Documents concerning the projected impact of mining stability agreements on voluntary contribution or royalty collections;b) Documents concerning projected voluntary contribution or royalty collections from SMCV; andc) Documents prepared, sent, or received by Mr. Polo concerning the March 2004 presentation to Congress by MINEM, Ex. CE-19, Evaluation of Royalty Application (11 March 2004). <p>Accordingly, the Tribunal orders Respondent to produce such Documents.</p>
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Document Request No.	26
Documents or category of requested documents	<p>Documents prepared, sent, or received by Minister or Vice-Minister of Economy and Finance, the Minister or Vice-Minister of Mines, Prime Minister Salomón Lerner Ghitis, Minister Luis Miguel Castilla, Minister Carlos Herrera Descalzi, Vice Minister Laura Calderón Regjo, or Director Marco Camacho concerning projected GEM, SMT, or royalty collections. This request includes, but is not limited to:</p> <ul style="list-style-type: none"> a) Documents concerning the projected impact of mining stability agreements on GEM, SMT, or royalty collections; b) Documents concerning projected GEM, SMT, or royalty collections from SMCV; and c) Communications or records of communications concerning the meeting between the Government and the Mining Society, on or about 24 August 2011. <p>Time frame of issuance: From 1 March 2011 to 28 September 2011.</p>
Relevance and materiality:	(1) Claimant’s Memorial ¶¶ 182-83, 334; Santa María ¶¶ 4, 17, 27, 31-45, Appendix C; Ex. CE-622 .
(1) para ref to submissions	Respondent’s Counter-Memorial ¶ 228; Camacho ¶¶ 29-30.
(2) comments	<p>(2) This information is relevant and material to Freeport’s claims that Peru treated the entire Cerro Verde Mining Unit as stabilized during the preparation of the SMT and the GEM program. <i>See</i> Claimant’s Memorial ¶¶ 182-83, 334. It is also relevant and material to the Tribunal’s assessment of the credibility and reliability of Mr. Camacho’s testimony.</p> <p>Freeport contends that Peru repeatedly recognized that the Stability Agreement applied to the entire Cerro Verde Mining Unit, including during the development of the SMT and the GEM program. <i>See</i> Claimant’s Memorial ¶¶ 182-83, 334. In support of this contention, Freeport offers testimony from Hugo Santa María, chief economist at APOYO Consultoría, whose proposals for the SMT and GEM were largely adopted by Peru. Santa María ¶¶ 4, 17, 43. Specifically, Mr. Santa María testifies that APOYO presented projected SMT and GEM contributions to high-ranking government officials at several meetings, including with Prime Minister Salomón Lerner Ghitis, Minister Luis Miguel Castilla, and Minister Carlos Herrera Descalzi on or about 24 August 2011, and with Vice Minister Laura Calderón Regjo, and Director Camacho throughout September 2011. <i>See</i> Santa María ¶¶ 31-40. He explains that these projections</p>

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	<p>assumed that SMCV would not be subject to royalty or SMT payments. Santa María ¶¶ 27, 38. Further, Mr. Santa María, testifies that Peru reviewed, never questioned, and adopted APOYO proposals and projections for the SMT and GEM that classified SMCV as part of the “group of stabilized mining companies that would not pay royalties or the SMT” “for some part of its operations.” Santa María ¶¶ 38-41, 45. Freeport submits documentary evidence corroborating Mr. Santa María’s testimony. <i>See Ex. CE-622</i>; Santa María, Appendix C.</p> <p>Peru argues that “the fact that a company is classified as a ‘stabilized company’ by a private association . . . does not mean that it is exempt from paying royalties.” Respondent’s Counter-Memorial ¶ 228. Peru offers testimony from Mr. Camacho that meetings concerning the preparation of the SMT and GEM program never involved discussions about the scope of stability agreements. Camacho ¶¶ 29-30. However, Mr. Camacho does not provide any documentary evidence to support this assertion.</p> <p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Agreed production: Respondent does not object to Request No. 26. Respondent is reviewing its files and, subject to its general objections noted on pages 4-5 above, will produce to Claimant any responsive documents that it is able to locate.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport agrees to Peru’s agreed production.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note of Respondent’s agreement, subject to its general objections, to voluntarily produce documents it is able to locate which were prepared, sent, or received by Minister or Vice-Minister of Economy and Finance, the Minister or Vice-Minister of Mines, Prime Minister Salomón Lerner Ghitis, Minister Luis Miguel Castilla, Minister Carlos Herrera Descalzi, Vice Minister Laura Calderón Regjo, or Director Marco Camacho concerning projected GEM, SMT, or royalty collections, including but not limited to:</p> <p>a) Documents concerning the projected impact of mining stability agreements on GEM, SMT, or royalty collections;</p>

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	<p>b) Documents concerning projected GEM, SMT, or royalty collections from SMCV; and</p> <p>c) Communications or records of communications concerning the meeting between the Government and the Mining Society, on or about 24 August 2011.</p> <p>Accordingly, the Tribunal orders Respondent to produce such Documents.</p>
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Documents Concerning Political Backlash Against SMCV and SUNAT	
Document Request No.	27
Documents or category of requested documents	<p>Case files of any complaints, claims, or lawsuits with or against SUNAT for matters involving SMCV filed by Arequipa activist Dante Martínez Palacios, including the case file corresponding to the November 2007 complaint referenced in Ex. CE-572, Dante Martinez, THE IMPUNITY AND HIDDEN TRUTH OF SOCIEDAD MINERA CERRO VERDE - SMCV (7 January 2008).</p> <p>Time frame of issuance: From 1 June 2006 to 31 December 2012.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant’s Memorial ¶¶ 159, 169, 373-77; Ex. CE-603, CE-572.</p> <p>Respondent’s Counter-Memorial ¶ 677.</p> <p>(2) <i>See</i> justification for Request Nos. 1, 3, 4, 5, & 8 above. Freeport contends that Peru adopted its novel and restrictive interpretation of the Stability Agreement as a result of political pressure, targeted at SMCV, MINEM, SUNAT, MEF, and specific Government Officials. <i>See</i> Claimant’s Memorial ¶¶ 373-77. In support of this contention, Freeport submits documentary evidence of complaints filed by Arequipa activist Dante Martínez Palacios against SMCV and SUNAT in November 2007 and April 2009, alleging that the parties colluded to commit tax fraud in relation to the reinvestment benefit and non-payment of royalties, demanding that SUNAT assess royalties against SMCV, and denouncing SUNAT’s alleged “systematic reluctance to comply with its duties to assess and collect taxes and royalties evaded by SMCV.” Claimant’s Memorial ¶ 376; Ex. CE-603, CE-572.</p> <p>Peru maintains that Freeport’s claim that Peru’s interpretation of the Stability Agreement was the result of political pressure is “without merit.” Respondent’s Counter-Memorial ¶ 677.</p> <p>The requested information is not at Freeport’s disposal because it is non-public documentation of claims, complaints, or lawsuits to which Freeport is not a party, which Peru is in a position to access without undue burden.</p>

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<p>Agreement to produce or</p> <p>Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent objects to Request No. 27.</p> <ul style="list-style-type: none">• <u>Relevance and materiality</u>: Respondent objects to Request No. 27 on the basis that Claimant has failed to show how the documents it is requesting are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant’s reason for its Request is that the documents it seeks relate to its argument that “Peru adopted its novel and restrictive interpretation of the Stability Agreement as a result of political pressure, targeted at SMCV, MINEM, SUNAT, MEF, and specific Government Officials.” Regardless of the information included in Mr. Martínez’s complaints, claims, or lawsuits, the documents that Claimant requests will only show Mr. Martínez’s complaints; they will not prove that the Peruvian Government took any particular actions and cannot possibly show the reasons for any actions taken by Government officials (including whether Government officials took any actions as a result of alleged “political pressure”). Thus, the documents Claimant seeks are irrelevant and immaterial to this dispute. <p><u>Procedural economy and fairness</u>: Respondent also objects to Claimant’s Request No. 27 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. Claimant’s reason for its Request is to support its allegation that Perú allegedly adopted its interpretation of the Stability Agreement “as a result of political pressure.” Claimant has submitted no credible evidence to support its assertion. Claimant is instead seeking to obtain documents it believes to be in Respondent’s possession, custody, and control, speculating that any such documents could contain information that it might be able to use to support its case. However, in international arbitration, document production is not intended as an avenue for Claimant to conduct an audit to see “whether” documents are useful for Claimant’s case: “[t]he focus of disclosure should be on obtaining relevant and material evidence, <i>not playing guessing games</i>.”³⁹ Claimant’s Request is an impermissible attempt to introduce US-style discovery into these arbitral proceedings, rather than following a document production exercise pursuant to the IBA Rules.</p> <ul style="list-style-type: none">• <u>Possession, custody, or control</u>: Respondent also objects to Request No. 27 on the basis that Claimant has failed to show that all the documents requested are not in Claimant’s possession, custody, or control as required under Article 3(3)(c) of the IBA Rules. <p><i>First</i>, some of the documents in Mr. Martínez’s lawsuit case file can be accessed online through the <i>Poder Judicial</i>’s website (link) (<i>e.g.</i>, all the resolutions in such proceeding) and, thus, are already available to Claimant.</p>
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³⁹ G. Born, *International Commercial Arbitration* (2d ed. 2014), at pp. 2359, 236 (emphasis added).

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	<p><i>Second</i>, Claimant has already exhibited one of Mr. Martínez’s briefs in his lawsuit against SUNAT involving SMCV (<i>see</i> Exhibit CE-588). Thus, Claimant has demonstrated that it has access to some of the documents it is requesting, and it is not Respondent’s responsibility to compile further such documents for Claimant.</p>
<p>Requesting party reply</p>	<p>Relevance and materiality: Peru’s objection is misconceived. As set forth above, Freeport has submitted witness testimony and documentary evidence demonstrating that, after the adoption of the Royalty Law and a drastic rise in copper prices, members of Congress and Arequipa activist Dante Martínez Palacios launched a campaign to collect royalties from SMCV in violation of the Stability Agreement. Claimant’s Memorial ¶¶ 130-39. <i>See also</i> Exs. CE-506, CE-512, CE-515, CE-517, CE-519-20, CE-523, CE-525; Torreblanca ¶¶ 63-81; Flury ¶¶ 28-31. Contrary to Peru’s objection, the requested documents are relevant and material because they will demonstrate whether SUNAT took the position that the Stability Agreement precluded the collection of royalties from SMCV in proceedings concerning SMCV that Mr. Martínez Palacios initiated with or against SUNAT. They will also demonstrate the extent to which SUNAT officials were subjected to political pressure to collect royalties from SMCV in violation of the Stability Agreement.</p> <p>Procedural economy and fairness: Peru’s claim that Freeport has “submitted no credible evidence to support its assertion” that Peru adopted its novel and restrictive interpretation of the Stability Agreement as a result of political pressure is inconsistent with the evidentiary record. As set forth in Freeport’s justifications for Requests 1, 3, 4, 5, 8 and 27, Freeport has submitted witness testimony and documentary evidence demonstrating that Peru consistently applied stability benefits to entire concessions, mining units, and EAUs. Claimant’s Memorial ¶¶ 313-19, 328-34, 381-82; Chappuis ¶¶ 28, 45, 52-55; Torreblanca ¶¶ 31-32, 53; Davenport ¶¶ 31, 33, 36-39; Morán ¶ 25. In 2005 members of Congress launched a campaign to collect royalties from SMCV in violation of the Stability Agreement. Claimant’s Memorial ¶¶ 130-39. <i>See also</i> Exs. CE-500, CE-506-12, CE-515, CE-517, CE-519-20, CE-523, CE-525, Torreblanca ¶¶ 63-81; Flury ¶¶ 28-31. Yet, in April and September 2005, Mr. Isasi prepared MINEM reports confirming that stabilized concessions would not be subject to the Royalty Law and concluding that SMCV was appropriately entitled to the reinvestment of profits benefit. Exs. CE-494; CE-512. In September 2005, Congressmen Diez Canseco and Oré ratcheted up the political pressure, requesting information about the Stability Agreement from MINEM, demanding that Minister Sánchez Mejía revoke SMCV’s authorization to reinvest profits and require SMCV to pay royalties, and threatening to “denounce” the Minister “constitutionally” if he failed to do so. Exs. CE-508, Ex-CE-509. One month later, Minister Sánchez Mejía sent a letter to Congressman Oré acknowledging that SMCV was entitled to use the profit investment but asserting, with no legal basis, that the Concentrator was not covered by the Stability Agreement. Ex. CE-515. That same month, the <i>Peruvian Congress</i> created a special Working Group to “investigate the [alleged tax benefits SMCV may have] received” and “adopt the appropriate measures.” Ex. CE-516. In November 2005, again, with no legal basis, Minister Sánchez Mejía sent a letter to Congressman Diez Canseco stating that the Concentrator was not covered by the Stability Agreement. Ex. CE-519. In March 2006, members of the Congressional Working Group convened to investigate SMCV reportedly decried the erroneous proposition that SMCV “does not pay taxes or fees” or “help the development in the district.” Ex. CE-</p>

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	<p>525. Finally, following nearly a year of sustained political pressure, Mr. Isasi authored the June 2006 Report, which, for the first time, set forth MINEM’s position that the Stability Agreement would not apply to the Concentrator because stability guarantees are limited to specific investment projects. Ex. CE-574. In November 2007, Arequipa activist, Dante Martínez Palacios, intensified the pressure on SUNAT by filing complaints against SMCV with SUNAT alleging that SMCV had improperly evaded royalties through “fraudulent actions” and collusion with Peruvian officials, and demanding that SUNAT assess royalties against SMCV. Claimant’s Memorial ¶ 165. On 4 April 2009, Mr. Martínez filed claims against SUNAT before the Contentious Administrative Courts, decrying SUNAT’s “systematic reluctance to comply with its duties to assess and collect taxes and royalties evaded by SMCV.” Ex. CE-603. Thereafter, in August 2009, for the first time SUNAT abandoned its previous extension of stability guarantees to all investments made within SMCV’s mining unit and took the position that only the investments included in the investment program of the feasibility study were covered by the stability guarantees. Thus, this is not a situation in which a party is seeking documents to support unfounded allegations or claims. Freeport has submitted extensive evidence circumstantially demonstrating that a sustained political campaign, launched after the adoption of the Royalty Law and a drastic rise in copper prices, led Peru to adopt its novel and restrictive interpretation of the Stability Agreement. The case files of complaints, claims, or lawsuits filed as part of that campaign will provide additional context to existing record evidence and, therefore, are clearly relevant and material to key issues in dispute.</p> <p><u>Possession, custody, or control:</u> Peru’s objection is meritless to the extent that it seeks to avoid disclosure of documents that are not in Freeport’s or SMCV’s possession, custody, or control. Freeport and SMCV are only in possession of one of the briefs that Dante Martínez Palacios filed in his lawsuit against SUNAT. <i>See Ex. CE-588.</i> However, Freeport is not in possession of the rest of the case file, which is not publicly available.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal orders Respondent to produce the case file corresponding to the November 2007 complaint referenced in Ex. CE-572.</p> <p>The Tribunal rejects the remainder of Claimant’s Request No. 27 as overly broad.</p>

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Documents Concerning Peru's Experts	
Document Request No.	28
Documents or category of requested documents	<p>Documents concerning the retention of Francisco José Eguiguren Praeli:</p> <ul style="list-style-type: none"> a) As counsel to SUNAT's Public Attorney's Office in the judicial proceedings in the 2006/07 and 2008 Royalty Cases, identified in RER-1, Eguiguren Expert Report, ¶¶ 8-9 by case numbers: (i) 07649-2013-0-1801-JR-CA-23 and Cassation 18174; and (ii) 07650-2013-0-1801-JR-CA-18 and Cassation 05212-2016, including: <ul style="list-style-type: none"> i. Documents concerning the selection and hiring of Mr. Eguiguren, including any contracts. ii. Documents concerning remuneration paid to Mr. Eguiguren. iii. Documents recording the conclusion of Mr. Eguiguren's representation. b) As expert in this Arbitration, including documents relating to Mr. Eguiguren's compensation and instructions for his engagement. <p>Time frame of issuance: From 1 December 2015 to 27 February 2020.</p>
Relevance and materiality:	(1) Eguiguren ¶¶ 8-9.
(1) para ref to submissions	(2) This information is relevant and material to the Tribunal's assessment of the credibility and reliability of Mr. Eguiguren's testimony.
(2) comments	In his Expert Report, Mr. Eguiguren disclosed that he served as counsel to SUNAT's Public Attorney's Office in the judicial proceedings in the 2006/07 and 2008 Royalty Cases and provided "support for how to interpret, based on the Constitution and mining legislation, the content and scope of legal stabilization agreements and the guarantees they provide to the investor." Eguiguren ¶¶ 8-9. This previous engagement raises doubts about the credibility and reliability of Mr. Eguiguren's testimony in this Arbitration.

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	<p>The requested information is not at Freeport’s disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Respondent objects to Request No. 28.</p> <p><u>Request No. 28(a)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: Respondent objects to Request No. 28(a) on the basis that Claimant has failed to show how the requested documents are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant’s reason for its Request is that the documents concerning the retention of Mr. Eguiguren as counsel to SUNAT’s Public Attorney’s Office in the judicial proceedings in the 2006/07 and 2008 Royalty Cases could supposedly “rais[e] doubts about the credibility and reliability of Dr. Eguiguren’s testimony in this Arbitration.” Claimant’s position is without merit since none of the requested documents can serve that purpose. <i>First</i>, the documents concerning the remuneration that Mr. Eguiguren received to be SUNAT’s counsel in another proceeding are totally irrelevant to assess his credibility or reliability in this arbitration. Of course external litigation counsel are paid, and the remuneration of a lawyer will vary depending on several factors (<i>e.g.</i>, hours billed, complexity of the matter, or number of lawyers involved in the case). The fact or terms of Dr. Eguiguren’s compensation will not prove anything. <i>Second</i>, Claimant has failed to show how the documents concerning the selection and hiring of Dr. Eguiguren as a counsel, including any contracts, in another proceeding that took place more than six years ago could help to assess the credibility and reliability of Dr. Eguiguren’s testimony in this arbitration. <i>Third</i>, similarly, Claimant has failed to explain how documents recording the conclusion of Dr. Eguiguren’s representation in another proceeding can implicate Dr. Eguiguren’s credibility and reliability in this arbitration. • <u>Privilege, confidentiality</u>: Respondent also objects to Request No. 28(a) pursuant to Articles 9(2)(b) and (e), and 9(4) of the IBA Rules on the basis that such Request will necessarily include documents protected by privilege and that contain confidential information. Dr. Eguiguren was SUNAT’s counsel in the judicial proceedings in the 2006-2007 and 2008 Royalty Cases. Therefore various sections of (i) the documents concerning the selection and hiring of Dr. Eguiguren, and (ii) the documents concerning remuneration paid to Dr. Eguiguren, are likely protected under attorney-client privilege. <p><u>Request No. 28(b)</u></p> <ul style="list-style-type: none"> • <u>Lack of relevance</u>: Respondent objects to Request No. 28(b) on the basis that Claimant has failed to show how the requested documents are relevant and material to the outcome of this case as required under Article 3(3)(b) of the IBA Rules (<i>see also</i> Article 9(2)(a) of the IBA Rules). Claimant simply asserts, without more, that the documents it seeks are “relevant and material

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	<p>to the Tribunal’s assessment of the credibility and reliability of Dr. Eguiguren’s testimony.” However, none of the requested documents can serve that purpose. <i>First</i>, the documents concerning the remuneration paid to Dr. Eguiguren in this arbitration are totally irrelevant to assess his credibility or reliability. All experts are paid, and the remuneration of an expert will vary depending on several factors (<i>e.g.</i>, experience, country where the expert resides). <i>Second</i>, Claimant has failed to show how the instructions for Dr. Eguiguren’s engagement in this arbitration could raise issues regarding Dr. Eguiguren’s credibility or reliability.</p> <ul style="list-style-type: none"> • <u>Privilege, confidentiality</u>: Respondent also objects to Request No. 28(b) pursuant to Articles 9(2)(b) and (e), and 9(4) of the IBA Rules on the basis that such Request will necessarily include documents or sections of documents protected by privilege and that are or contain confidential information.
<p>Requesting party reply</p>	<p><u>Request No. 28(a)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: Documents concerning the representation of Peru in <i>proceedings against SMCV concerning the 2006-2007 and 2008 Royalty Assessments</i> by Peru’s expert, Dr. Eguiguren, are plainly relevant and material to the Tribunal’s assessment of the credibility and reliability of Dr. Eguiguren’s “expert evidence.” • <u>Privilege, confidentiality</u>: Without prejudice to the General Replies, Freeport proposes that Peru redact information protected by attorney-client privilege from documents responsive to Request No. 28(a). <p><u>Request No. 28(b)</u></p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: Freeport incorporates by reference its reply to Peru’s “relevance and materiality” objection to Request No. 28(a) above. • <u>Privilege, confidentiality</u>: Without prejudice to the General Replies, Freeport proposes that Peru redact information protected by attorney-client privilege from documents responsive to Request No. 28(b).
<p>Decision of the Tribunal</p>	<p>The Tribunal rejects Claimant’s Request No. 28. The Tribunal does not consider the requested Documents to be <i>prima facie</i> relevant to the case and material to its outcome.</p>

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Documents Supporting Freeport's Claims	
Document Request No.	29
Documents or category of requested documents	<p>Any non-public documents in the possession of Peru's arbitration counsel (Stanimir A. Alexandrov PLLC, Sidley Austin LLP, or Estudio Navarro & Pazo) that have not been exhibited in this arbitration:</p> <ul style="list-style-type: none"> a) Supporting Freeport's claims that stability guarantees under the Stability Agreement and the Mining Law and Regulations extend to entire concessions, mining units, or EAUs; or b) Demonstrating reasonable doubt concerning the scope of stability guarantees under the Stability Agreement and the Mining Law and Regulations. <p>Time frame of issuance: From 1 August 1990 to 30 April 2020.</p>
Relevance and materiality: (1) para ref to submissions (2) comments	<p>(1) Claimant's Memorial. Respondent's Counter-Memorial.</p> <p>(2) See justification for Requests Nos. 1-27 above.</p> <p>The requested information is not at Freeport's disposal because it is internal governmental documentation, which Peru is in a position to access without undue burden.</p>
Agreement to produce or Summary of objections by disputing Party to production of requested documents	<p>Respondent objects to Request No. 29.</p> <ul style="list-style-type: none"> • Lack of specificity: Respondent objects to Request No. 29 on the basis that the Request is excessive and overbroad (<i>see</i> Article 3.3(a) of the IBA Rules). It is common ground that the requirement of specificity in the IBA Rules is intended to prevent "'fishing expeditions,' [which are] aimed at identifying possible sources of further inquiry, rather than at obtaining materials that

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are likely to be adduced as evidence in support of existing claims.”⁴⁰ The “*narrow and specific*” standard necessitates that a request be tailored and “*limited in time and subject matter*.”⁴¹ Claimant has not adhered to the narrow and specific standard: Claimant makes a sweeping request for documents from Respondent’s counsel addressing topics as vague as “Freeport’s claims that stability guarantees under the Stability Agreement . . . extend to entire concessions, mining units, or EAUs” over a period of 30 years. Claimant’s Request conceivably includes any and all documents vaguely mentioning the 1998 Stabilization Agreement. This Request is not narrow by any means and is in essence an impermissible, full-fledged discovery request of any and all documents in Respondent’s counsel possession that could possibly support Claimant’s claims—which Claimant plans to use to further develop additional arguments not already pleaded. This is not permitted under the IBA Rules. Also, Respondent notes that this Request is phrased so broadly that it significantly overlaps with all of Claimant’s Requests No. 1-28.

- **Procedural economy and fairness**: Respondent also objects to Claimant’s Request No. 29 on the basis that the Request is inconsistent with procedural economy and fairness to Respondent as provided for in Article 9(2)(g) of the IBA Rules. This is an international arbitration and expansive discovery in the guise of document requests is not permitted. As the IBA Task Force explains, “Expansive American- or English-style discovery is generally inappropriate in international arbitration. Rather, requests for documents to be produced should be carefully tailored to issues that are relevant and material to the determination of the case.”⁴²

Respondent’s Request is a textbook definition of a fishing expedition. Claimant is requesting “[a]ny non-public documents in the possession of Perú’s arbitration counsel . . .” that may support Claimant’s claims over a period of 30 years. Document production is not intended as an avenue for Claimant to conduct an audit—of Respondent’s counsel, no less—to see “whether” non-public documents in Respondent’s counsel possession, custody, or control of over a period of 30 years are useful for Claimant’s case. Claimant is fishing for information that it hopes exists on the off chance it can use something to support its case. Indeed, this Request is an impermissible attempt to introduce US-style discovery, that does not follow the document production exercise that the Tribunal suggested pursuant to the IBA Rules (*see* PO1, para. 16.4).

- **Privilege, confidentiality**: Respondent also objects to Request No. 29 pursuant to Articles 9(2)(b) and (e), and 9(4) of the IBA Rules on the basis that such Request will necessarily include documents protected by privilege and that are or contain

⁴⁰ Gary Born, *International Commercial Arbitration* (2nd Ed), 2360 (2014). *See also* Jeffrey Waincymer, *Procedure and Evidence in International Arbitrations*, 842 (2012); Bernard Hanotiau, *Document Production in International Arbitration: A tentative definition of “Best Practices,”* ICC International Court of Arbitration Bulletin (Special Supplement) (2006) at 117; and Hilmar Raeschke-Kessler, *The Production of Documents in International Arbitration - A Commentary on Article 3 of the New IBA Rules of Evidence*, 18(4) *Arbitration International*, 411, 417 (2002).

⁴¹ Nathan O’Malley, *Document Production under Art. 3 of the 2010 IBA Rules of Evidence*, *International Arbitration Law Review* 186 (2010) at 187 (emphasis added). *See also International Thunderbird Gaming Corp. v. United Mexican States* (UNCITRAL/NAFTA), Procedural Order No. 2, July 31, 2003, 2.

⁴² IBA Task Force for the Revision of the IBA Rules on the Taking of Evidence in International Arbitration, *Commentary on the revised text of the 2020 IBA Rules of the Taking of Evidence in International Arbitration* (January 2021) at 8, available at <https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D>.

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	<p>confidential and/or commercially sensitive information. In particular, Respondent’s counsel evidently has had, and will continue to have, expectations of legal privilege over the interactions they have had with Respondent and among themselves (<i>see</i> IBA Rules, Article 9.4(c)) and have not waived any such privilege (<i>see</i> IBA Rules, Article 9.4(d)). Therefore the work-product prepared by and for, and communications exchanged between, for example, Respondent’s counsel and Respondent or among Respondent’s lawyers are protected as privileged and confidential and cannot be produced.</p> <p>In sum, Claimant’s Request No. 29 does not seek to clarify the factual issues in dispute, but constitutes an impermissible fishing expedition to see what, if anything, Claimant can obtain from Respondent in support of its claims.</p>
<p>Requesting party reply</p>	<p>Without prejudice to the General Replies, Freeport withdraws Request 29.</p>
<p>Decision of the Tribunal</p>	<p>No decision required as Claimant has withdrawn Request No. 29.</p>

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Appendix 2 to Procedural Order No. 2 dated 4 July 2022

Respondent's Document Production Requests

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Document Request No.	1.
Documents or Category of Requested Documents	<p>Any pre-feasibility study/studies prepared by or at the request of Phelps Dodge Mining Corporation (“Phelps Dodge”) or Sociedad Minera Cerro Verde S.A.A. (“SMCV”), prior to contracting Fluor Canada Ltd. (“Fluor”), used to prepare SMCV’s primary sulfide project feasibility study dated May 2004 (the “2004 Feasibility Study”), and any documents discussing the scope of the 1998 Stabilization Agreement used to prepare such pre-feasibility study/studies, including but not limited to:</p> <p style="padding-left: 40px;">(i) the preliminary feasibility study that was prepared in 2002 (the “2002 Pre-Feasibility Study”) [<i>see</i> Exhibit CE-20, p. 4], and any documents (<i>e.g.</i>, Excel spreadsheets, letters, models) used to prepare the 2002 Pre-Feasibility Study which discuss the scope of the 1998 Stabilization Agreement.</p> <p><u>Time frame of the Request:</u> From the time SMCV and/or Phelps Dodge discussed for the first time building a concentrator until engaging Fluor in June 2003 to conduct a feasibility study for construction of the same [<i>see</i> Claimant’s Memorial, para. 90].</p>
Relevance and Materiality: (1) Paragraph Reference in Submissions (2) Comments	<p>(1) Paragraph Reference in Submissions</p> <ul style="list-style-type: none"> • 2004 Feasibility Study, p. 2 [Exhibit CE-20]. • Fluor, SMCV Updated Primary Sulfide Project Feasibility Study Project Update (“2004 Updated Feasibility Study,” and together with the 2004 Feasibility Study the “2004 Feasibility Studies”), p. 4 [Exhibit CE-459]. • Mr. Davenport WS, para. 25 [CWS-5]. • Claimant’s Memorial, para. 90. <p>(2) Comments</p> <p><i>First</i>, Claimant asserts that “SMCV and Freeport’s predecessor, Phelps Dodge, invested in the Concentrator in <i>reliance</i> on the reasonable expectation that Peru would honor [the guarantees provided in the 1998 Stabilization Agreement]” (<i>see</i> Claimant’s Memorial, para. 371) (emphasis added). In particular, Claimant notes, as an example, that “[t]he [2004 Feasibility Studies] . . . explicitly assumed that SMCV would be entitled to rely on the stabilized regime through December 31, 2013” (Claimant’s Memorial, para 371(d); <i>see also</i> Exhibit CE-20, pp. 167-168 pdf;</p>

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and Exhibit CE-459, p. 46). Therefore, there is no doubt that the 2004 Feasibility Studies and the documents discussing the scope of the 1998 Stabilization Agreement that served as a basis of such studies, are relevant and material for this dispute.

Second, the 2004 Feasibility Studies *took into account the 2002 Pre-Feasibility Study* (see Exhibits CE-20, pp. 2-4 and CE-459, pp. 2-4). Claimant admits that SMCV created the 2002 Pre-Feasibility Study to decide whether to invest in a large concentrator plant (see Claimant’s Memorial, para. 90; see also CWS-5, para. 25). Also, Mr. Davenport, former President and General Manager of SMCV, explains in his witness statement that based on the results of the 2002 Pre-Feasibility Study, (i) he managed to convince Phelps Dodge to consider investing “in a concentrator at Cerro Verde against investment in world-class copper deposits”; and (ii) he suggested that Phelps Dodge commission the 2004 Feasibility Study (see CWS-5, paras. 25-26).

However, Claimant failed to submit with its Memorial (i) the 2002 Pre-Feasibility Study, (ii) any other pre-feasibility study that served as a basis for the 2004 Feasibility Studies, or (iii) any documents discussing the scope of the 1998 Stabilization Agreement that were used to prepare the 2002 Pre-Feasibility Study or any other pre-feasibility study that served as a basis for the 2004 Feasibility Studies.

The requested documents are relevant, because they would likely provide additional information regarding:

- (i) SMCV’s and Phelps Dodge’s (Freeport’s predecessor) understanding of whether or not the Concentrator was covered by the 1998 Stabilization Agreement, which is relevant to assess, among other things, Claimant’s legitimate expectations claim (see Claimant’s Memorial, Section IV.B.2(i), and Respondent’s Counter-Memorial Section II.C.3 and 4);
- (ii) whether or not SMCV and Phelps Dodge (Freeport’s predecessor) took into account the benefits of the 1998 Stabilization Agreement when considering the viability of the Concentrator Project, which is relevant to assess, among other things, Claimant’s legitimate expectations claim (see Claimant’s Memorial, Section IV.B.2.(i), and Respondent’s Counter-Memorial Section II.C.3 and 4); and
- (iii) whether the preliminary analysis that led to the building (and ultimately, operation) of the Concentrator Plant varied from 2002 to 2004 and, in particular, whether the 2002 analysis was based on the same assumptions as the 2004 analysis.

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<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth and for the reasons set forth in the General Objections.</p> <p>This request is overbroad. To the extent it seeks “any documents discussing the scope of the 1998 Stabilization Agreement used to prepare such pre-feasibility study/studies,” it does not relate to a narrow and specific category of documents. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). Moreover, the temporal limitation does not contain a specified start date and Peru has not narrowed the request by reference to specific custodians. It is impractical and overly burdensome for Freeport to seek to identify every document discussing the scope of the Stability Agreement that its predecessor used, during a vaguely defined time period, to complete the 2002 Pre-Feasibility Study twenty years ago.</p> <p>Without prejudice to the above objections and the General Objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • The 2002 Pre-Feasibility Study.
<p>Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, specificity. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce “[t]he 2002 Pre-Feasibility Study.” <p>While Respondent will be glad to receive such document, it emphasizes that this Request also focuses on “<i>any</i> pre-feasibility study/studies prepared by or at the request of [Phelps Dodge] or [SMCV] prior to contracting [Fluor]” (emphasis added) used to prepare the 2004 Feasibility Study (including <i>but not limited to</i> the 2002 Pre-Feasibility Study). Respondent notes that Claimant has not established that there are no other pre-feasibility studies that are responsive to Request No. 1 other than the 2002 Pre-Feasibility Study. Also, Respondent requests “any documents discussing the scope of the 1998 Stabilization Agreement used to prepare such pre-feasibility study/studies,” and not only the pre-feasibility study(ies) themselves. Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request.</p>

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Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 1 are misplaced for the following reasons.

- **Amended Request:** Claimant alleges that this Request is overbroad because, among other things, “the temporal limitation does not contain a specified start date.” It is not. Respondent has specified a defined time frame: “from the time the 2004 Feasibility Study was discussed for the first time until engaging Fluor in June 2003.” Of course, it is Claimant, not Respondent, who knows when the 2004 Feasibility Study was first discussed. The specific date is simply not known to Respondent. Even if Respondent did not provide a specific start date, the timeframe for potentially responsive documents is not unlimited. Respondent narrowed its request as much as it could: (i) the time frame identified is less than a year (far less than some of Claimant’s Requests that have a time frame of 17 or 30 years (see Claimant’s document production Requests Nos. 1 and 29)); and (ii) Respondent provided two identifiable moments in time that will allow Claimant to easily locate the requested documents. In any event, in a good faith effort to collaborate, and considering Claimant’s objections, Respondent narrows the scope of Request No. 1:
 - From: “Time frame of the Request: From the time SMCV and/or Phelps Dodge discussed for the first time building a concentrator until engaging Fluor in June 2003.”
 - To: “Time frame of the Request: From January 2003 to June 2003” (Respondent believes that it is reasonable to believe that Fluor and Phelps Dodge started conversations about Fluor’s potential engagement six months prior to Fluor’s formal engagement).

To be clear, Respondent includes within the scope of this Request the documents that identify the potential oral or written instructions provided to Fluor before its formal engagement. Indeed, it is common practice to work with an entity prior to official retention.

- **Specificity:** Respondent notes that Claimant has not objected to the specificity of “[a]ny pre-feasibility study/studies prepared by or at the request of [Phelps Dodge] or [SMCV] prior to contracting [Fluor].” Claimant only alleges that “any documents discussing the scope of the 1998 Stabilization Agreement used to prepare such pre-feasibility study/studies” is an overbroad request. It is not. Respondent’s Request (i) identifies the relevant parties (SMCV or Phelps Dodge); (ii) is limited to a particular subject (any documents discussing the scope of the 1998 Stabilization Agreement Project used to prepare the 2002 Pre-Feasibility Study); and (iii) is limited to a defined time frame (from

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	<p>January 2003 to June 2003). This Request is narrow and specific, even if Respondent does not list specific custodians. Respondent notes that Claimant is the one in the position to know who its own custodians of the requested documents are—as Claimant is the party that has access to the requested documents. Claimant cannot expect Respondent to list the specific persons who are in the possession, custody, or control of the requested documents as Respondent was not a party to the engagement with Flour. Respondent notes that <u>Claimant itself has not identified specific custodians in most of its document production requests.</u>¹ In any event, <i>at a minimum</i> the requested documents should be in the possession, custody, or control of the following persons and/or entities: (i) Mr. Davenport (<i>see</i> CWS-5, para. 25); and (ii) Phelps Dodge and/or SMCV high officials (<i>e.g.</i>, members of the board or CEO during the identified time frame).</p> <ul style="list-style-type: none"> • Privilege: Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described in <i>supra</i> p. ii.
Decision of the Tribunal	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged document, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: The 2002 Pre-Feasibility Study. Accordingly, the Tribunal orders Claimant to produce such Document.</p> <p>The Tribunal also takes note of Respondent’s amended request. With respect to Respondent’s request for any other pre-feasibility study prepared by or at the request of Phelps Dodge or SMCV, the Tribunal notes that Claimant has also agreed to voluntarily produce all pre-feasibility studies prepared in advance of the 1996 Feasibility Study and after the 1995 Pre-Feasibility Study under Request No. 3. The Tribunal thus expects that Claimant is in a position to reasonably undertake the same document production exercise under Request No. 1. Accordingly, the Tribunal orders Claimant to produce all pre-feasibility studies prepared by or at the request of Phelps Dodge or</p>

¹ See *e.g.*, Claimant’s Document Production Requests Nos. 1, 6, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, and 27.

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	<p>SMCV used to prepare the 2004 Feasibility Study, in the timeframe as amended by Respondent (<i>i.e.</i> from January 2003 to June 2003).</p> <p>The Tribunal rejects the remainder of Request No. 1 as overly broad.</p>
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Document Request No.	2.
Documents or Category of Requested Documents	<p>Any document(s) (<i>e.g.</i>, correspondence, contracts, letters, meeting minutes, agendas, presentations, reports, Excel spreadsheets) that (i) record or discuss the oral or written instructions that Phelps Dodge and/or SMCV provided to Fluor to prepare the 2004 Feasibility Study and/or the 2004 Updated Feasibility Study, and/or (ii) discuss the scope of the 1998 Stabilization Agreement in connection with the Feasibility Studies, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any document(s) regarding “an alignment session [which] was held with the principal stakeholders in the project to articulate key project objectives for the [2004 Feasibility Study and/or the 2004 Updated Feasibility Study] and the project” [Exhibit CE-459, p. 2]; (ii) Any document(s) discussing the scope of the 2004 Feasibility Study and/or the 2004 Updated Feasibility Study and/or Fluor’s mandate; (iii) Any document(s) that reflect what Fluor had to assume for the purposes of undertaking the 2004 Feasibility Study, and/or the 2004 Updated Feasibility Study, as well as the basis for any such assumptions; and (iv) Any document(s) on which Fluor based the 2004 Feasibility Study and/or the 2004 Updated Feasibility Study (<i>e.g.</i>, preliminary economic and financial analysis of the Concentrator Project). <p><u>Time frame of the Request:</u> From the time SMCV and/or Phelps Dodge and Fluor started discussing the 2004 Feasibility Study (including any communications between SMCV and/or Phelps Dodge and Fluor prior to Fluor’s formal engagement in June 2003), until September 2004 (when Fluor delivered the 2004 Updated Feasibility Study).</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • 2004 Feasibility Study, pp. 4, 167-168 pdf [Exhibit CE-20]. • 2004 Updated Feasibility Study, pp. 2, 46 [Exhibit CE-459]. • Mr. Davenport WS, para. 40 [CWS-5]. • Mr. Morán WS, paras. 23, 29 [CWS-8].

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	<ul style="list-style-type: none"> • Ms. Torreblanca WS, paras. 22, 27 [CWS-11]. • Claimant’s Memorial, para. 96. <p>(2) Comments</p> <p>In June 2003, Phelps Dodge retained Fluor to prepare the 2004 Feasibility Study, presumably in order to make an informed decision on whether to invest in the Concentrator Project. In May 2004, Fluor delivered the 2004 Feasibility Study, and in September 2004 it delivered the Updated Feasibility Study. In both Feasibility Studies, Fluor was <i>explicitly asked to assume</i> that the 1998 Stabilization Agreement would cover any taxes and/or royalties that would otherwise apply to the Concentrator Plant through December 31, 2013 (<i>see</i> Claimant’s Memorial, para. 371(d) (“The 2004 Feasibility Study and its September 2004 update explicitly assumed that SMCV would be entitled to rely on the stabilized regime through December 31, 2013.”); CWS- 5, para. 40 (“we agreed with Fluor to retain the assumption that the Stability Agreement would apply to the concentrator . . . ”); CWS-8, para. 23 (“To model the proposed scenarios, Fluor reflected our understanding that the Stability Agreement would cover the Concentrator.”); Exhibit CE-20, pp. 167-168 pdf; and Exhibit CE-459, p. 46).</p> <p>However, Claimant failed to submit with its Memorial the Phelps Dodge documents or SMCV documents on which Fluor relied in making or accepting that assumption, and Claimant also failed to explain or exhibit in its Memorial the instructions that Fluor received to conduct the 2004 Feasibility Studies.</p> <p>The requested documents are relevant in that they are likely to show the basis (or lack thereof) for Phelps Dodge’s (Claimant’s predecessor) and SMCV’s assumption that “the Stability Agreement would apply to the concentrator” (CWS-5, para. 40) and whether the assumptions Fluor made in the 2004 Feasibility Studies were reasonable.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth, irrelevance and immateriality, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request does not relate to a “narrow and specific” category of documents. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). It seeks “[a]ny document(s)” prepared by unspecified persons during a vaguely defined time period. Rather than identify a specific document or set of documents, such as “written instructions provided to Fluor,” it employs vague descriptions such as documents “that . . . record or discuss the oral or written instructions,” “that reflect what Fluor had to assume,” and “on which</p>

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	<p>Fluor based the 2004 Feasibility” Studies. These descriptions are insufficient to identify the specific documents the request seeks. Moreover, the temporal limitation does not contain a specified start date, such as June 2003 when Fluor was retained to prepare the 2004 Feasibility Study, and Peru has not narrowed the request by reference to specific custodians. <i>See Ex. CE-20</i>, Vol. I, p. 1.</p> <p><i>Second</i>, to the extent the request seeks documents unrelated to the scope of the Stability Agreement, it seeks documents that are irrelevant and immaterial. <i>See IBA Rules</i>, Art. 9(2)(a). The 2004 Feasibility Studies, collectively span over 400 pages and contain dozens of appendices, covering a wide array of subjects, including, <i>inter alia</i>, mine location detail, geology, mineral reserves, waste disposal, and occupational health and safety. <i>See Ex. CE-20</i>, Vol. 1, Table of Contents (Executive Summary Table of Contents); Vol. 1, p. 88 (Typical Index for Volumes 2, 3, 4, 5). The great majority of the instructions Fluor would have received to prepare the 2004 Feasibility Study have nothing to do with the Stability Agreement or its scope.</p> <p>Without prejudice to these objections and the General Objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Written instructions relating to the scope of the Stability Agreement provided to Fluor from June 2003 to September 2004 for purposes of preparing the 2004 Feasibility Study and the 2004 Updated Feasibility Study.
<p>Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, relevance and specificity. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce the “[w]ritten instructions relating to the scope of the Stability Agreement provided to Fluor from June 2003 to September 2004 for purposes of preparing the 2004 Feasibility Study and the 2004 Updated Feasibility Study.” While Respondent will be glad to receive such documents, it emphasizes that its Request also focuses on “[a]ny <u>document(s) . . . that identify the oral . . . instructions</u> that were provided to Fluor to prepare the 2004 Feasibility Study and/or the 2004 Updated Feasibility Study” (emphasis added) (<i>i.e.</i>, not only the written instructions that Claimant has agreed to produce but also the emails or minutes of meetings that record the content of any oral instructions provided to Fluor). In fact, Respondent does not know whether Fluor was given written or oral instructions or both. Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request (as amended below).

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Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 2 are misplaced for the following reasons.

- **Amended Request:** *First*, Respondent understands that not all the instructions that SMCV and/or Phelps Dodge provided to Fluor may be relevant to the instant dispute, because some of them may not relate to the scope of the 1998 Stabilization Agreement. Respondent, thus, narrows the scope of Request No. 2:
 - From: any documents “that (i) record or discuss the oral or written instructions that Phelps Dodge and/or SMCV provided to Fluor to prepare the 2004 Feasibility Study and/or the 2004 Updated Feasibility Study, *and/or* (ii) discuss the scope of the 1998 Stabilization Agreement in connection with the Feasibility Studies” (emphasis added).
 - To: any documents “that (i) record or discuss the oral or written instructions that Phelps Dodge and/or SMCV provided to Fluor to prepare the 2004 Feasibility Study and/or the 2004 Updated Feasibility Study, *and* (ii) discuss the scope of the 1998 Stabilization Agreement in connection with the Feasibility Studies” (emphasis added).

Second, Claimant alleges that this Request is overbroad because, among other things, “the temporal limitation does not contain a specified start date.” It is not. Respondent has specified a defined time frame: “From the time SMCV and/or Phelps Dodge and Fluor started discussing the 2004 Feasibility Study . . . until September 2004.” Of course, it is Claimant, not Respondent, who knows when the 2004 Feasibility Study was first discussed. The specific date is simply not known to Respondent. Even if Respondent did not provide a specific start date, the timeframe for potentially responsive documents is not unlimited. Also, Respondent narrowed its request as much as it could: (i) the time frame is less than two and a half years (far less than some of Claimant’s Requests that have a time frame of 17 or 30 years (*see* Claimant’s document production Requests Nos. 1 and 29)); and (ii) Respondent provided two identifiable moments in time that will allow Claimant to easily locate the requested documents. In any event, in a good faith effort to collaborate, and considering Claimant’s objections, Respondent narrows the scope of Request No. 2:

- From: “Time frame of the Request: From the time SMCV and/or Phelps Dodge and Fluor started discussing the 2004 Feasibility Study (including any communications between SMCV and/or Phelps Dodge and Fluor prior to Fluor’s formal engagement in June 2003), until September 2004 (when Fluor delivered the 2004 Updated Feasibility Study).”

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	<ul style="list-style-type: none"> ○ To: “<u>Time frame of the Request</u>: From January 2003 to September 2004” (In Respondent’s view, it is reasonable to believe that Fluor and Phelps Dodge started conversations about Fluor’s potential engagement six months prior to Fluor’s formal engagement). <p>To be clear, Respondent includes within the scope of this Request the documents that identify the potential oral or written instructions provided to Fluor before its formal engagement. Indeed, it is common practice to work with an entity prior to official retention.</p> <ul style="list-style-type: none"> ● <u>Specificity</u>: Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent identifies <i>one</i> narrow and specific category of documents in its Request (any documents in Claimant’s possession, custody, or control that identify the oral or written instructions that were provided to Fluor to prepare the 2004 Feasibility Studies and that discuss the scope of the 1998 Stabilization Agreement), during a defined time frame (from January 2003 until September 2004). This Request is narrow and specific even if Respondent does not list specific custodians. Respondent notes that Claimant is the one in the position to know who its own custodians of the requested documents are—as Claimant is the party that has access to the requested documents. Claimant cannot expect Respondent to list the specific persons who are in the possession, custody, or control of the requested documents as Respondent was not a party to the engagement with Fluor. Respondent notes that <u>Claimant itself has not identified specific custodians in most of its document production requests.</u>² In any event, <u>at a minimum</u> the requested documents should be in the possession, custody, or control of the following persons and/or entities: (i) Mr. Davenport (<i>see</i> CWS-5, para. 26); and (ii) Phelps Dodge and/or SMCV high officials (<i>e.g.</i>, members of the board or CEO during the identified time frame). In any event, Claimant has agreed to produce the “[w]ritten instructions relating to the scope of the Stability Agreement provided to Fluor from June 2003 to September 2004 for purposes of preparing the 2004 Feasibility Study and the 2004 Updated Feasibility Study”; certainly, in conducting that search, it can easily include documents that identify and/or discuss the instructions that were provided to Fluor. ● <u>Relevance and materiality</u>: Claimant notes that the requested documents are not relevant because “[t]he great majority of the instructions Fluor would have received to prepare the 2004 Feasibility Study have nothing to do with the Stability Agreement or its scope.” Respondent has further narrowed its Request to documents which discuss the scope of the
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² See *e.g.*, Claimant’s Document Production Requests Nos. 1, 6, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, and 27.

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	<p>1998 Stabilization Agreement as explained above. Claimant’s concerns have thus been addressed.</p> <ul style="list-style-type: none"> • Privilege: Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described in <i>supra</i> p. ii.
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Written instructions relating to the scope of the Stability Agreement provided to Fluor from June 2003 to September 2004 for purposes of preparing the 2004 Feasibility Study and the 2004 Updated Feasibility Study. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal also takes note of Respondent’s amended request. The Tribunal nevertheless rejects the remainder of Respondent’s Request No. 2 as overly broad.</p>

SCHEDULE OF DOCUMENT REQUESTS
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Document Request No.	3.
Documents or Category of Requested Documents	<p>Any pre-feasibility study/studies about processing Cerro Verde’s outputs that was/were prepared in advance of Fluor’s 1996 Feasibility Study (the “1996 Feasibility Study”), but in any case prepared after Fluor’s 1995 feasibility study [Exhibit CE-347], and any accompanying document(s).</p> <p><u>Time frame of the Request:</u> From August 1995 to May 1996.</p>
<p>Relevance and Materiality:</p> <p>(1) Paragraph Reference to Submissions</p> <p>(2) Comments</p>	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, para. 73. • 1996 Feasibility Study [Exhibit CE-9]. <p>(2) Comments</p> <p>Claimant alleges in its Memorial that the 1996 Feasibility Study “la[id] the groundwork for the eventual construction of a concentrator, which would operate as an integrated unit alongside the expanded leaching facilities” (Claimant’s Memorial, para. 73). However, the 1996 Feasibility Study only analyzes an investment in the Leaching Project, and it does not set out any type of investment plan to build the Concentrator Plant (<i>see generally</i> Exhibit CE-9). The scope of the 1998 Stabilization Agreement is limited to the investment plan that was described in the 1996 Feasibility Study.</p> <p>The 1996 Feasibility Study is a revised version of a 1995 Fluor feasibility study “for the improvements, upgrades, and further development of the existing leaching facility and infrastructure” (Claimant’s Memorial, para. 73).</p> <p>The requested documents are relevant to assess, among other things, Claimant’s legitimate expectations claim (<i>see</i> Claimant’s Memorial, Section IV.B.2(i), and Respondent’s Counter-Memorial Section II.C.1). In particular, the requested documents are relevant in that they are likely to show SMCV’s and Cyprus’ (Freeport’s predecessor) understanding around the time that it commissioned the 1996 Feasibility Study whether the plan to invest in the leaching facility included eventual plans to build the Concentrator Plant.</p>

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	<p>SMCV requested a pre-feasibility study before commissioning the 2004 Feasibility Study; Respondent therefore has reason to believe that SMCV likely requested a pre-feasibility study before commissioning the 1996 Feasibility Study as well.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport is not aware of any pre-feasibility studies prepared by SMCV or Phelps Dodge in between Fluor’s 1995 feasibility study and the 1996 Feasibility Study that have not already been exhibited. <i>See Ex. CE-348.</i> However, without prejudice to the General Objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Pre-feasibility studies prepared in advance of the 1996 Feasibility Study and after the 1995 feasibility study.
<p style="text-align: center;">Requesting party reply</p>	<p>Agreed production: Respondent notes that Claimant has agreed to produce the “[p]re-feasibility studies prepared in advance of the 1996 Feasibility Study and after the 1995 feasibility study” within its or SMCV’s possession, custody, or control. In a good faith effort to collaborate, Respondent asks for no further documents under Request No. 3.</p> <p>As to Claimant’s privilege objections, Respondent refers the Tribunal to its general Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described in <i>supra</i> p. ii.</p>
<p style="text-align: center;">Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Pre-feasibility studies prepared in advance of the 1996 Feasibility Study and after the 1995 feasibility study. The Tribunal also notes that Respondent asks for no further Documents under Request No. 3. Accordingly, the Tribunal orders Claimant to produce such Documents.</p>

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Document Request No.	4.
Documents or Category of Requested Documents	<p>Any document(s) (<i>e.g.</i>, correspondence, contracts, letters, meeting minutes, agendas, presentations, reports, Excel spreadsheets) that identify and/or discuss the oral or written instructions that were provided to Fluor to conduct the 1996 Feasibility Study, and that relate to the eventual plans to build the Concentrator Plant, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any document(s) discussing the scope of the 1996 Feasibility Study and Fluor’s mandate; (ii) Any document(s) discussing what Fluor had to assume for the purposes of undertaking the 1996 Feasibility Study, as well as the basis for these assumptions (if any); and (iii) Any document(s) on which Fluor based the 1996 Feasibility Study. <p><u>Time frame of the Request:</u> From the time SMCV and/or Cyprus and Fluor discussed for the first time the 1996 Feasibility Study (including the potential communications between the parties prior to Fluor’s formal engagement), until January 1996 (when Fluor completed the 1996 Feasibility Study).</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, para. 73. • 1996 Feasibility Study [Exhibit CE-9]. <p>(2) Comments</p> <p>Claimant alleges in its Memorial that the 1996 Feasibility Study “laid the groundwork for building a concentrator next to the leaching facilities” (Claimant’s Memorial, para. 73). However, the 1996 Feasibility Study only analyzes an investment in the Leaching Project, and it does not set out any type of investment plan to build the Concentrator Plant (<i>see generally</i> Exhibit CE-9). The scope of the 1998 Stabilization Agreement is limited to the investment plan that was described in the 1996 Feasibility Study.</p> <p>The 1996 Feasibility Study is a revised version of the 1995 Fluor feasibility study “for the improvements, upgrades, and further development of the existing leaching facility and infrastructure” (Claimant’s Memorial, para. 73).</p>

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	<p>The requested documents are relevant in that they are likely to show SMCV’s and Cyprus’ (Claimant’s predecessor) understanding at the time the 1996 Feasibility Study was commissioned whether the plan to invest in the leaching facility included eventual plans to build the Concentrator Plant. The latter can help assess Claimant’s legitimate expectations claim (<i>see</i> Claimant’s Memorial, Section IV.B.2(i), and Respondent’s Counter-Memorial Section II.C.1).</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth, irrelevance and immateriality, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request does not relate to a “narrow and specific” category of documents. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). It seeks “[a]ny document(s)” prepared by unspecified persons during a vaguely defined time period. Rather than identify a specific document or set of documents, such as “written instructions provided to Fluor,” it employs vague descriptions such as documents “that . . . discuss the oral or written instructions,” “that discuss[] what Fluor had to assume,” and “on which Fluor based the 1996 Feasibility” Study. These descriptions are insufficient to identify the specific documents the request seeks. Moreover, the temporal limitation does not contain a specified start date and Peru has not narrowed the request by reference to specific custodians.</p> <p><i>Second</i>, this request seeks documents that are irrelevant and immaterial to any issue in dispute. <i>See</i> IBA Rules, Art. 9(2)(a). There is no dispute about the <i>contents</i> of the 1996 Feasibility Study. Peru does not dispute that the 1996 Feasibility Study recommended an allocation of US\$2.5 million to conduct a feasibility study for a concentrator, or that SMCV and its predecessor, Minero Perú, had long contemplated investing in a concentrator. <i>See, e.g.</i>, Claimant’s Memorial ¶¶ 35-41, 71. Rather, Peru claims that the Stability Agreement does not cover the Concentrator because the 1996 Feasibility Study itself did not contain an investment plan to build a concentrator. <i>See</i> Respondent’s Counter-Memorial ¶¶ 32, 76-86. Peru has made no attempt to explain how the instructions Fluor received to prepare the 1996 Feasibility Study about eventual plans to build a concentrator are relevant to this claim.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Written instructions relating to eventual plans to build a Concentrator Plant provided to Fluor from August 1995 to January 1996 for purposes of preparing the 1996 Feasibility Study.

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Requesting party reply	<p>Partially agreed production:</p> <ul style="list-style-type: none">Respondent notes that Claimant objects to this Request on the basis of, among others, relevance and specificity. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce the “[w]ritten instructions relating to eventual plans to build a Concentrator Plant provided to Fluor from August 1995 to January 1996 for purposes of preparing the 1996 Feasibility Study.” While Respondent will be glad to receive such documents, it emphasizes that its Request also focuses on “[a]ny documents that <u>identify and/or discuss the oral . . . instructions</u> that were provided to Fluor to conduct the 1996 Feasibility Study” (emphasis added) (<i>i.e.</i>, not only the written instructions that Claimant has agreed to produce but also the emails or minutes of meetings that record the content of the oral instructions provided to Fluor). In fact, Respondent does not know whether Fluor was given written or oral instructions (or both). Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request (as amended below). <p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 4 are misplaced for the following reasons.</p> <ul style="list-style-type: none"><u>Amended Request:</u> Claimant alleges that the Request is overbroad because “the temporal limitation does not contain a specified start date.” It is not. Respondent has specified a defined time frame: “From the time SMCV and/or Cyprus and Fluor discussed for the first time the 1996 Feasibility Study . . . until January 1996.” Of course, it is Claimant, not Respondent, who knows when the 1996 Feasibility Study was first discussed. The specific date is simply not known to Respondent. Even if Respondent did not provide a specific start date, the timeframe for potentially responsive documents is not unlimited, and Respondent narrowed its request as much as it could: (i) the identified time frame is <u>less than two and a half years</u> (far less than some of Claimant’s Requests that have a time frame of 17 or 30 years (<i>see</i> Claimant’s document production Requests Nos. 1, and 29)); and (ii) Respondent provided two identifiable moments in time that will allow Claimant to easily locate the requested documents. In any event, in a good faith effort to collaborate, and considering Claimant’s objections, Respondent narrows the scope of Request No. 5 as follows:
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	<ul style="list-style-type: none"> ○ From: “<u>Time frame of the Request</u>: From the time SMCV and/or Cyprus and Fluor discussed for the first time the 1996 Feasibility Study . . .until January . . .” ○ To: “<u>Time frame of the Request</u>: From August 1995 to January 1996” (<i>i.e.</i>, Claimant’s suggested time frame). <ul style="list-style-type: none"> ● <u>Specificity</u>: Respondent’s request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent identifies <i>one</i> narrow and specific category of documents in its Request (“[a]ny document(s) . . . that identify and/or discuss the oral or written instructions that were provided to Fluor to conduct the 1996 Feasibility Study, relating to the eventual plans to build the Concentrator Plan). This Request is narrow and specific even if Respondent does not list specific custodians. Respondent notes that Claimant is the one in the position to know who its own custodians of the requested documents are—as Claimant is the party that has access to the requested documents. Claimant cannot expect Respondent to list the specific persons who are in the possession, custody, or control of the requested documents as Respondent was not a party to the engagement with Fluor. Respondent notes that <u>Claimant itself has not identified specific custodians in most of its document production requests</u>.³ In any event, <i>at a minimum</i> the requested documents should be in the possession, custody, or control of Cyprus and/or SMCV high officials (<i>e.g.</i>, members of the board or CEO during the identified time frame). In any event, Claimant has agreed to produce “[w]ritten instructions relating to eventual plans to build a Concentrator Plant provided to Fluor from August 1995 to January 1996 for purposes of preparing the 1996 Feasibility Study”; certainly in conducting that search, it can easily include documents that identify and/or discuss the instructions that were provided to Fluor. ● <u>Relevance and materiality</u>: Claimant alleges that the requested documents are not relevant because (i) “Peru has made no attempt to explain how the instructions Fluor received to prepare the 1996 Feasibility Study are relevant to this claim,” and (ii) “Peru admits that Fluor’s instructions are only relevant to the extent that they relate to ‘eventual plans to build the Concentrator Plant.’” Claimant’s response is without merit. Respondent already explained in its Request that the requested documents (including Fluor’s
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³ See *e.g.*, Claimant’s Document Production Requests Nos. 1, 6, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, and 27.

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	<p>instructions to prepare the 1996 Feasibility Study) are relevant because “they are likely to show SMCV’s understanding at the time the 1996 Feasibility Study was commissioned whether the plan to invest in the leaching facility included eventual plans to build the Concentrator Plant.” This is because in its 2004 Feasibility Studies, Fluor states that it assumed the Concentrator Plant was included in the scope of the 1998 Feasibility Study (<i>see</i> Exhibit CE-20, pp. 167-168 pdf; and Exhibit CE-459, p. 46). Fluor likely made the same assumption for its 1996 Feasibility Study. On what basis Fluor made this assumption is relevant to determining whether the assumption itself was sound or without merit.</p> <ul style="list-style-type: none"> • Privilege: Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request . Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described in <i>supra</i> p. ii.
Decision of the Tribunal	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Written instructions relating to eventual plans to build a Concentrator Plant provided to Fluor from August 1995 to January 1996 for purposes of preparing the 1996 Feasibility Study. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal also takes note of Respondent’s amended request. The Tribunal nevertheless rejects the remainder of Respondent’s Request No. 4 as overly broad.</p>

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Document Request No.	5.
Documents or Category of Requested Documents	<p>Any document(s) discussing or recording any due diligence undertaken by Cyprus prior to its acquisition of 91.65% of SMCV in March 1993, regarding the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the terms of the draft stabilization agreement attached as Annex H to the share purchase agreement between Cyprus and Empresa Minera del Perú S.A. (“Minero Perú”), including but not limited to:</p> <ul style="list-style-type: none"> (i) Any study, and/or advice received about the <i>Texto Único Ordenado</i> (“TUO”) of the Mining Law, the 1993 regulations that Perú’s Ministry of Mines and Energy (“MINEM”) issued to Title Nine of the Mining Law (the “Mining Regulations”), Legislative Decree No. 708 (“L.D. 708”), and/or regarding the scope and purpose of an eventual stabilization agreement [<i>see</i> Exhibit CE-4, Art. 3(1)(h), and Annex H]; (ii) Any legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel), received regarding the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of an eventual stabilization agreement [<i>see</i> Exhibit CE-4, Art. 3(1)(h), and Annex H]; (iii) Any study, and/or advice received about the Heads of Agreement that Minero Perú prepared for investors, which highlighted the availability of mining stabilization agreements for investors in the Cerro Verde Mine [<i>see</i> Exhibit CE-332, clause 9]; (iv) Any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, emails) created by or exchanged with Cyprus discussing or analyzing any due diligence performed on the matters described in points (i) and (iii) above; and (v) Any written statement from the Peruvian government with respect to the mining stability guarantees on which Cyprus allegedly relied in signing the share purchase agreement with Minero Perú [<i>see generally</i> Exhibit CE-4]. <p><u>Time frame of the Request:</u> From June 1993 (after Perú’s MINEM issued Supreme Decree No. 024-93-EM, the regulation implementing Title Nine of the Mining Law [<i>see</i> Exhibit CA-2], and a</p>

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	<p>few months before Cyprus presented its bid for the acquisition of shares in SMCV [see Claimant’s Memorial, para. 66]), to March 17, 1994 (when Cyprus acquired 91.65% of Mineró Perú’s shares in SMCV [see Exhibit CE-4].).</p>
<p style="text-align: center;">Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments</p>	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 65-68, 297(a). • Respondent’s Counter-Memorial paras. 67 (at p. 35), and 70. • Share Purchase Agreement between Cyprus Climax Metals Company and Empresa Minera del Perú S.A. [Exhibit CE-4]. • CEPRI, International Public Competitive Bidding for the Sale of SMCV S.A.: Heads of Agreement, clause 9 [Exhibit CE-332]. <p>(2) Comments</p> <p><i>First</i>, Claimant asserts that it <i>relied</i> on the information of its predecessors in interest regarding Perú’s guarantees of stability “when ‘establishing or acquiring’ its covered investment in SMCV and its covered investments in the Cerro Verde Mining Unit, including the investment to construct the Concentrator” (see Claimant’s Memorial, para. 297). Therefore, it is likely that Claimant relied on Cyprus’ information regarding Perú’s guarantees of stability when making its investment in the Cerro Verde Mine.</p> <p><i>Second</i>, Claimant notes that “Cyprus initially acquired SMCV <i>in reliance on Peru’s guarantees of stability</i>, which pursuant to the terms of the Share Purchase Agreement and the Guaranty Agreement would be set out in, among others, future mining stability agreements” (see Claimant’s Memorial, para 297(a)). Claimant also claims that “Cyprus viewed the stability guarantees as a ‘prerequisite’ to its purchase of SMCV” (see Claimant’s Memorial, paras. 68-69; see also Exhibit CE-339, p. 2). However, Claimant has failed to put on the record any documents showing that Cyprus performed any due diligence regarding the stability guarantees under the Peruvian mining regulatory regime. In particular, Claimant has failed to put on record any documents showing that Cyprus analyzed the stability guarantees included in the Heads of Agreement—which served as a basis for negotiations related to a share purchase agreement for the Cerro Verde Mine (see Exhibit CE-332; see also Respondent’s Counter-Memorial, para. 70)—and in the draft stabilization agreement attached to the share purchase agreement with Mineró Perú (see Exhibit CE-4, Art. 3(1)(h), and Annex H).</p>

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	<p><i>Third</i>, Claimant cannot cite privilege as a ground to object to Request No. 5(ii). As discussed, Claimant has <i>put at issue</i> Cyprus’ and its own subjective understanding of the mining stability guarantees under Peruvian law for purposes of its legitimate expectations claim (<i>see, e.g.</i>, Claimant’s Memorial, para. 297(a)). The truth of Claimant’s claim to have held a certain belief about the scope of the 1998 Stabilization Agreement can only be fully assessed if Respondent and the Tribunal have access to the contemporaneous legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) on which Claimant (or its predecessors in interest) relied discussing or analyzing the relevant legal framework (<i>e.g.</i>, the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of an eventual stabilization agreement). Claimant cannot be permitted to claim that it (or its predecessors in interest) held a certain legal interpretation but then deny access to contemporaneous evidence of what it (or its predecessors in interest) did or did not actually know about the legal regime and/or the (in)validity of that legal interpretation at the time. If Claimant wishes to rely on its (or its predecessors in interest) legal understanding at the time, it must be prepared to share the documents that would prove or disprove that it (or its predecessors in interest) actually did hold that legal understanding at the time. In order to maintain fairness and equality, Claimant should not be able to object to this Request on grounds of privilege. In any case, even if any of the requested document(s) is/are protected by privilege, that is not a basis to resist the Request <i>per se</i>; rather, Claimant must put any such document(s) on a “privilege log” as described <i>supra</i> at p. (ii).</p> <p>The requested documents are relevant in that they will provide information regarding Cyprus’ understanding (which Claimant allegedly relied on, in turn) of the Mining Law and the stability guarantees under the Peruvian mining regulatory regime, before signing the 1994 Stabilization Agreement and the 1998 Stabilization Agreement.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of privilege, Peru’s possession, custody, or control, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request targets documents that are protected from disclosure by legal professional privilege. <i>See</i> IBA Rules, Art. 9(2)(b). The requested due diligence is likely to include privileged legal advice.</p> <ul style="list-style-type: none"> • Request No. 5(i) seeks “stud[ies]” and/or “advice” about the Mining Law, the Regulations, and/or eventual stability agreements;

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	<ul style="list-style-type: none"> • Request No. 5(ii) seeks “legal memoranda, opinions, and/or legal advice” prepared by “counsel” about the Mining Law, the Regulations, and/or eventual stability agreements; • Request No. 5(iii) seeks “stud[ies]” and/or “advice” about the Heads of Agreement, the document that served as the framework for the negotiation of the Share Purchase Agreement; and • Request No. 5(iv) seeks Cyprus documents discussing the privileged legal advice sought in Requests No. 5(i) and 5(iii). <p>For the reasons set forth in the General Objections, Peru has failed to justify its documents requests seeking privileged information.</p> <p><i>Second</i>, this request seeks documents that are in the possession, custody, or control of Peru. <i>See</i> IBA Rules, Art. 3(3)(c)(i). For example, Request 5(v) seeks “[a]ny written statement from the Peruvian government with respect to the mining stability guarantees on which Cyprus allegedly relied.” Freeport has already exhibited the written statements that Cyprus relied on. <i>See e.g.</i>, Ex. CE-320; CE-321; CE-331; CE-332; CE-351; CE-815. In any event, written statements by the Peruvian government are presumably already in the possession of Peru. Similarly, as Mineró Perú, a State-owned company, was a party to the Share Purchase Agreement, Peru presumably has in its possession documents memorializing due diligence meetings between Mineró Perú and Cyprus concerning the Peruvian mining stability regime.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents recording due diligence Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations.
Requesting party reply	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, privilege and Perú’s possession, custody, and control. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce the “[d]ocuments recording due diligence Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations.” While Respondent will be glad to receive such documents, it emphasizes that its Request also focuses on “[a]ny document(s) discussing or recording any due

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diligence undertaken by Cyprus prior to its acquisition of 91.65% of SMCV in March 1993, regarding . . . the terms of the draft stabilization agreement attached as Annex H to the share purchase agreement between Cyprus and Empresa Minera del Perú S.A. (“Minero Perú”),” including the examples listed as Request No. 5(i)-(v). Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request (as amended below).

Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 5 are misplaced for the following reasons.

- **Amended Request:** Claimant alleges that Respondent seeks documents that are in the possession, custody, or control of Perú under Request No. 5(v). It does not. In a good faith effort to collaborate, Respondent narrows the scope of Request No. 5(v) from “[a]ny written statement from the Peruvian government with respect to the mining stability guarantees on which Cyprus allegedly relied in signing the share purchase agreement with Minero Perú” to “[a]ny documents in SMCV’s or Freeport’s possession, custody, or control that evidence discussions with the Peruvian government with respect to the mining stability guarantees on which Cyprus allegedly relied in signing the share purchase agreement with Minero Perú.”
- **Privilege:** Claimant alleges that in Requests Nos. 5(i)-(iv) Respondent seeks documents that are protected from disclosure by legal privilege. *First*, it is Claimant that has put Cyprus’ understanding—and its own understanding—of stability guarantees into issue in this case (*see* Claimant’s Memorial, para. 297(a)), and Claimant cannot do so as a sword to advance its claims but then assert the shield of privilege over documents (including legal advice) that will verify or refute Claimant’s true understanding of that same legal question. Additionally, only Request No. 5(ii) seeks documents that might contain legal due diligence; Requests Nos. 5(i), 5(iii), and 5(iv) seek production of *other* due diligence (*i.e.*, *not* legal due diligence); therefore, any allegation of legal privilege necessarily would not apply to the latter Requests.

Second, as to Claimant’s privilege objections, Respondent requests that to the extent Claimant asserts that any responsive document(s) is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described *supra* at p. ii. Respondent

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	<p style="text-align: center;">notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV's possession, custody, and control, which can be located after a reasonable search: Documents recording due diligence Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal also takes note of Respondent's amended request. The Tribunal nevertheless rejects the remainder of Respondent's Request No. 5 as overly broad.</p>

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Document Request No.	6.
Documents or Category of Requested Documents	<p>Any document(s) discussing or recording any due diligence undertaken by SMCV or Cyprus prior to the signing of the 1994 Stabilization Agreement, regarding the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the terms of the 1994 Stabilization Agreement, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any study and/or advice received about the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or the scope and purpose of the 1994 Stabilization Agreement; (ii) Any legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) received regarding the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or the scope and purpose of the 1994 Stabilization Agreement; (iii) Any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, emails) created by SMCV or Cyprus and/or exchanged with SMCV or Cyprus discussing or analyzing any due diligence performed on the matters described in points (i) and (ii) above; and (iv) Any written statement from the Peruvian government with respect to the scope of the Stabilization Agreement on which SMCV or Cyprus relied in signing the 1994 Stabilization Agreement. <p><u>Time frame of the Request:</u> From March 17, 1994 (when Cyprus acquired 91.65% of Minero Perú's shares in SMCV [<i>see</i> Exhibit CE-4]), to May 26 1994 (when the Peruvian Government and SMCV signed the 1994 Stabilization Agreement [<i>see</i> Exhibit CE-344]).</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant's Memorial, para. 70. • Respondent's Counter-Memorial, paras. 74-75. • 1994 Stabilization Agreement [Exhibit CE-344].

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(2) Comments

Claimant asserts that it *relied* on the information of its predecessors in interest regarding Perú’s guarantees of stability “when ‘establishing or acquiring’ its covered investment in SMCV and its covered investments in the Cerro Verde Mining Unit, including the investment to construct the Concentrator” (*see* Claimant’s Memorial, para. 297). As Claimant has identified Cyprus as one of its predecessors in interest (*see* Claimant’s Memorial, para. 297(a)), it is likely that Claimant relied on Cyprus’ understanding of Perú’s guarantees of stability when making its investment in the Cerro Verde Mine.

Claimant notes that “Cyprus initially acquired SMCV *in reliance on Peru’s guarantees of stability*, which pursuant to the terms of the Share Purchase Agreement and the Guaranty Agreement would be set out in, among others, future mining stability agreements [*i.e.*, in the 1994 Stabilization Agreement]” (*see* Claimant’s Memorial, para. 297(a) (emphasis added)).

The 1994 Stabilization Agreement, describes the investment project as being completed in Cerro Verde’s Mining and Beneficiation Concessions (*see* Exhibit CE-344, Section 1.1). These are the same concessions in connection with which SMCV later completed the Leaching Project—which was the subject of the 1998 Stabilization Agreement. Thus, if Claimant’s theory—*i.e.*, that all investments made within the same concession or so-called “mining unit” are covered by a stabilization agreement, regardless of whether or not they are detailed in the investment plan submitted to obtain the agreement—had any merit, SMCV would have relied on the 1994 Stabilization Agreement just a few years later when it decided to pursue the much larger investment project in the same facilities (*see* Respondent’s Counter-Memorial, para. 75). SMCV would not have seen any need to request and sign a new stabilization agreement for that new investment project in 1998.

Finally, Claimant cannot cite privilege as a ground to object to Request No. 6(ii). As discussed, Claimant has *put at issue* Cyprus’ and its own subjective understanding of the mining stability guarantees under Peruvian law for purposes of its legitimate expectations claim (*see, e.g.*, Claimant’s Memorial, para. 297(a)). The truth of Claimant’s claim to have held a certain belief about the scope of the 1998 Stabilization Agreement can only be fully assessed if Respondent and the Tribunal have access to the contemporaneous legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) on which Claimant (or its predecessors in interest) relied discussing or analyzing the relevant legal framework (*e.g.*, the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of the 1994 Stabilization

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	<p>Agreement). Claimant cannot be permitted to claim that it (or its predecessors in interest) held a certain legal interpretation but then deny access to contemporaneous evidence of what it (or its predecessors in interest) did or did not actually know about the legal regime and/or the (in)validity of that legal interpretation at the time. If Claimant wishes to rely on its (or its predecessors in interest) legal understanding at the time, it must be prepared to share the documents that would prove or disprove that it (or its predecessors in interest) actually did hold that legal understanding at the time. In order to maintain fairness and equality, Claimant should not be able to object to this Request on grounds of privilege. In any case, even if any of the requested document(s) is/are protected by privilege, that is not a basis to resist the Request <i>per se</i>; rather, Claimant must put any such document(s) on a “privilege log” as described <i>supra</i> at p. (ii).</p> <p>The requested documents are relevant in that they will provide information regarding Cyprus’ and SMCV’s understanding (which Claimant allegedly relied on, in turn) of the Mining Law and the stability guarantees under the Peruvian mining regulatory regime, when it signed the 1994 Stabilization Agreement.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of privilege, Peru’s possession, custody, or control, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request targets documents that are protected from disclosure by legal professional privilege. <i>See</i> IBA Rules, Art. 9(2)(b). The requested due diligence is likely to include privileged legal advice.</p> <ul style="list-style-type: none"> • Request No. 6(i) seeks “stud[ies]” and/or “advice” about the Mining Law, the Regulations, and/or the 1994 Stability Agreement; • Request No. 6(ii) seeks “legal memoranda, opinions, and/or legal advice” prepared by “counsel” about the Mining Law, the Regulations, and/or the 1994 Stability Agreement; and • Request No. 6(iii) seeks SMCV and/or Cyprus documents discussing the privileged legal advice sought in Requests No. 6(i) and 6(ii). <p>For the reasons set forth in the General Objections, Peru has failed to justify its documents requests seeking privileged information.</p>

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	<p><i>Second</i>, this request seeks documents that are in the possession, custody, or control of Peru. <i>See</i> IBA Rules, Art. 3(3)(c)(i). For example, Request 6(iv) seeks “[a]ny written statement from the Peruvian government with respect to the scope of the Stabilization Agreement on which SMCV or Cyprus relied in signing the 1994 Stabilization Agreement.” Peru has not explained why it believes such statements are not in its possession but are in the possession of Freeport or SMCV.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents recording due diligence SMCV or Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations.
<p style="text-align: center;">Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, privilege and Perú’s possession, custody, or control. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce “[d]ocuments recording due diligence SMCV or Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations.” While Respondent will be glad to receive such documents, it emphasizes that its Request also focuses on “[a]ny document(s) discussing or recording any due diligence undertaken by SMCV or Cyprus prior to the signing of the 1994 Stabilization Agreement, regarding . . . the terms of the 1994 Stabilization Agreement,” including the examples listed as Requests Nos. 6(i)-(iv). Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request (as amended below). <p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 6 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> • <u>Amended Request:</u> Claimant alleges that Respondent seeks documents that are in the possession, custody, or control of Peru under Request No. 6(iv). It does not. In a good faith effort to collaborate, Respondent narrows the scope of Request No. 6(iv) from “[a]ny written statement from the Peruvian government with respect to the scope of the Stabilization Agreement on which SMCV or Cyprus relied in signing the 1994 Stabilization Agreement” to “[a]ny documents in SMCV’s possession, custody, or control that evidence discussions with the Peruvian government with respect to the scope of the

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	<p>1994 Stabilization Agreement on which SMCV or Cyprus allegedly relied in signing the 1994 Stabilization Agreement.”</p> <ul style="list-style-type: none"> • Privilege: Claimant alleges that in Requests Nos. 6(i)-(iii) Respondent seeks documents that are protected from disclosure by legal privilege. <i>First</i>, it is Claimant that has put Cyprus’s understanding—and its own understanding—of stability guarantees into issue in this case (<i>see</i> Claimant’s Memorial, para. 297(a)), and Claimant cannot do so as a sword to advance its claims but then assert the shield of privilege over documents (including legal advice) that will verify or refute Claimant’s true understanding of that same legal question. Additionally, <u>only</u> Request No. 6(ii) seeks documents that might contain legal due diligence; Requests Nos. 6(i) and 6(iii) seek production of <i>other</i> due diligence (<i>i.e., not</i> legal due diligence); therefore, any allegation of legal privilege would necessarily not apply to the latter Requests. <p><i>Second</i>, as to Claimant’s privilege objections, Respondent requests that to the extent Claimant asserts that any responsive document(s) is/are protected by privilege the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> at p. ii. Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Documents recording due diligence SMCV or Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal also takes note of Respondent’s amended request. The Tribunal nevertheless rejects the remainder of Respondent’s Request No. 6 as overly broad.</p>

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Document Request No.	7.
Documents or Category of Requested Documents	<p>Any document(s) discussing or recording any due diligence undertaken by SMCV or by Cyprus prior to the signing of the 1998 Stabilization Agreement regarding the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the terms of the 1998 Stabilization Agreement, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any study, and/or advice received about the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or the scope and purpose of the 1998 Stabilization Agreement; (ii) Any legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) received about the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of the 1998 Stabilization Agreement; (iii) Any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, emails) created by SMCV and/or exchanged with Cyprus (or any other third party) discussing or analyzing any due diligence performed on the matters described in points (i) and (ii) above; and (iv) Any written statement from the Peruvian government with respect to the scope of the Stabilization Agreement on which SMCV or Cyprus relied in signing the 1998 Stabilization Agreement. <p><u>Time frame of the Request:</u> From the approval of the 1996 Feasibility Study in June 1, 1996 [<i>see</i> Exhibit CE-350 and Claimant’s Memorial, p. vii], to the signing of the 1998 Stabilization Agreement in February 26, 1998 [<i>see</i> Exhibit CE-12].</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Respondent’s Counter-Memorial, paras. 104-105. • Claimant’s Memorial, para. 297. <p>(2) Comments</p>

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	<p>Claimant alleges in its Memorial that at the time it made its investment in SMCV, “through its predecessors in interest [it] ‘relied’ on the [1998] Stability Agreement when ‘establishing or acquiring’ its covered investment in SMCV and its covered investments in the Cerro Verde Mining Unit, including the investment to construct the Concentrator” (<i>see</i> Claimant’s Memorial, para. 297). Therefore, it is likely that Claimant relied on Cyprus’ information regarding Perú’s guarantees of stability when making its investment in the Cerro Verde Mine.</p> <p>However, Claimant has failed to put on the record any documents that might have formed the basis of Cyprus’ expectations regarding the scope of the 1998 Stabilization Agreement.</p> <p>Finally, Claimant cannot cite privilege as a ground to object to Request No. 7(ii). As discussed, Claimant has <i>put at issue</i> Cyprus’ and its own subjective understanding of the mining stability guarantees under Peruvian law and the scope and purpose of the 1998 Stabilization Agreement for purposes of its legitimate expectations claim (<i>see, e.g.</i>, Claimant’s Memorial, para. 297). The truth of Claimant’s claim to have held a certain belief about the scope of the 1998 Stabilization Agreement can only be fully assessed if Respondent and the Tribunal have access to the contemporaneous legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) on which Claimant (or its predecessors in interest) relied discussing or analyzing the relevant legal framework (<i>e.g.</i>, the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of the 1998 Stabilization Agreement). Claimant cannot be permitted to claim that it (or its predecessors in interest) held a certain legal interpretation but then deny access to contemporaneous evidence of what it (or its predecessors in interest) did or did not actually know about the legal regime and/or the (in)validity of that legal interpretation at the time. If Claimant wishes to rely on its (or its predecessors in interest) legal understanding at the time, it must be prepared to share the documents that would prove or disprove that it (or its predecessors in interest) actually did hold that legal understanding at the time. In order to maintain fairness and equality, Claimant should not be able to object to this Request on grounds of privilege. In any case, even if any of the requested document(s) is/are protected by privilege, that is not a basis to resist the Request <i>per se</i>; rather, Claimant must put any such document(s) on a “privilege log” as described <i>supra</i> at p. (ii).</p> <p>The requested documents are relevant to assess, among other things, Claimant’s legitimate expectations claim (<i>see</i> Claimant’s Memorial, Section IV.B.2(i), and Respondent’s Counter-Memorial Section II.C.1). In particular, the requested documents are relevant in that they will provide information regarding SMCV’s and Cyprus’ (Freeport’s predecessor) understanding of the</p>
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	Mining Law and the scope of the 1998 Stabilization Agreement before signing the 1998 Stabilization Agreement.
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of privilege, Peru’s possession, custody, or control, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request targets documents that are protected from disclosure by legal professional privilege. <i>See</i> IBA Rules, Art. 9(2)(b). The requested due diligence is likely to include privileged legal advice.</p> <ul style="list-style-type: none"> • Request No. 8(i) seeks “stud[ies]” and/or “advice” about the Mining Law, the Regulations, and the Stability Agreement; • Request No. 8(ii) seeks “legal memoranda, opinions, and/or legal advice” prepared by “counsel” about the Mining Law, the Regulations, and the Stability Agreement; and • Request No. 8(iii) seeks SMCV and/or Cyprus documents discussing the privileged legal advice sought in Requests No. 8(i) and 8(ii). <p>For the reasons set forth in the General Objections, Peru has failed to justify its documents requests seeking privileged information.</p> <p><i>Second</i>, this request seeks documents that are in the possession, custody, or control of Peru. <i>See</i> IBA Rules, Art. 3(3)(c)(i). For example, Request 7(iv) seeks “[a]ny written statement from the Peruvian government with respect to the scope of the Stabilization Agreement on which SMCV or Cyprus relied in signing the 1998 Stabilization Agreement.” Peru has not explained why it believes such statements are not in its possession but are in the possession of Freeport or SMCV.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents recording due diligence SMCV or Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations.
<p style="text-align: center;">Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, privilege and Perú’s possession, custody, or control. As explained below, Claimant’s

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objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce “[d]ocuments recording due diligence SMCV or Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations.” While Respondent will be glad to receive such documents, it emphasizes that its Request also focuses on “[a]ny document(s) discussing or recording any due diligence undertaken by SMCV or by Cyprus prior to the signing of the 1998 Stabilization Agreement regarding . . . the terms of the 1998 Stabilization Agreement,” including the examples listed as Requests Nos. 7(i)-(iv). Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request (as amended below).

Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 7 are misplaced for the following reasons.

- **Amended Request:** Claimant alleges that Respondent seeks documents that are in the possession, custody, or control of Peru under Request No. 7(iv). It does not. In any event, in a good faith effort to collaborate, Respondent narrows the scope of Request No. 7(iv) from “[a]ny written statement from the Peruvian government with respect to the scope of the Stabilization Agreement on which SMCV or Cyprus relied in signing the 1998 Stabilization Agreement” to “[a]ny documents in SMCV’s possession, custody, or control that evidence discussions with the Peruvian government with respect to the scope of the 1998 Stabilization Agreement on which SMCV or Cyprus allegedly relied in signing the 1998 Stabilization Agreement.”
- **Privilege:** Claimant contends that in Requests Nos. 7(i)-(iii) Respondent seeks documents that are protected from disclosure by legal privilege. *First*, it is Claimant that has put Cyprus’ understanding—and its own understanding—of stability guarantees into issue in this case (*see* Claimant’s Memorial, para. 297(a)), and Claimant cannot do so as a sword to advance its claims but then assert the shield of privilege over documents (including legal advice) that will verify or refute Claimant’s true understanding of that same legal question. Additionally, only Request No. 7(ii) seeks documents that might contain legal due diligence; Requests Nos. 7(i) and 7(iii) seek production of *other* due diligence (*i.e., not* legal due diligence); therefore, any allegation of legal privilege would necessarily not apply to the latter Requests.

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	<p><i>Second</i>, as to Claimant’s privilege objections, Respondent requests that to the extent Claimant asserts that any responsive document(s) is/are protected by privilege the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> at pp. ii, x-xii. Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Documents recording due diligence SMCV or Cyprus performed on the scope of stability guarantees under the Mining Law and Regulations. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal also takes note of Respondent’s amended request. The Tribunal nevertheless rejects the remainder of Respondent’s Request No. 7 as overly broad.</p>

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Document Request No.	8.
Documents or Category of Requested Documents	<p>Any document(s) discussing or recording any due diligence undertaken by Phelps Dodge before acquiring Cyprus regarding the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the terms of the 1998 Stabilization Agreement, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any study, and/or advice received about the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or the scope and purpose of the 1998 Stabilization Agreement; (ii) Any legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) received about the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of the 1998 Stabilization Agreement; and (iii) Any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, emails) created within Phelps Dodge and/or exchanged with Phelps Dodge or SMCV (or any other third party) discussing or analyzing documents or matters described in points (i) to (ii) above. <p><u>Time frame of the Request:</u> From the time Phelps Dodge and Cyprus initiated conversations about Phelps Dodge potentially acquiring Cyprus, to Phelps Dodge’s acquisition of Cyprus in October 1999 [<i>see</i> Claimant’s Memorial, para. 84].</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 84, 297. • Respondent’s Counter-Memorial, paras. 106-111. • Mr. Morán’s WS, paras. 10-12, 14. <p>(2) Comments</p> <p><i>First</i>, Claimant alleges in its Memorial that at the time it made its investment in SMCV, “through its predecessors in interest [it] ‘relied’ on the [1998] Stability Agreement when ‘establishing or acquiring’ its covered investment in SMCV and its covered investments in the Cerro Verde Mining</p>

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	<p>Unit, including the investment to construct the Concentrator” (<i>see</i> Claimant’s Memorial, para. 297). Therefore, it is likely that Claimant relied on Phelps Dodge’s information regarding Perú’s guarantees of stability when making its investment in the Cerro Verde Mine.</p> <p><i>Second</i>, in particular, Claimant asserts that Phelps Dodge understood that the Stabilization Agreement would apply to the entire Cerro Verde Mine, including the development of the extraction and processing of primary sulfides (<i>see</i> Claimant’s Memorial, paras. 84, 297). Claimant cites to the witness statements of Mr. Cristian Morán, former Director of Finance at Phelps Dodge Mining Services, who was involved in Phelps Dodge’s 1999 acquisition of Cyprus, in support of this assertion (<i>see</i> Claimant’s Memorial, paras. 84, 297 and CWS-8, paras. 10-12, 14). Mr. Morán’s testimony, however, shows that Phelps Dodge did not conduct any adequate due diligence when it first invested in SMCV.</p> <p>Claimant has failed to put on the record any relevant document(s) that might have formed the basis of Phelps Dodge’s expectations related to its investment in SMCV, and to its expectations regarding the scope of the 1998 Stabilization Agreement.</p> <p>Finally, Claimant cannot cite privilege as a ground to object to Request No. 8(ii). Claimant has <i>put at issue</i> Phelps Dodge’s and its own subjective understanding of the mining stability guarantees under Peruvian law and the scope and purpose of the 1998 Stabilization Agreement for purposes of its legitimate expectations claim (<i>see</i> Claimant’s Memorial, para. 368 (“SMCV, and Freeport’s predecessor, Phelps Dodge, invested in the Concentrator <i>in reliance</i> on the stability guarantees set forth in the Stability Agreement, which they understood would apply to the Concentrator based on the existing legal framework and specific assurances given by Peruvian officials, only to have legitimate expectation of stability thwarted by Peru’s decisions to effectively re-write the scope of the Stability Agreement and the Mining Law”) (emphasis added)). The truth of Claimant’s claim to have held a certain belief about the scope of the 1998 Stabilization Agreement can only be fully assessed if Respondent and the Tribunal have access to the contemporaneous legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) on which Claimant (or its predecessors in interest) relied discussing or analyzing the relevant legal framework (<i>e.g.</i>, the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of the 1998 Stabilization Agreement). Claimant cannot be permitted to claim that it (or its predecessors in interest) held a certain legal interpretation but then deny access to contemporaneous evidence of what it (or its predecessors in interest) did or did not actually know about the legal regime and/or the (in)validity of that legal interpretation at the time. If Claimant wishes to rely on its (or its predecessors in interest) legal understanding at the time, it must be</p>
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	<p>prepared to share the documents that would prove or disprove that it (or its predecessors in interest) actually did hold that legal understanding at the time. In order to maintain fairness and equality, Claimant should not be able to object to this Request on grounds of privilege. In any case, even if any of the requested document(s) is/are protected by privilege, that is not a basis to resist the Request <i>per se</i>; rather, Claimant must put any such document(s) on a “privilege log” as described <i>supra</i> at p. (ii).</p> <p>The requested documents are relevant to assess, among other things, Claimant’s legitimate expectations claim (<i>see</i> Claimant’s Memorial, Section IV.B.2(i), and Respondent’s Counter-Memorial Section II.C.1). In particular, the requested documents are relevant in that they will provide information regarding Phelps Dodge’s (Claimant’s predecessor) understanding of the Mining Law and of the terms and scope of the 1998 Stabilization Agreement (<i>i.e.</i>, regarding whether or not the Stabilization Agreement would apply to the activities and investment related to the Concentrator Project) before Phelps Dodge made its investment in Perú.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of privilege, and for the reasons set forth in the General Objections.</p> <p>This request targets documents that are protected from disclosure by legal professional privilege. <i>See</i> IBA Rules, Art. 9(2)(b). The requested due diligence is likely to include privileged legal advice.</p> <ul style="list-style-type: none"> • Request No. 8(i) seeks “stud[ies]” and/or “advice” about the Mining Law, the Regulations, and the Stability Agreement; • Request No. 8(ii) seeks “legal memoranda, opinions, and/or legal advice” prepared by “counsel” about the Mining Law, the Regulations, and the Stability Agreement; and • Request No. 8(iii) seeks Phelps Dodge documents discussing the privileged legal advice sought in Requests No. 8(i) and 8(ii). <p>For the reasons set forth in the General Objections, Peru has failed to justify its documents requests seeking privileged information.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p>

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	<ul style="list-style-type: none"> Documents recording due diligence Phelps Dodge performed on the scope of stability guarantees under the Mining Law and Regulations.
<p>Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> Respondent notes that Claimant objects to this Request on the basis of, among others, privilege and Perú’s possession, custody, or control. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce “[d]ocuments recording due diligence Phelps Dodge performed on the scope of stability guarantees under the Mining Law and Regulations.” While Respondent will be glad to receive such documents, it emphasizes that its Request also focuses on “[a]ny document(s) discussing or recording any due diligence undertaken by Phelps Dodge before acquiring Cyprus regarding . . . the terms of the 1998 Stabilization Agreement,” including the examples listed as Requests Nos. 8(i)-(iii). Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request. <p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 8 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> Privilege: Claimant sustains that in Requests Nos. 8(i)-(iii) Respondent seeks documents that are protected from disclosure by legal professional privilege. <i>First</i>, it is Claimant that has put Cyprus’ understanding (<i>see</i> Claimant’s Memorial, para. 297(a))—and its own understanding—of stability guarantees into issue in this case, and Claimant cannot do so as a sword to advance its claims but then assert the shield of privilege over documents (including legal advice) that will verify or refute Claimant’s true understanding of that same legal question. Additionally, <u>only</u> Request No. 8(ii) seeks documents that might contain legal due diligence; Requests Nos. 8(i) and 8(iii) seek production of <i>other</i> due diligence (<i>i.e.</i>, <i>not</i> legal due diligence); therefore, any allegation of legal privilege would necessarily not apply to the latter Requests. <p><i>Second</i>, as to Claimant’s privilege objections, Respondent requests that to the extent Claimant asserts that any responsive document(s) is/are protected by privilege the Tribunal</p>

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	<p>order Claimant to create a “privilege log” as described <i>supra</i> at pp. ii, x-xii. Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Documents recording due diligence Phelps Dodge performed on the scope of stability guarantees under the Mining Law and Regulations. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal rejects the remainder of Respondent’s Request No. 8 as overly broad.</p>

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Document Request No.	9.
Documents or Category of Requested Documents	<p>Any document(s) (<i>e.g.</i>, correspondence, contracts, letters, meeting minutes, agendas, presentations, reports, excel spreadsheets, etc.) discussing Phelps Dodge’s and/or SMCV’s decision to invest in the Concentrator Plant, related to the role and/or scope of the 1998 Stabilization Agreement, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any study and/or advice that Phelps Dodge or SMCV received discussing or recording the scope and purpose of the 1998 Stabilization Agreement; (ii) Any legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) that Phelps Dodge or SMCV received discussing or recording the scope and purpose of the 1998 Stabilization Agreement; (iii) Any document(s) (created within SMCV and/or exchanged with Phelps Dodge (or any other third party)) discussing or analyzing the 2004 Feasibility Studies; (iv) Any document(s) discussing, prepared for, or recording what transpired at the October 11, 2004 Board of Directors meeting where SMCV’s Board conditionally approved the investment in the Concentrator Project, as well as at any corresponding meeting of the Phelps Dodge Board of Directors [Claimant’s Memorial, para. 112; Exhibit CE-470]; and (v) Any document(s) discussing Phelps Dodge Finance Committee’s assessment of the investment, and documents discussing the Finance Committee’s recommendation to the Phelps Dodge Board [CWS-8, para. 29; Claimant’s Memorial, para. 371(a)]. <p><u>Time frame of the Request:</u> From June 2004 (when Phelps Dodge and SMCV received the 2004 Feasibility Study), to October 11, 2004 (when SMCV’s Board conditionally approved the investment in the Concentrator Project).</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Mr. Morán WS, para. 29 [CWS-8]. • Ms. Torreblanca WS, para. 27 [CWS-11].

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<p>(2) Comments</p>	<ul style="list-style-type: none"> • Mr. Davenport’s WS, paras. 30, 40 [CWS-5]. • Claimant’s Memorial, paras. 297(c)-(f). • Respondent’s Counter-Memorial, paras. 112-123. • Phelps Dodge, SEC Form 10-K for 2004 [Exhibit CE-901]. • SMCV, Board of Directors Meeting Minutes [Exhibit CE- 470] • 2004 Feasibility Study [Exhibit CE-20]. • 2004 Updated Feasibility Study [Exhibit CE-459]. <p>(2) Comments</p> <p><i>First</i>, Claimant and its witnesses argue that at the time Phelps Dodge and SMCV were considering the additional capital investment in the Concentrator Project, they understood that the 1998 Stabilization Agreement would grant stability guarantees to that Project and that the October 2004 approval from MINEM to expand the Beneficiation Concession confirmed this understanding (<i>see</i> Claimant’s Memorial, paras. 114-115, 297(c)-(f)). However, Claimant provides no relevant evidence of any adequate due diligence undertaken either by Phelps Dodge or SMCV at the time to support this allegation; instead, it relies on witness testimony (<i>see</i> CWS-8, paras. 27-29; CWS-11, para. 27; and CWS-5, para. 31). In particular, Claimant’s witness Cristian Morán alleges that “[Phelps Dodge’s] knew, therefore, that securing financing for this new investment would be complicated unless [they] could rely on the stability guarantees contemplated in the Stability Agreement” (CWS-8, para. 27 and Claimant’s Memorial, para. 371(a)). Respondent therefore requests the documents that prove Claimant’s unsupported allegations.</p> <p><i>Second</i>, on October 11, 2004, SMCV’s Board of Directors conditionally approved an investment of US \$850 million for the construction of the Concentrator. Claimant describes this as a decision by “Phelps Dodge <i>and</i> SMCV’s Boards of Directors” (Claimant’s Memorial, para. 112) (emphasis added)—although Claimant cites only to an SMCV Board document (<i>see</i> Claimant’s Memorial, para. 112, n. 233 and Exhibit CE-470). However, in the minutes of SMCV’s Board of Directors meeting cited by Claimant where the investment in the Concentrator was approved, there is no mention of the 1998 Stabilization Agreement (<i>see generally</i> Exhibit CE-470). Also, Mr. Morán submits a copy of Phelps Dodge’s 10-K Form filed before the United States Securities and Exchange Commission (“SEC”) for fiscal year December 31, 2004, to show Phelps Dodge’s Board decision to invest in the Concentrator Project (<i>see</i> CWS-8, para. 29 citing Exhibit CE-901).</p>
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	<p>Notably, he does not provide any relevant Phelps Dodge Board meeting minutes. Similar to SMCV's Board meeting minutes, Phelps Dodge's 10- K Form does not mention the scope of the 1998 Stabilization Agreement as a variable that was considered when making the decision to invest in the Concentrator Project, nor does it discuss the Board's understanding of the scope of the 1998 Stabilization Agreement or any due diligence undertaken on the matter. Respondent therefore requests documents from the meetings of both Boards.</p> <p><i>Third</i>, Claimant cannot cite privilege as a ground to object to Request No. 9(ii). Claimant has <i>put at issue</i> Phelps Dodge's and its own subjective understanding of the mining stability guarantees under Peruvian law and the scope and purpose of the 1998 Stabilization Agreement for purposes of its legitimate expectations claim (<i>see</i> Claimant's Memorial, para. 368 ("SMCV, and Freeport's predecessor, Phelps Dodge, invested in the Concentrator <i>in reliance</i> on the stability guarantees set forth in the Stability Agreement, which they understood would apply to the Concentrator based on the existing legal framework and specific assurances given by Peruvian officials, only to have legitimate expectation of stability thwarted by Peru's decisions to effectively re-write the scope of the Stability Agreement and the Mining Law") (emphasis added)). The truth of Claimant's claim to have held a certain belief about the scope of the 1998 Stabilization Agreement can only be fully assessed if Respondent and the Tribunal have access to the contemporaneous legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) on which Claimant (or its predecessors in interest) relied discussing or analyzing the relevant legal framework (<i>e.g.</i>, the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of the 1998 Stabilization Agreement). Claimant cannot be permitted to claim that it (or its predecessors in interest) held a certain legal interpretation but then deny access to contemporaneous evidence of what it (or its predecessors in interest) did or did not actually know about the legal regime and/or the (in)validity of that legal interpretation at the time. If Claimant wishes to rely on its (or its predecessors in interest) legal understanding at the time, it must be prepared to share the documents that would prove or disprove that it (or its predecessors in interest) actually did hold that legal understanding at the time. In order to maintain fairness and equality, Claimant should not be able to object to this Request on grounds of privilege. In any case, even if any of the requested document(s) is/are protected by privilege, that is not a basis to resist the Request <i>per se</i>; rather, Claimant must put any such document(s) on a "privilege log" as described <i>supra</i> at p. (ii).</p> <p>The requested documents are relevant to assess, among other things, Claimant's legitimate expectations claim (<i>see</i> Claimant's Memorial, Section IV.B.2(i), and Respondent's Counter-</p>
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	<p>Memorial Section II.C.1). In particular, the requested documents are relevant, because they would likely provide additional information regarding Phelps Dodge’s understanding of whether the Concentrator was (or was not) covered by the 1998 Stabilization Agreement, and the weight (if any) that SMCV’s and/or Phelps Dodge’s Board(s) of Directors gave to this fact in their investment decision.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of privilege, overbreadth, irrelevance and immateriality, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, Request Nos. 9(i) and (ii) seek documents that are protected from disclosure by legal professional privilege. <i>See</i> IBA Rules, Art. 9(2)(b). Request No. 9(i) seeks “stud[ies]” and/or “advice” about the Stability Agreement and Request No. 9(ii) seeks “legal memoranda, opinions, and/or legal advice” prepared by “counsel” about the Stability Agreement. For the reasons set forth in the General Objections, Peru has failed to justify its documents requests seeking privileged information.</p> <p><i>Second</i>, this request is overbroad. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). It seeks any document prepared by any person, including third parties, referencing the role of the Stability Agreement in SMCV’s or Phelps Dodge’s decision to invest in the Concentrator. As drafted, the request captures publicly available documents like news articles and financial disclosures. Moreover, “[a]ny document(s) (created within SMCV and/or exchanged with Phelps Dodge (or any other third party)) discussing or analyzing the 2004 Feasibility Studies” is not a narrow and specific category of documents likely to be found in a readily identifiable location. Further, Peru has not narrowed the request by reference to specific custodians.</p> <p><i>Finally</i>, Respondent bases the request on a mischaracterization of the evidentiary record. Respondent argues that the request is justified because Claimant presents no “relevant evidence” that Phelps Dodge and/or SMCV performed “adequate due diligence” on the scope of the Stability Agreement, on which they relied in deciding to invest in the Concentrator. Yet, in the same sentence, Respondent acknowledges that Claimant “relies on witness testimony” reflecting Phelps Dodge’s and SMCV’s due diligence and reliance. <i>See, e.g.</i>, Davenport ¶¶ 36-39 (“I recall having discussions with various Government officials,” one of which was “Ms. Chappuis[, who] explained that, once the concentrator would be included in the existing beneficiation concession, it would benefit from the stabilization guarantees under the Stability Agreement.”); Davenport ¶¶ 39-40 (“We had confidence in Ms. Chappuis’s recommendation on how to ensure the applicability of the Stability Agreement to the new investment given her role as Director General of Mining.</p>

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Accordingly, in August 2004, SMCV submitted a request to MINEM to operate the concentrator within the existing beneficiation concession and expand its capacity In early October 2004, Phelps Dodge’s [and] SMCV Board of Directors . . . approved an investment of US\$850 million to construct the concentrator, conditional ‘on obtaining the required permits,’ [including the expansion of the Beneficiation Concession].”); Torreblanca ¶¶ 24-25 (“Around the second and third quarter of 2004, along with other SMCV representatives, I attended several meetings with Government officials [and] asked them whether the Government would be willing to give us a written guarantee or amend the Stability Agreement so that it made express reference to the Concentrator Their response was generally the same: that we did not have to worry because the Agreement would protect any investment that SMCV made in its Mining Concession and Beneficiation Concession during the term of the Agreement. I recall that Director Chappuis was particularly clear about this: she told us that, in accordance with the Mining Law and the Regulations, the Stability Agreement applied to the entirety of the Cerro Verde Mining Unit (*i.e.*, the Mining and Beneficiation Concessions), and thus we merely had to expand the Beneficiation Concession to include the Concentrator.”); Torreblanca ¶ 27 (“The [SMCV] Board of Directors decided to approve the investment conditionally, noting in the meeting minutes that final approval ‘would depend on obtaining the required permits, [including the expansion of the Beneficiation Concession].”); Morán ¶ 24 (“[B]etween July and August 2004, SMCV representatives—including Randy Davenport, the company’s President, and Ms. Torreblanca—met with María Chappuis, MINEM’s Director General of Mining, to discuss the Stability Agreement and confirm that the Mining Royalty Law would not affect our investment in the Concentrator. . . . I understand that the DGM gave Mr. Davenport and Ms. Torreblanca the assurances that we were seeking and explained that, for greater certainty, SMCV should petition MINEM to expand the Beneficiation Concession to include the Concentrator.”); Morán ¶¶ 27-29 (“The Board based its approval on . . . our understanding that the Stability Agreement’s guarantees would apply to the Concentrator (an understanding that the Peruvian authorities had confirmed to SMCV representatives). Indeed, as noted in Phelps Dodge’s financial reports from 2004, the Board underscored that its final approval of the investment was contingent upon receiving all required permits that were pending in Peru, including expansion of the Beneficiation Concession” “which would ensure that [the Concentrator] would be covered by the Stability Agreement.”); Chappuis ¶ 52 (“I recall that I repeated to the representatives of SMCV that the scope of stability guarantees under the Mining Law and the Regulations was clear, and that the Stability Agreement would apply to any investment that SMCV made in its mining unit throughout the Agreement’s effective term.”).

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To the extent that Respondent maintains that Claimant presents no *documents* that Phelps Dodge and SMCV relied on, that submission is flatly contradicted by the evidentiary record. *See, e.g. Ex. CE-403*, p. 8 (October 2003 draft royalty law stating that “[t]he stability agreements that were signed with the Peruvian State prior to this law fall outside its scope of application, until the terms of said stability agreements are completed”); *Ex. CE-406*, (November 2003 draft royalty law including SMCV in list of stabilized companies); *Ex. CE-415*, p. 1 (December 2003 opinion of the Congressional Energy and Mines Commission recommending approval of a royalty that “will apply to all new mining concessions and to all of those that enjoy tax stability, once they have ended”); *Ex. CE-19*, p. [10] (March 2004 MEF evaluation including SMCV on list of mining companies whose stability agreements would preclude application of a new royalty); *Ex. CE-20*, Vol. IV pp. 14-16 (May 2004 Feasibility Study, assuming that the stabilized regime would apply to the Concentrator); *Ex. CE-450*, p. 2 (presentation SMCV gave to MINEM officials during a July 2004 meeting which included a “Stability Agreement Discussion”); *Ex. CE-457* (SMCV’s August 2004 request to MINEM to expand the Beneficiation Concession to include the Concentrator); *Ex. CE-462* (SMCV’s September 2004 application to the DGM to use the profit reinvestment benefit, including a capital costs projection that assumed that the stabilized regime would apply to the Concentrator); *CE-459*, p. 48 (September 2004 Feasibility Study Project Update, 2004 Feasibility Study, assuming that the stabilized regime would apply to the Concentrator); *Ex. CE-470* (minutes of October 2004 meeting of SMCV’s Board approving the Concentrator investment conditional on “obtaining the required permits” including the expansion of the Beneficiation Concession); *Ex. CE-21* (December 2004 MEF letter approving SMCV’s use of the profit reinvestment benefit, noting in its internal memo that SMCV had signed a stability agreement “with respect to the investment in its concession: Cerro Verde Nos. 1, 2 and 3, known as ‘The Cerro Verde Leaching Project’” that remained “in force,” and that the Concentrator was intended for the “[e]xpansion of the [c]urrent [o]perations of Cerro Verde”); *Ex. CE-23* (December 2004 MINEM resolution approving SMCV’s use of the profit reinvestment benefit for the construction of the Concentrator); *Ex. CE-901* (Phelps Dodge’s 2004 financial report, noting that the Board’s “[f]inal approval” of the Concentrator investment was contingent upon receiving all required permits from the Peruvian government . . . in the 2004 fourth quarter,” including the expansion of the Beneficiation Concession).

Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:

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	<ul style="list-style-type: none"> • Any document(s) discussing, prepared for, or recording what transpired at the October 11, 2004 Board of Directors meeting where SMCV’s Board conditionally approved the investment in the Concentrator Project, as well as at any corresponding meeting of the Phelps Dodge Board of Directors. • Any document(s) discussing Phelps Dodge Finance Committee’s assessment of the investment, and documents discussing the Finance Committee’s recommendation to the Phelps Dodge Board.
<p style="text-align: center;">Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, privilege, relevance, and specificity. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce the following documents: <ul style="list-style-type: none"> ○ “Any document(s) discussing, prepared for, or recording what transpired at the October 11, 2004 Board of Directors meeting where SMCV’s Board conditionally approved the investment in the Concentrator Project, as well as at any corresponding meeting of the Phelps Dodge Board of Directors. ○ Any document(s) discussing Phelps Dodge Finance Committee’s assessment of the investment, and documents discussing the Finance Committee’s recommendation to the Phelps Dodge Board.” <p>While Respondent will be glad to receive such documents, it emphasizes that its Request also encompasses:</p> <ul style="list-style-type: none"> ○ “Any study and/or advice that Phelps Dodge or SMCV received discussing or recording the scope and purpose of the 1998 Stabilization Agreement” (Request No. 9(i)). ○ “Any legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) that Phelps Dodge or SMCV received discussing or recording the scope and purpose of the 1998 Stabilization Agreement” (Request No. 9(ii)); and

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- “Any document(s) (created within SMCV and/or exchanged with Phelps Dodge (or any other third party)) discussing or analyzing the 2004 Feasibility Studies” (Request No. 9(iii)).

Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request.

Respondent moves to compel production of the requested documents subject to the following comments. Claimant’s objections to Request No. 9 are misplaced for the following reasons.

- **Privilege:** As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, *supra* at pp. ii, x-xii. Claimant asserts that Request No. 9 “targets documents that are protected from disclosure by legal professional privilege.” *First*, it is Claimant that has put Phelps Dodge’s legal understanding and its own legal understanding of the 1998 Stabilization Agreement into issue in this case (*see* Claimant’s Memorial, paras. 297(c)-(f)), and Claimant cannot do so as a sword to advance its claims but then assert the shield of privilege over documents (including legal advice) that will verify or refute Claimant’s true understanding of that same legal question. Additionally, only Request No. 9(ii) seeks documents that might contain legal due diligence; Requests Nos. 9(i), 9(iii), 9(iv), and 9(v) seek production of *other* due diligence (*i.e.*, *not* legal due diligence); therefore, any allegation of legal privilege would necessarily not apply to the latter Requests.

Second, as to Claimant’s privilege objections, Respondent requests that to the extent Claimant asserts that any responsive document(s) is/are protected by privilege the Tribunal order Claimant to create a “privilege log” as described *supra* at pp. ii, x-xii. Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request.

- **Specificity:** Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent (i) identifies *one* narrow and specific category of documents in its Request (any documents discussing Phelps Dodge’s and/or SMCV’s decision to invest in the Concentrator Plant, related to the role and/or scope of the 1998 Stabilization Agreement) and provides specific examples of the documents it is

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	<p>requesting; (ii) limits the request to a specific period (just after receiving the 2004 Feasibility Studies in June 2004 and September 2004).</p> <p>This Request is narrow and specific even if Respondent does not list specific custodians. Respondent notes that Claimant is the one in the position to know who its own custodians of the requested documents are—as Claimant is the party that has access to the requested documents. Claimant cannot expect Respondent to list the specific persons who are in the possession, custody, or control of the requested documents. Respondent notes that Claimant itself has not identified specific custodians in most of its document production requests.⁴ In any event, <i>at a minimum</i> the requested documents should be in the possession, custody, or control of the following persons and/or entities: (i) Mr. Davenport (<i>see</i> CWS-5, paras. 30-40); (ii) Mr. Morán (<i>see</i> CWS-8, para. 28); (iii) Ms. Torreblanca (<i>see</i> CWS-11, para. 27); and (vi) other Phelps Dodge and/or SMCV high officials (<i>e.g.</i>, members of the board or CEO during the identified time frame).</p> <p>In any event, Claimant has agreed to produce the documents mentioned above; certainly in conducting that search, it can easily include documents discussing Phelps Dodge’s and/or SMCV’s decision to invest in the Concentrator Plant, related to the role and/or scope of the 1998 Stabilization Agreement.</p> <ul style="list-style-type: none"> • <u>Relevance and materiality:</u> The requested documents are relevant for the reasons stated in Respondent’s Request. Claimant argues that Respondent “mischaracteri[zes]” the evidence and that the requested documents are irrelevant, because Claimant has already presented witness testimony reflecting Phelps Dodge’s and SMCV’s adequate due on the scope of the 1998 Stabilization Agreement. However, Claimant has failed to provide <u>relevant evidence</u> which means contemporaneous documents that reflect the due diligence and the understanding that Phelps Dodge and SMCV had of the 1998 Stabilization Agreement at time of their investment in the Concentrator. <i>First</i>, none of the Exhibits that Claimant cites supports Claimant’s assertion. Claimant merely cites to laws, MINEM resolutions, government opinions, and feasibility studies that shed no light on <i>SMCV’s or Phelps Dodge’s</i> understanding of whether the Concentrator was covered by the 1998 Stabilization Agreement at the time of SMCV’s decision to invest in the Concentrator. It is telling that Claimant has not been able to point to relevant paragraphs of the exhibits it cites that allegedly support its assertions. Claimant merely lists a series of exhibits and
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⁴ *See e.g.*, Claimant’s Document Production Requests, March 18, 2022, Requests Nos. 1, 6, 9, 10, 11, 12, 13, 14, 23, and 24.

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	<p>provides no explanation regarding how they are relevant to support its position. <i>Second</i>, it is not sufficient for Claimant to rely on the testimony of its own witnesses alone (most of which are SMCV or former Phelps Dodge employees) to support its assertion regarding any alleged due diligence undertaken prior to Phelps Dodge’s or SMCV’s investment in the Concentrator Plant.</p> <p>The requested documents will inform the Tribunal about Phelps Dodge’s and/or SMCV’s understanding of whether the Concentrator was (or was not) covered by the 1998 Stabilization Agreement, and the weight (if any) that SMCV’s and/or Phelps Dodge’s Board(s) of Directors gave to this fact in their investment decision.</p>
<p style="text-align: center;">Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Any document(s) discussing, prepared for, or recording what transpired at the 11 October 2004 Board of Directors meeting where SMCV’s Board conditionally approved the investment in the Concentrator Project, as well as at any corresponding meeting of the Phelps Dodge Board of Directors. • Any document(s) discussing Phelps Dodge Finance Committee’s assessment of the investment, and documents discussing the Finance Committee’s recommendation to the Phelps Dodge Board. <p>Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal rejects the remainder of Respondent’s Request No. 9 as overly broad.</p>

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Document Request No.	10.
Documents or Category of Requested Documents	<p>Any document(s) (<i>e.g.</i>, correspondence, contracts, letters, meeting minutes, agendas, presentations, reports, excel spreadsheets, etc.) that Phelps Dodge and/or SMCV exchanged with or received from Sociedad Minera Cerro Verde S.A.A. (“SMM Cerro Verde”) and/or Sumitomo Metal Mining Co., Ltd (“SMM”), discussing the scope of the 1998 Stabilization Agreement, in the context of the approval and financing of the Concentrator Project, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any document(s) discussing, prepared for, or recording what transpired at the meetings that took place before the provisional approval of the Concentrator Project, where Phelps Dodge, SMCV and SMM and/or SMM Cerro Verde discussed whether the 1998 Stabilization Agreement covered the Concentrator Project; and (ii) Any document(s) discussing, prepared for, or recording what transpired at the meetings that took place once the Concentrator Project was provisionally approved, where Phelps Dodge, SMCV and SMM and/or SMM Cerro Verde discussed the master participation agreement (“Master Participation Agreement”) and/or the bond issuance program envisaged to finance the Concentrator Project. <p><u>Time frame of the Request:</u> From early 2004 (when Phelps Dodge formally began negotiating with SMM to obtain financing for the Concentrator Project [<i>see</i> Claimant’s Memorial, para. 118], to April 26, 2006 (when the corporate bonds to finance the Concentrator Project were issued [<i>see</i> Claimant’s Memorial, para. 122]).</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 112, 118-119, 122. • Participation Agreement [Exhibit CE-906]. • Master Participation Agreement [Exhibit CE-513]. • Mr. Morán WS, para. 31 [CWS-8]. <p>(2) Comments</p> <p>Freeport and its witnesses argue that at the time Phelps Dodge, and SMCV were considering the additional capital investment in the Concentrator Project, they obtained confirmation that the 1998</p>

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	<p>Stabilization Agreement would grant stability guarantees to that Project (<i>see</i> Claimant’s Memorial para. 112; CWS-5, para. 40; CWS-8, paras. 30-31). Freeport claims that it relied on this alleged confirmation when making its investment in the Cerro Verde Mine (<i>see</i> Claimant’s Memorial para. 297(c) and (d)). However, Claimant has failed to put on the record any document that supports its statement.</p> <p>Claimant notes that Phelps Dodge negotiated with SMM the financing of the Concentrator Project (Claimant’s Memorial, para. 118 (“Beginning in early 2004, Phelps Dodge had begun formally negotiating with Sumitomo Metal Mining to obtain financing for the concentrator investment.”)). SMM documents or SMM Cerro Verde documents exchanged with Phelps Dodge or SMCV discussing the scope of the 1998 Stabilization Agreement in the context of the approval and financing of the Concentrator Project are relevant and material for the dispute, and are likely to be in Claimant’s possession, custody, or control for the following reasons.</p> <p><i>First</i>, in early 2004, Phelps Dodge began formally negotiating with SMM to obtain financing for the Concentrator Project, and in May 2005, Phelps Dodge transferred its rights to purchase Buenaventura’s shares in SMCV to SMM Cerro Verde (<i>see</i> Claimant’s Memorial, paras. 118, 120). Therefore, Phelps Dodge (Freeport’s predecessor) was likely in possession, custody, or control of SMM Cerro Verde and/or SMM document(s) exchanged with Phelps Dodge before and after the conditional approval of the Concentrator Project in October 11, 2004 (<i>see</i> Claimant’s Memorial, para. 112).</p> <p><i>Second</i>, in September 2005 and April 2006, SMCV signed the Master Participation Agreement and a bond issuance program to finance the Concentrator Project. SMCV and Sumitomo Mitsui Banking Corporation were parties to both the Master Participation Agreement and the draft bond prospectus (<i>see</i> CE-513, pp. 1 and 173 pdf). The Participation Agreement “recognized that the Concentrator would be located ‘within the concessions of SMCV’ and developed according to the plan set out in the 2004 Feasibility Study and its September 2004 update, <i>both of which assumed that the Stability Agreement would apply</i>” (Claimant’s Memorial, para. 119 (emphasis added)). Also, as explained below in Request No. 17, the scope of the 1998 Stabilization Agreement, and more precisely the issue of whether the Agreement may or may not cover the Concentrator Plant, is <i>explicitly</i> considered as one of the risks in the Participation Agreement and the draft bond prospectus.</p> <p>The requested documents are relevant to assess, among other things, Claimant’s legitimate expectations claim (<i>see</i> Claimant’s Memorial, Section IV.B.2(i), and Respondent’s Counter-</p>
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	<p>Memorial Section II.C.1). In particular, the requested documents are relevant in that they are likely to provide information regarding Phelps Dodge’s understanding in 2004, 2005, and 2006 of whether the Concentrator was or was not covered by the 1998 Stabilization Agreement.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth, absence of possession, custody, or control, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request is overbroad. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). “Any document(s) . . . that Phelps Dodge and/or SMCV exchanged with . . . SMM Cerro Verde . . . or SMM, discussing the scope of the 1998 Stabilization Agreement, in the context of the approval and financing of the Concentrator Project” is not a narrow and specific category of documents. Moreover, Peru has not narrowed the request by reference to specific custodians. To comply with the IBA Rules, Peru should identify a specific set of documents, such as minutes of meetings that Phelps Dodge and/or SMCV, conducted with SMM Cerro Verde and/or SMM.</p> <p><i>Second</i>, to the extent the request seeks documents solely held by SMCV shareholder, Sociedad Minera Cerro Verde B.V. (“SMM Cerro Verde”) or its parent, SMM, it seeks documents that are not in the possession, custody, or control of Freeport or SMCV. <i>See</i> IBA Rules, Art. 3(3)(c)(ii).</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Final minutes of due diligence meetings between: (i) SMM Cerro Verde and/or SMM; and (ii) Phelps Dodge and/or SMCV concerning the negotiation of the Participation Agreement. • Final minutes of due diligence meetings between: (i) SMM Cerro Verde and/or SMM; and (ii) Phelps Dodge and/or SMCV concerning the negotiation of the Master Participation Agreement.
<p style="text-align: center;">Requesting party reply</p>	<p>Agreed production: Respondent notes that Claimant has agreed to produce the “[f]inal minutes of due diligence meetings between: (i) SMM Cerro Verde and/or SMM and Phelps Dodge and/or SMCV concerning the negotiation of the Participation Agreement” and the “[f]inal minutes of due diligence meetings between: (i) SMM Cerro Verde and/or SMM; and (ii) Phelps Dodge and/or SMCV concerning the negotiation of the Master Participation Agreement” within its or SMCV’s possession, custody, or control. In a good faith effort to collaborate, Respondent asks for no further documents under Request No. 10.</p>

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	<p>As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and its General Replies, <i>supra</i> at pp. ii, x-xi. In particular, Respondent notes that the fact that some documents may be privileged does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> on p. ii.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Final minutes of due diligence meetings between: (i) SMM Cerro Verde and/or SMM; and (ii) Phelps Dodge and/or SMCV concerning the negotiation of the Participation Agreement. • Final minutes of due diligence meetings between: (i) SMM Cerro Verde and/or SMM; and (ii) Phelps Dodge and/or SMCV concerning the negotiation of the Master Participation Agreement. <p>Accordingly, the Tribunal orders Claimant to produce such Documents. The Tribunal also takes note that Respondent asks for no further Documents under Request No. 10.</p>

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Document Request No.	11.
Documents or Category of Requested Documents	<p>Any document(s) discussing or recording any due diligence undertaken by Freeport before acquiring Phelps Dodge regarding the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the terms of the 1998 Stabilization Agreement, including but not limited to:</p> <ul style="list-style-type: none"> (i) Any study and/or advice Freeport received about the TUO of the Mining Law, the Mining Regulations, and/or L.D. 708; (ii) Any legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) that Freeport received discussing or recording the scope and purpose of the TUO of the Mining Law, the Mining Regulations and/or L.D. 708 or of the 1998 Stabilization Agreement; (iii) Any study and/or advice Freeport received discussing or recording the scope and purpose of the 1998 Stabilization Agreement; (iv) Any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, emails) created within Freeport and/or exchanged with Phelps Dodge or SMCV (or any other third party) discussing or analyzing documents or matters described in points (i) and (ii) above. <p><u>Time frame of the Request:</u> From the time Freeport started its discussions about a potential merger with Phelps Dodge (probably several months before signing the merger agreement in November 2006 [<i>see</i> Claimant’s Memorial, para. 156]), to March 19, 2007 (when Freeport completed its acquisition of Phelps Dodge [<i>see</i> Claimant’s Memorial, para. 158]).</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 156-158 and Section IV.B(2)(i). • Respondent’s Counter-Memorial, paras. 124-127.

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(2) Comments

Claimant contends that Perú “thwarted Freeport and SMCV’s legitimate expectation that the Government would honor the stability guarantees on which they and their predecessors-in-interest had relied in investing in the Concentrator” (Claimant’s Memorial, para. 22). However, Claimant has failed to provide any evidence that Freeport in fact relied on the 1998 Stabilization Agreement when making its decision to invest in Perú. Indeed, Claimant alleges that at the time it made its investment in SMCV, “it ‘relied’ [through its predecessors] on the [1998] Stability Agreement when ‘establishing or acquiring’ its covered investment in SMCV and its covered investments in the Cerro Verde Mining Unit, including the investment to construct the Concentrator” (*see* Claimant’s Memorial, para. 297; *see also* Notice of Arbitration, paras. 4, 106). However, Claimant fails to put on the record any specific due diligence undertaken by Freeport before acquiring Phelps Dodge regarding the scope of the 1998 Stabilization Agreement.

Claimant cannot cite privilege as a ground to object to Request No. 11(ii). Claimant has *put at issue* its own subjective understanding of the mining stability guarantees under Peruvian law and the scope and purpose of the 1998 Stabilization Agreement for purposes of its legitimate expectations claim (*see, e.g.*, Claimant’s Memorial, para. 297). The truth of Claimant’s claim to have held a certain belief about the scope of the 1998 Stabilization Agreement can only be fully assessed if Respondent and the Tribunal have access to the contemporaneous legal memoranda, opinions, and/or legal advice (prepared by internal or external counsel) on which Claimant relied discussing or analyzing the relevant legal framework (*e.g.*, the TUO of the Mining Law, the Mining Regulations, L.D. 708, and/or regarding the scope and purpose of the 1998 Stabilization Agreement). Claimant cannot be permitted to claim that it held a certain legal interpretation but then deny access to contemporaneous evidence of what it did or did not actually know about the legal regime and/or the (in)validity of that legal interpretation at the time. If Claimant wishes to rely on its legal understanding at the time, it must be prepared to share the documents that would prove or disprove that it actually did hold that legal understanding at the time. In order to maintain fairness and equality, Claimant should not be able to object to this Request on grounds of privilege. In any case, even if any of the requested document(s) is/are protected by privilege, that is not a basis to resist the Request *per se*; rather, Claimant must put any such document(s) on a “privilege log” as described *supra* at p. (ii).

The requested documents are relevant to assess Claimant’s legitimate expectations claim. In particular, the requested documents are relevant in that they will provide information regarding Freeport’s understanding of the Mining Law and of the terms and scope of the 1998 Stabilization

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	<p>Agreement (<i>i.e.</i>, regarding whether or not the Stabilization Agreement would apply to the activities and investment related to the Concentrator Project) before it invested in Perú.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of privilege, overbreadth, irrelevance and immateriality, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request targets documents that are protected from disclosure by legal professional privilege. <i>See</i> IBA Rules, Art. 9(2)(b). The requested due diligence is likely to include privileged legal advice.</p> <ul style="list-style-type: none"> • Request No. 11(i) seeks “stud[ies]” and/or “advice” about the Mining Law and Regulations; • Request No. 11(ii) seeks “legal memoranda, opinions, and/or legal advice” prepared by “counsel” about the Mining Law, the Regulations, and the Stability Agreement; • Request No. 11(iii) seeks “stud[ies]” and/or “advice” about the Stability Agreement; and • Request No. 11(iv) seeks Freeport documents discussing the privileged legal advice sought in Requests No. 11(i) and 11(ii). <p>For the reasons set forth in the General Objections, Peru has failed to justify its documents requests seeking privileged information.</p> <p><i>Second</i>, this request is overbroad. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). It seeks any document prepared by any person, including third parties, referencing due diligence about the Peruvian mining stability regime that Freeport conducted prior to acquiring Phelps Dodge. This is not a narrow and specific category of documents likely to be found in a readily identifiable location. Moreover, the temporal limitation does not contain a specified start date and Peru has not narrowed the request by reference to specific custodians.</p> <p><i>Finally</i>, this request seeks documents that are irrelevant and immaterial. <i>See</i> IBA Rules, Art. 9(2)(a). Respondent bases the request on a mischaracterization of Freeport’s claims and the evidentiary record. Any due diligence Freeport performed on the Peruvian mining stability regime or the scope of the Stability Agreement is not relevant to the issues in dispute. Freeport does not allege that it relied on the Stability Agreement in deciding to invest in Peru. Rather, Freeport alleges that Phelps Dodge, Freeport’s predecessor in interest, relied on the Stability Agreement in making the decision to invest in the Concentrator. As Phelps Dodge’s successor, Freeport is entitled to invoke Phelps</p>

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	<p>Dodge’s reliance on the Stability Agreement in making its decision to invest in the Concentrator for the jurisdictional purpose of establishing that the Stability Agreement is an “Investment Agreement” under Article 10.28 of the TPA.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents exchanged between: (i) Freeport; and (ii) Phelps Dodge and/or SMCV in 2006 or 2007 discussing or analyzing the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the scope of the Stability Agreement.
<p>Requesting party reply</p>	<p>Partially Agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant has agreed to produce “[d]ocuments exchanged between: (i) Freeport; and (ii) Phelps Dodge and/or SMCV in 2006 or 2007 discussing or analyzing the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the scope of the Stability Agreement” so long as they are not privileged and within its or SMCV’s possession, custody, and control. <p>However, this Request was not limited to documents exchanged between Freeport, on the one hand, and Phelps Dodge or SMCV, on the other. Nor was this Request limited to the 2006-2007 time frame (it covered documents “from the time Freeport started its discussions about a potential merger with Phelps Dodge”). And it is unclear whether “[d]ocuments . . . discussing or analyzing the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the scope of the Stability Agreement” would cover each of the documents specified in sections (i)-(iv) of this Request.</p> <p>Thus, Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request.</p> <p>Respondent moves to compel production of the requested documents subject to the following comments. Claimant’s objections to Request No. 11 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> • Privilege: As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, supra at pp. ii, x-xii. Claimant asserts that Request No. 11 “targets documents that are protected from disclosure by legal professional privilege.” <i>First</i>, it is Claimant that has put its legal understanding of the 1998 Stabilization

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	<p>Agreement into issue in this case (<i>see</i> Claimant’s Memorial, para. 297), and Claimant cannot do so as a sword to advance its claims but then assert the shield of privilege over documents (including legal advice) that will verify or refute Claimant’s true understanding of that same legal question. Additionally, <u>only</u> Request No. 11(ii) seeks documents that might contain legal due diligence; Requests Nos. 11(i), 11(iii), and 11(iv) seek production of other due diligence (<i>i.e.</i>, <i>not</i> legal due diligence); therefore, any allegation of legal privilege would necessarily <i>not</i> apply to those sections.</p> <p><i>Second</i>, as to Claimant’s privilege objections, Respondent requests that to the extent Claimant asserts that any responsive document(s) is/are protected by privilege the Tribunal order Claimant to create a “privilege log” as described supra at pp. ii, x-xii. Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request.</p> <ul style="list-style-type: none"> • <u>Overbreadth</u>: Claimant also argues that this Request is overbroad because “[i]t seeks any document prepared by any person, including third parties, referencing due diligence about the Peruvian mining stability regime that Freeport conducted prior to acquiring Phelps Dodge” and because “the temporal limitation does not contain a specified start date and Peru has not narrowed the request by reference to specific custodians.” These arguments are unreasonable. Respondent is seeking these documents precisely to determine what due diligence, if any, Claimant did when it acquired Phelps Dodge; Respondent obviously does not and cannot know the universe or scope of that due diligence (<i>i.e.</i>, what documents exist or who created them). With respect to the temporal limitation, Respondent explicitly limited this Request to documents starting “[f]rom the time Freeport started its discussions about a potential merger with Phelps Dodge.” Claimant complains that this is not a specific date but, again, there is no possible way for Respondent to know when Claimant’s due diligence (if any) began. • <u>Relevance and Materiality</u>: Finally, Claimant argues that “this request seeks documents that are irrelevant and immaterial.” According to Claimant, “[a]ny due diligence Freeport performed on the Peruvian mining stability regime or the scope of the Stability Agreement is not relevant to the issues in dispute” because “Freeport does not allege that it relied on the Stability Agreement in deciding to invest in Peru.” Claimant’s arguments are without merit. <i>First</i>, Respondent notes that Claimant did previously make the aforementioned allegation. Specifically, in its Notice of Arbitration, Claimant declares that Freeport relied on the 1998 Stabilization Agreement without citing to or submitting on the record any evidence: “<i>Freeport and SMCV relied on the Stability Agreement and invested hundreds of</i>
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	<p>millions of dollars to develop the Cerro Verde mine” (Claimant’s Notice of Arbitration, para. 4) (emphasis added); “<i>Freeport and SMCV relied on the Stability Agreement ‘in establishing or acquiring a covered investment.’ Freeport relied on the Stability Agreement in acquiring SMCV’s shares and Freeport and SMCV relied on the Stability Agreement in making their investments in the Cerro Verde mine</i> including, among other investments, the Leaching and the Flotation Plant.” (Claimant’s Notice of Arbitration, para. 106) (emphasis added). <i>Second</i>, with respect to legitimate expectations, Respondent argued in its Counter-Memorial that the formulation of Claimant’s legitimate expectations claim “is fatally flawed,” precisely “because it is based on other entities’ expectations” and not Freeport’s expectations. (Respondent’s Counter-Memorial at para. 670.) The documents Respondent seeks go to the heart of Respondent’s argument and, thus, are relevant to the credibility (or lack thereof) of Claimant’s legitimate expectations claim.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Documents exchanged between: (i) Freeport; and (ii) Phelps Dodge and/or SMCV in 2006 or 2007 discussing or analyzing the regulatory framework applicable to stabilization agreements signed under Title Nine of the Mining Law, and/or the scope of the Stability Agreement. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal rejects the remainder of Respondent’s Request No. 11 as overly broad.</p>

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Document Request No.	12.
Documents or Category of Requested Documents	<p>Any document(s) showing that Claimant acquired Phelps Dodge on March 19, 2007 in reliance of the 1998 Stabilization Agreement.</p> <p><u>Time frame of Request:</u> Time period leading up to Freeport’s acquisition of Phelps Dodge on March 19, 2007 [see Claimant’s Memorial, para. 158].</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Notice of Arbitration, paras. 4, 106. • Claimant’s Memorial, paras. 297, 371, and Section IV.A. • Respondent’s Counter-Memorial, paras. 519-535. • US-Perú Trade Promotion Agreement, Arts. 10.16.1(b), 10.28 [Exhibit CA-10]. <p>(2) Comments</p> <p>Claimant alleges, on behalf of SMCV, that Perú breached the 1998 Stabilization Agreement (Claimant’s Memorial, Section IV.A). According to Article 10.16.1(b) of the United States-Peru Trade Promotion Agreement (“TPA”), a claimant may submit a claim of breach of an investment agreement “on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly . . . only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement” (US-Perú Trade Promotion Agreement, Art. 10.16.1(b) [Exhibit CA-10]). Additionally, the TPA defines “investment agreement” as requiring the investor’s reliance on the investment agreement: “a written agreement between a national authority of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment” (US-Perú Trade Promotion Agreement, Art. 10.28 [Exhibit CA-10]).</p> <p>Respondent has argued that Claimant has failed to submit any evidence on the record of its reliance on the 1998 Stabilization Agreement when it acquired Phelps Dodge (Respondent’s Counter-Memorial, paras. 519-535). Thus, Claimant failed to satisfy the jurisdictional requirements under the TPA, because it (i) failed to satisfy the TPA’s requirement for submitting (on behalf of SMCV)</p>

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	<p>a claim of breach of the 1998 Stabilization Agreement, and (ii) failed to show that the 1998 Stabilization Agreement is an “investment agreement” within the meaning of the TPA.</p> <p>In its Notice of Arbitration, Claimant declares that it relied on the 1998 Stabilization Agreement without citing to or submitting on the record any evidence (Claimant’s Notice of Arbitration, paras. 4, 106). Similarly, in its Memorial, Claimant failed to submit any evidence of its reliance on the 1998 Stabilization Agreement when it acquired Phelps Dodge.</p> <p>The requested documents are relevant and material to determining whether Claimant satisfied the jurisdictional requirements under Articles 10.16.1(b) and 10.28 of the TPA.</p>
<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth and irrelevance and immateriality, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request is overbroad. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). It seeks any document prepared by any person, including third parties, referencing due diligence about the Peruvian mining stability regime that Freeport conducted prior to acquiring Phelps Dodge. This is not a narrow and specific category of documents likely to be found in a readily identifiable location. Moreover, the temporal limitation does not contain a specified start date and Peru has not narrowed the request by reference to specific custodians.</p> <p><i>Second</i>, this request seeks documents that are irrelevant and immaterial. <i>See</i> IBA Rules, Art. 9(2)(a). Respondent bases the request on a mischaracterization of Freeport’s claims and the evidentiary record. Freeport does not allege that it relied on the Stability Agreement in making its decision to acquire Phelps Dodge. Rather, Freeport alleges that Phelps Dodge, Freeport’s predecessor in interest, relied on the Stability Agreement in making the decision to invest in the Concentrator. As Phelps Dodge’s successor, Freeport is entitled to invoke Phelps Dodge’s reliance on the Stability Agreement in making its decision to invest in the Concentrator for the jurisdictional purpose of establishing that the Stability Agreement is an “Investment Agreement” under Article 10.28 of the TPA.</p>
<p>Requesting party reply</p>	<p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 12 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> • Specificity: Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent identifies <i>one</i> narrow and specific category of documents in its Request (any document(s) showing that Claimant acquired Phelps Dodge

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	<p>on March 19, 2007 in reliance of the 1998 Stabilization Agreement), during a defined time frame (“Time period leading up to Freeport’s acquisition of Phelps Dodge on March 19, 2007.”). This Request is narrow and specific even though Respondent does not provide a start date or specific custodians. Respondent notes that Claimant is in a better position to identify the date when it began considering or discussing the acquisition of Phelps Dodge, and the 1998 Stabilization Agreement in the context of its consideration to acquire Phelps Dodge. Similarly, Respondent notes that Claimant is the one in the position to know who its own custodians of the requested documents are—as Claimant is the party that has access to the requested documents. Claimant cannot expect Respondent to list the specific persons who are in the possession, custody, or control of the requested documents as Respondent was not a party to the discussions related to Freeport’s acquisition of Phelps Dodge. Respondent notes that <u>Claimant itself has not identified specific custodians in most of its document production requests.</u>⁵</p> <p>In any event, <i>at a minimum</i> the requested documents should be in the possession, custody, or control of the following persons and/or entities: Freeport, Phelps Dodge, and/or SMCV high officials (<i>e.g.</i>, members of the board, and CEO during the time frame of issuance). Claimant’s argument that the requested documents are not “likely to be found in a readily identifiable location” is without merit. Claimant should have already gathered and reviewed the requested documents in support of its position that Claimant satisfied the jurisdictional requirements under Articles 10.16.1(b) and 10.28 of the TPA. It therefore cannot argue that a search for such documents would be unreasonably burdensome. Also, Freeport has likely gathered in an identifiable location all of its due diligence documents related to one of its largest acquisitions.</p> <ul style="list-style-type: none"> • <u>Relevance and materiality:</u> Claimant argues that the requested documents are not relevant because “Freeport does not allege that it relied on the Stability Agreement in making its decision to acquire Phelps Dodge. Rather, Freeport alleges that Phelps Dodge, Freeport’s predecessor in interest, relied on the Stability Agreement in making the decision to invest in the Concentrator.” <i>First</i>, Respondent notes that Claimant did previously make the aforementioned allegation. Specifically, in its Notice of Arbitration, Claimant declares that Freeport relied on the 1998 Stabilization Agreement (without citing to or submitting on the record any evidence): “<i>Freeport and SMCV relied on the Stability Agreement and invested hundreds of millions of dollars to develop the Cerro Verde mine</i>” (Claimant’s Notice of Arbitration, para. 4) (emphasis added); “<i>Freeport and SMCV relied on the Stability</i>
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⁵ See *e.g.*, Claimant’s Document Production Requests Nos. 1, 6, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, and 27.

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	<p><i>Agreement ‘in establishing or acquiring a covered investment.’ Freeport relied on the Stability Agreement in acquiring SMCV’s shares and Freeport and SMCV relied on the Stability Agreement in making their investments in the Cerro Verde mine including, among other investments, the Leaching and the Flotation Plant.” (Claimant’s Notice of Arbitration, para. 106) (emphasis added).</i></p> <p><i>Second</i>, as discussed, the TPA (i) permits a claimant to submit a claim of breach of an investment agreement “on behalf of an enterprise of the respondent that is a juridical person that the claimant owns or controls directly or indirectly . . . only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement,” and (ii) defines “investment agreement” as requiring the investor’s reliance on the investment agreement: “a written agreement between a national authority of a Party and a covered investment or an investor of another Party, on which the covered investment or the investor relies in establishing or acquiring a covered investment” (US-Perú Trade Promotion Agreement, Arts. 10.16.1(b) and 10.28 [Exhibit CA-10]). Therefore, the requested documents are both relevant and material to determining whether Claimant satisfied the jurisdictional requirements under Articles 10.16.1(b) and 10.28 of the TPA.</p>
Decision of the Tribunal	The Tribunal rejects Respondent’s Request No. 12 as overly broad.

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(ICSID Case No. ARB/20/8)

Document Request No.	13.
Documents or Category of Requested Documents	<p>Any document(s) created or received by Ms. Torreblanca, Mr. Davenport, and/or any other official from SMCV, discussing or recording that they communicated to SMCV’s management and/or to SMCV’s shareholders about the alleged discussions they had with Peruvian government officials (including any assurances they received) regarding the scope of the 1998 Stabilization Agreement and whether such Agreement included the Concentrator Project, including but not limited to:</p> <p>(i) Any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, correspondence, emails) prepared for, discussing, or recording what transpired in the meetings that Ms. Torreblanca had with Ms. Chappuis; Luis Panizo (MINEM’s Legal Advisor); Jorge Merino (Project Manager in Mining Affairs of the Private Investment Promotion Agency of Perú); and/or Juana Rosa Del Castillo (Manager at Empresa Minera del Centro del Perú) where Peruvian government officials allegedly confirmed that “[SMCV] did not have to worry because the Agreement would protect any investment that SMCV made in its Mining Concession and Beneficiation Concession during the term of the Agreement” [CWS-11, para. 24]; and</p> <p>(ii) Any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, correspondence, emails) discussing or recording the discussions that Mr. Davenport had with Ms. Chappuis and other Peruvian government officials where they allegedly confirmed that “SMCV could count on the protections of the Stabili[zation] Agreement for [its] investment [in the concentrator]” [CWS-5, para. 36].</p> <p><u>Time frame for the Request:</u> From January 2004 to May 2005.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Ms. Torreblanca WS, paras. 24-25 [CWS-11]. • Mr. Davenport WS, paras. 35-39 [CWS-5]. • Claimant’s Memorial, paras. 107-109, 370. • Respondent’s Counter-Memorial, paras. 147, 690, 695.

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	<p>(2) Comments</p> <p>Claimant’s witnesses Ms. Torreblanca and Mr. Davenport assert that they received assurances from Peruvian government officials who confirmed that the Concentrator would be covered by the 1998 Stabilization Agreement. However, both Claimant and its witnesses have failed to submit any contemporaneous documentary evidence showing that such assurances existed and/or that these assurances were communicated to SMCV’s management and/or to SMCV’s shareholders at the time.</p> <p>The requested documents are for the period when SMCV allegedly received those assurances from Peruvian government officials (<i>i.e.</i>, they will probably fall within the time period from January 2004 until May 2005). Most of the meetings between SMCV’s officials and Peruvian government officials regarding whether the 1998 Stabilization Agreement covered the Concentrator took place in 2004 (<i>see</i> CWS-5, para. 39, and CWS-11, paras. 24, 26). Taking into account that SMCV’s Board of Directors conditionally approved the Concentrator Project in October 2004 (<i>see</i> Claimant’s Memorial, para. 112), and assuming that it will be reasonable for SMCV’s officials to report on whether the 1998 Stabilization Agreement covered the Concentrator Project to its shareholders both (i) while they were having the meetings with Peruvian government officials, and (ii) before and <i>after</i> the approval of the Concentrator Project (<i>i.e.</i>, also during the first months of 2005), Respondent believes that January 2004 to May 2005 is a reasonable time frame for this Request.</p> <p>The requested documents are relevant and material, <i>inter alia</i>, to assess Claimant’s legitimate expectations claim. The requested documents may provide contemporaneous evidence regarding SMCV’s and Phelps Dodge’s (Claimant’s predecessor) understanding of the scope of the 1998 Stabilization Agreement based on comments SMCV received from Peruvian government officials, or the lack thereof.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of irrelevance and immateriality, overbreadth, and for the reasons set forth in the General Objections. <i>See</i> IBA Rules, Art. 3(3)(a)(ii).</p> <p><i>First</i>, to the extent the request seeks documents from after the moment Phelps Dodge decided to invest in the Concentrator, it seeks documents that are irrelevant and immaterial to the dispute. In October 2004, Phelps Dodge’s Board conditionally approved the Concentrator investment. Davenport ¶ 40; Torreblanca ¶ 27; Morán ¶¶ 27-29. “Final approval was contingent upon receiving all required permits from the Peruvian government . . . in the 2004 fourth quarter,” including</p>

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MINEM's approval of SMCV's requests to expand the Beneficiation Concession to include the Concentrator and use the profit reinvestment benefit to construct the Concentrator. **Ex. CE-901.** MINEM approved SMCV's request to expand the Beneficiation Concession in October 2004 and SMCV's request to use the profit reinvestment benefit to construct the Concentrator in December 2004. **Ex. CE-476; Ex. CE-23.** Therefore, any information SMCV conveyed to Phelps Dodge after December 2004 is not relevant to the question of Phelps Dodge's reliance on the Stability Agreement in making its investment decision.

Second the request is overbroad. It is not limited to specific SMCV or Government officials. It would be impractical and overly burdensome for Freeport to identify every document any official of SMCV conveyed to SMCV's management or shareholders over a year-and-a-half period concerning communications with any Peruvian government official. This is not a narrow and specific category of documents likely to be located in a readily identifiable location.

Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV's possession, custody, and control, which can be located after a reasonable search:

- Any document(s) from 2004 created or received by Ms. Torreblanca or Mr. Davenport discussing or recording that they communicated to SMCV's management and/or to SMCV's shareholders:
 - What transpired in the meetings that Ms. Torreblanca had with Ms. Chappuis; Luis Panizo (MINEM's Legal Advisor); Jorge Merino (Project Manager in Mining Affairs of the Private Investment Promotion Agency of Perú); and/or Juana Rosa Del Castillo (Manager at Empresa Minera del Centro del Perú) in which they allegedly confirmed that "[SMCV] did not have to worry because the Agreement would protect any investment that SMCV made in its Mining Concession and Beneficiation Concession during the term of the Agreement" [CWS-11, paras. 24-25]; or
 - Recording the discussions that Mr. Davenport had with Ms. Chappuis where she allegedly confirmed that "SMCV could count on the protections of the Stabili[zation] Agreement for [its] investment [in the concentrator]" [CWS-5, para. 36].

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Requesting party reply	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, specificity and relevance. As explained below, Claimant’s objection is without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce the following documents: <ul style="list-style-type: none"> “Any document(s) from 2004 created or received by Ms. Torreblanca or Mr. Davenport discussing or recording that they communicated to SMCV’s management and/or to SMCV’s shareholders: <ul style="list-style-type: none"> What transpired in the meetings that Ms. Torreblanca had with Ms. Chappuis; Luis Panizo (MINEM’s Legal Advisor); Jorge Merino (Project Manager in Mining Affairs of the Private Investment Promotion Agency of Perú); and/or Juana Rosa Del Castillo (Manager at Empresa Minera del Centro del Perú) in which they allegedly confirmed that “[SMCV] did not have to worry because the Agreement would protect any investment that SMCV made in its Mining Concession and Beneficiation Concession during the term of the Agreement [CWS-11, paras. 24-25]; or Recording the discussions that Mr. Davenport had with Ms. Chappuis where she allegedly confirmed that “SMCV could count on the protections of the Stabili[zation] Agreement for [its] investment [in the concentrator] [CWS-5, para. 36].” <p>While Respondent will be happy to receive such documents, it emphasizes that its Request also focuses on the documents (i) “created or received by . . . <i>any other official from SMCV</i>” (emphasis added) (and not only by Ms. Torreblanca or Mr. Davenport), (ii) “about the alleged discussions they had with Peruvian government officials . . . regarding the scope of the 1998 Stabilization Agreement and whether such Agreement included the Concentrator Project” (and not only regarding the meetings listed in Requests Nos. 13(i) and 13(ii), which are only two examples). Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request.</p> <p>Respondent moves to compel production of the requested documents subject to the following comments. Claimant’s objections to Request No. 13 are misplaced for the following reasons.</p>
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- **Relevance:** The requested documents are relevant for the reasons stated in Respondent’s Request. Claimant alleges that “to the extent the request seeks documents from after the moment Phelps Dodge decided to invest in the Concentrator, it seeks documents that are irrelevant and immaterial to the dispute.” As Respondent noted in its comments to this Request, it would be reasonable for SMCV’s officials to report on whether the 1998 Stabilization Agreement covered the Concentrator Project to its management and to its shareholders both before and *after* the approval of the Concentrator Project in October 2004 (*i.e.*, also during the first months of 2005). Therefore, the requested documents that are dated after October 2004 are also relevant.
- **Specificity:** Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent (i) identifies a narrow and specific category of documents in its Request (documents *discussing or recording* what certain SMCV officials communicated to SMCV’s management and/or SMCV’s shareholders about the alleged discussions they had with Peruvian government officials regarding the scope of the 1998 Stabilization Agreement and whether it covered the Concentrator Project); (ii) identifies the relevant parties (Ms. Torreblanca, Mr. Davenport, or any other SMCV official who communicated to SMCV’s management and/or SMCV’s shareholders the content of the alleged discussions that they had with Peruvian government officials regarding the scope of the 1998 Stabilization Agreement); and (iii) identifies a narrow time frame of one-and-a-half years that corresponds to the months when SMCV’s officials potentially reported to their management and/or shareholders on whether the 1998 Stabilization Agreement covered the Concentrator Project (probably SMCV officials discussed the scope of the 1998 Stabilization Agreement both before and after the approval of the Concentrator Project in October 2004 (*i.e.*, also during the first months of 2005)).

Also, Claimant alleges that “[i]t would be impractical and overly burdensome for Freeport to identify every document any official of SMCV conveyed to SMCV’s management or shareholders over a year-and-a-half period concerning communication with any Peruvian government official.” However, the Request is not as broad as Claimant suggests: the requested documents do not cover any “communication with Peruvian Government officials” but (i) it covers only the communications “regarding the scope of the 1998 Stabilization Agreement and whether such Agreement included the Concentrator Project,” and (ii) the Request is limited to communications discussing what was communicated to SMCV’s management and/or shareholders. Claimant’s assertion that it would be unreasonably burdensome to carry out the search for the requested documents is also misleading. Claimant should have already gathered and reviewed the requested documents in support of its position that Peruvian government officials allegedly confirmed to

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	<p>SMCV’s officials that the 1998 Stabilization Agreement covered the Concentrator Project (<i>see</i> Claimant’s Memorial, paras. 107-108). Also, Claimant is in a better position to know which SMCV official communicated the conversations that SMCV had with Peruvian government officials to SMCV’s management and/or shareholders. Furthermore, Claimant may also easily base its search on the responsive documents it has agreed to produce in this Request.</p> <ul style="list-style-type: none"> • Privilege: Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> at p. ii.
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Any document(s) from 2004 created or received by Ms. Torreblanca or Mr. Davenport discussing or recording that they communicated to SMCV’s management and/or to SMCV’s shareholders: <ul style="list-style-type: none"> ○ What transpired in the meetings that Ms. Torreblanca had with Ms. Chappuis; Luis Panizo (MINEM’s Legal Advisor); Jorge Merino (Project Manager in Mining Affairs of the Private Investment Promotion Agency of Perú); and/or Juana Rosa Del Castillo (Manager at Empresa Minera del Centro del Perú) in which they allegedly confirmed that “[SMCV] did not have to worry because the Agreement would protect any investment that SMCV made in its Mining Concession and Beneficiation Concession during the term of the Agreement” [CWS-11, paras. 24-25]; or ○ Recording the discussions that Mr. Davenport had with Ms. Chappuis where she allegedly confirmed that “SMCV could count on the protections of the Stabili[zation] Agreement for [its] investment [in the concentrator]” [CWS-5, para. 36].

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	<p>Accordingly, the Tribunal orders Claimant to produce such Documents. The Tribunal rejects the remainder of Respondent's Request No. 13 as overly broad.</p>
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Document Request No.	14.
Documents or Category of Requested Documents	<p>Any document(s) exchanged between Ms. Torreblanca and SMCV’s management and/or SMCV’s shareholders in which Ms. Torreblanca reported on or described discussions she had with Peruvian government officials (including any alleged assurances she received from Peruvian government officials) regarding whether the expansion of the Beneficiation Concession would serve as confirmation that the 1998 Stabilization Agreement would apply to the Concentrator (<i>i.e.</i>, whether the expansion of the Beneficiation Concession would extend the scope of the Stabilization Agreement), including but not limited to any document(s) (<i>e.g.</i>, meeting minutes, shareholder meeting minutes, memoranda, letters, correspondence, emails) regarding the meetings that Ms. Torreblanca had with Ms. Chappuis where Ms. Chappuis allegedly confirmed that “the Stability Agreement applied to the entirety of the Cerro Verde Mining Unit . . . and thus we merely had to expand the Beneficiation Concession to include the Concentrator” [CWS-11, para. 25].</p> <p><u>Time frame of the Request:</u> From January 2004 to May 2005.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Ms. Torreblanca WS, paras. 25-27 [CWS-11]. • Mr. Morán’s WS, para. 28 [CWS-8]. • Mr. Davenport’s WS, para. 41 [CWS-5]. • Mr. Tovar’s WS, paras. 17-23 [RWS-3]. • Claimant’s Memorial, paras. 112, 114, 370(b). • Respondent’s Counter-Memorial, paras. 117, 118, and generally Section II.D.4. <p>(2) Comments</p> <p>Claimant’s witness, Ms. Torreblanca, asserts that she received assurances from Peruvian government officials that the expansion of the Beneficiation Concession would extend the scope of the Stabilization Agreement to include the Concentrator. However, neither Claimant nor Ms. Torreblanca have submitted any contemporaneous evidence showing that Ms. Torreblanca shared</p>

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	<p>the alleged assurances she received from Peruvian government officials with SMCV’s management or shareholders.</p> <p>The requested documents are for the period when SMCV allegedly received those assurances from Peruvian government officials (<i>i.e.</i>, they will probably fall within the time period from January 2004 until May 2005). Most of the meetings between Ms. Torreblanca and Peruvian government officials regarding whether the 1998 Stabilization Agreement covered the Concentrator took place in 2004 (<i>see</i> CWS-11, paras. 24, 26). Taking into account that SMCV’s Board of Directors conditionally approved the Concentrator Project in October 2004 (<i>see</i> Claimant’s Memorial, para. 112), and assuming that it will be reasonable for SMCV’s officials to report on whether the 1998 Stabilization Agreement covered the Concentrator Project to its shareholders both (i) while they were having the meetings with Peruvian government officials, and (ii) before and <i>after</i> the approval of the Concentrator Project (<i>i.e.</i>, also during the first months of 2005), Respondent believes that January 2004 to May 2005 is a reasonable time frame for this Request.</p> <p>The requested documents are relevant and material, <i>inter alia</i>, to the Tribunal’s assessment of Claimant’s legitimate expectations claim. The requested documents will show Ms. Torreblanca’s and SMCV’s contemporaneous understanding of the alleged assurances that Ms. Torreblanca received (or did not receive) from government officials regarding the scope of the 1998 Stabilization Agreement.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the same grounds set forth above in response to Request 13 above.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents from 2004 reporting or describing discussions with Ms. Chappuis.
<p style="text-align: center;">Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, specificity and relevance. As explained below, Claimant’s objection is without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce “[d]ocuments from 2004 reporting or describing discussions with Ms. Chappuis.”

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While Respondent will be happy to receive such documents, it emphasizes that its Request also focuses on the documents that record the discussions that Ms. Torreblanca had “*with Peruvian government officials . . . regarding whether the expansion of the Beneficiation Concession would serve as confirmation that the 1998 Stabilization Agreement would apply to the Concentrator*” (emphasis added) (*i.e.*, not only documents that record the meetings that Ms. Torreblanca had with Ms. Chappuis). Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request.

Respondent moves to compel production of the requested documents subject to the following comments. Claimant’s objections to Request No. 14 are misplaced for the following reasons.

- **Relevance:** The requested documents are relevant for the reasons stated in Respondent’s Request. Claimant alleges that “to the extent the request seeks documents from after the moment Phelps Dodge decided to invest in the Concentrator, it seeks documents that are irrelevant and immaterial to the dispute” (*see* Claimant’s Objections to Request No. 13 *supra*). As Respondent noted in its comments to that Request, it would be reasonable for SMCV’s officials to report on whether the expansion of the Beneficiation Concession would serve as confirmation that the 1998 Stabilization Agreement would apply to the Concentrator to its management and to its shareholders both before and after the approval of the Concentrator Project in October 2004 (*i.e.*, also during the first months of 2005). Therefore, the requested documents that are dated after October 2004 are also relevant.
- **Specificity:** Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent (i) identifies a narrow and specific category of documents in its Request (documents in which Ms. Torreblanca reported on or described discussions she had with Peruvian government officials regarding one specific topic); (ii) identifies the relevant parties (Ms. Torreblanca, and Peruvian government officials (including Ms. Chappuis)); and (iii) identifies a narrow time frame of one-and-a-half years.

Also, Claimant alleges that “[i]t would be impractical and overly burdensome for Freeport to identify every document any official of SMCV conveyed to SMCV’s management or shareholders over a year-and-a-half concerning communications with any Peruvian government official.” However, the Request is not as broad as Claimant suggests: the requested documents do not cover any “communication with Peruvian Government officials” as Claimant alleges but (i) only the communications “regarding whether the expansion of the Beneficiation Concession would serve as confirmation that the 1998 Stabilization Agreement would apply to the Concentrator,” and (ii) the Request is limited to communications discussing what was communicated to SMCV’s management and/or

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	<p>shareholders. Claimant’s assertion that it would be unreasonably burdensome to carry out the search for the requested documents is also misleading. Claimant should have already gathered and reviewed the requested documents in support of its position that Peruvian government officials allegedly confirmed that the expansion of the Beneficiation Concession would serve as confirmation that the 1998 Stabilization Agreement would apply to the Concentrator (<i>see</i> Claimant’s Memorial, para. 370(b)). Also, Claimant is in a better position to know which SMCV official communicated the conversations that SMCV had with Peruvian government officials to SMCV’s management and/or shareholders. Furthermore, Claimant may also easily base its search on the responsive documents it has agreed to produce in this Request.</p> <ul style="list-style-type: none"> • Privilege: Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> at p. ii.
Decision of the Tribunal	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Documents from 2004 reporting or describing discussions with Ms. Chappuis. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal rejects the remainder of Respondent’s Request No. 14 as overly broad.</p>

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Document Request No.	15.
Documents or Category of Requested Documents	<p>Any document(s) exchanged between Ms. Torreblanca and SMCV’s management and/or shareholders discussing or recording discussions she had with Congressman Olaechea, the Working Group, Vice Minister Polo, Mr. Isasi, Mr. Tovar, Minister Sánchez and/or Ms. Chappuis (including any alleged assurances she received), regarding whether the approval of the use of the profit reinvestment benefit to finance the Concentrator Project would indicate that the Concentrator would be covered under the Stabilization Agreement, including but not limited to any document(s) (e.g., meeting minutes, shareholder meeting minutes, memoranda, letters, correspondence, emails) prepared for, discussing, or recording what transpired in the meeting(s) that Ms. Torreblanca had with Congressman Olaechea and the Working Group where they discussed the investment in the Concentrator and the profit reinvestment benefit [CWS-11, para. 43].</p> <p><u>Time frame of the Request:</u> From 2003-2006.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Ms. Torreblanca WS, paras. 17-20, 28, 38-48 [CWS-11]. • Mr. Isasi WS, paras. 22-34 [RWS-2]. • Claimant’s Memorial, paras. 115-116. • Respondent’s Counter-Memorial, paras. 159-168, 198, 679, 692. • MINEM Presentation Profit Reinvestment and Mining Royalties Cerro Verde: Leaching Project and Primary Sulfide Project, slides 4-8 [RE-3]. <p>(2) Comments</p> <p>Claimant’s witness, Ms. Torreblanca, alleges that she received assurances from the Peruvian government that the approval of the use of the profit reinvestment benefit to finance the Concentrator Project indicated that the Concentrator would be covered by the 1998 Stabilization Agreement. However, Claimant has failed to submit any contemporaneous evidence that Ms. Torreblanca received such assurances.</p>

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	<p>The requested documents are relevant and material, <i>inter alia</i>, to the Tribunal’s assessment of Claimant’s legitimate expectations claim. The documents are relevant, because they may provide contemporaneous evidence of the alleged assurances that Ms. Torreblanca and SMCV received (or did not receive) from government officials regarding the scope of the 1998 Stabilization Agreement.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth and for the reasons set forth in the General Objections. <i>See</i> IBA Rules, Art. 3(3)(a)(ii).</p> <p>In particular, the request is overbroad. The evidentiary record reflects discussions concerning the profit reinvestment benefit between Ms. Torreblanca and (i) MINEM from May to September 2003 (Torreblanca ¶¶ 17-19; Chappuis ¶¶ 34-36), and (ii) the Congressional Working Group convened to investigate SMCV from January to June 2006 (Torreblanca ¶¶ 43-47). Peru provides no justification for seeking documents from a period spanning <i>three years</i>.</p> <p>Without prejudice to the General Objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents recording discussions with Vice Minister Polo, Mr. Isasi, Mr. Tovar, Minister Sánchez and/or Ms. Chappuis from May to September 2003. • Documents recording discussions with Congressman Olaechea and/or the Congressional Working Group convened to investigate SMCV from January to June 2006.
<p style="text-align: center;">Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request based on, among others, specificity, but Claimant has agreed to produce the following documents: <ul style="list-style-type: none"> “Documents recording discussions with Vice Minister Polo, Mr. Isasi, Mr. Tovar, Minister Sánchez and/or Ms. Chappuis from May to September 2003. Documents recording discussions with Congressman Olaechea and/or the Congressional Working Group convened to investigate SMCV from January to June 2006.” <p>While Respondent will be glad to receive such documents, it emphasizes that its Request focuses on “[a]ny document(s) [between 2003 and 2006] exchanged between Ms.</p>

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Torreblanca and SMCV's management and/or shareholders discussing or recording discussions she had . . ." and not just the documents from May to September 2003 and from January to June 2006. Even if the evidentiary record reflects discussions concerning the profit reinvestment benefit between Ms. Torreblanca and MINEM from May to September 2003, and (ii) between Ms. Torreblanca the Congressional Working Group from January to June 2006, Respondent cannot know when Ms. Torreblanca exchanged documents with SMCV's management and/or shareholders about said meetings or if any additional meetings took place between them. Also, contrary to what Claimant suggests, a time frame of three years for this Request is reasonable (three years is far less than some of Claimant's Requests that have a time frame of 17 or 30 years (see Claimant's document production Requests Nos. 1 and 29)).

Respondent moves to compel production of the requested documents. Claimant's objections to Request No. 15 are misplaced for the following reasons.

- **Amended Request:** Claimant alleges that the Request is overbroad because the time frame of the Request is too broad. It is not. In any event, in a good faith effort to collaborate, and taking into account Claimant's objections, Respondent narrows the scope of Request No. 15:
 - From: "Time frame of the Request: From 2003-2006."
 - To: "Time frame of the Request: From February 2003 to November 2003 and from November 2005 to August 2006" (Respondent considers that it is reasonable to add two additional months to the time limits that Claimant suggested given that Respondent does not know when Ms. Torreblanca exchanged documents with SMCV's management and/or shareholders.).
- **Specificity:** Claimant alleges that Perú has not narrowed the request by reference to a narrow time frame. Respondent has further narrowed down the Request, as explained above. Claimant's concerns have thus been addressed. It is worth noting that Claimant does not object to the specificity of the custodians in this case.
- **Privilege:** Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant's privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, *supra* at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may

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	<p>be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> at p. ii.</p>
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents recording discussions with Vice Minister Polo, Mr. Isasi, Mr. Tovar, Minister Sánchez and/or Ms. Chappuis from May to September 2003. • Documents recording discussions with Congressman Olaechea and/or the Congressional Working Group convened to investigate SMCV from January to June 2006. <p>Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal also takes note of Respondent’s amended request. The Tribunal nevertheless rejects the remainder of Respondent’s Request No. 15 as overly broad.</p>

SCHEDULE OF DOCUMENT REQUESTS
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Document Request No.	16.
Documents or Category of Requested Documents	<p>Any document(s) created or received by Ms. Torreblanca, Mr. Benavente, and/or any other official from SMCV discussing or recording that they communicated to SMCV’s management and/or to SMCV’s shareholders about discussions they had with Peruvian government officials (including any assurances they received) regarding whether soliciting or accepting voluntary contributions and GEM (Special Mining Contribution, “GEM” for its acronym in Spanish) payments was confirmation by the State that the 1998 Stabilization Agreement applied to the Concentrator Project.</p> <p><u>Time frame of the Request:</u> From 2006 to 2007 or from 2011.</p>
<p>Relevance and Materiality:</p> <p>(1) Paragraph Reference to Submissions</p> <p>(2) Comments</p>	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 187-89, 382. • Respondent’s Counter-Memorial, paras. 206-242, 694-695. • Ms. Torreblanca WS, paras. 49-62, 81, 83-91 [CWS-11]. <p>(2) Comments</p> <p>Claimant alleges in its Memorial that soliciting and/or accepting voluntary contributions and GEM payments was confirmation by the State that SMCV enjoyed stabilization for any investments in Cerro Verde (as opposed to the investments identified in the 1998 Stabilization Agreement). Claimant points to inquiries from Ms. Torreblanca to MINEM and MEF officials that allegedly confirmed this understanding (Claimant’s Memorial, paras. 187-89, 382(c) and CWS-11, paras. 57-62, 81, 83-91). However, neither Claimant nor Ms. Torreblanca have submitted any evidence on the record that supports such an understanding.</p> <p>The requested documents are relevant and material, among other things, to the Tribunal’s assessment of Claimant’s legitimate expectations claim. The documents requested are relevant because they may provide contemporaneous evidence of any alleged assurances that SMCV received from government officials regarding the scope of the 1998 Stabilization Agreement.</p>

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<p>Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth and for the reasons set forth in the General Objections.</p> <p>This request is overbroad. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). Peru’s justification for the request only references meetings and events that occurred between June 2006 and August 2007 (with respect to voluntary contributions) and September to December 2011 (with respect to GEM). <i>See</i> Torreblanca ¶¶ 57-61 (recounting SMCV’s discussions with the Government concerning the Voluntary Contribution Program from June 2006, when President García proposed opening dialogue with mining companies to increase contributions from the sector, to August 2007, when SMCV signed the revised Voluntary Contribution Agreement), 83-89 (recounting SMCV’s conversations with the Government concerning the GEM from September 2011, when Congress enacted the law establishing the legal framework for the GEM, to December 2011, when Director Camacho acknowledged that mining companies with stability agreements only had to pay the GEM); Ex. 560 (Voluntary Contribution Agreement executed 10 August 2007); Ex. CA-181 (Law No. 29790 Establishing GEM Legal Framework, dated 28 September 2011); Ex. CE-629 (MEF report received 28 December 2011, acknowledging that the GEM was “applicable by virtue of an Agreement to those engaged in mining activity for that which is covered by a [mining stability agreement]”). Thus, there is no justification for the temporal scope of the request.</p> <p>Without prejudice to the above objections and the General Objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents created or received by Ms. Torreblanca or Mr. Benavente from June 2006 to August 2007 discussing or recording that they communicated to SMCV’s management and/or to SMCV’s shareholders about discussions they had with Peruvian government officials (including any assurances they received) regarding whether soliciting or accepting voluntary contributions was confirmation by the State that the Stability Agreement applied to the Concentrator; and • Documents created or received by Ms. Torreblanca from September to December 2011 discussing or recording that she communicated to SMCV’s management and/or to SMCV’s shareholders about discussions she had with Peruvian government officials (including any assurances they received) regarding whether soliciting or accepting GEM payments was confirmation by the State that the Stability Agreement applied to the Concentrator.
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Requesting party reply	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request, among other things, on the basis of specificity. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce the following documents: <ul style="list-style-type: none"> “Documents created or received by Ms. Torreblanca or Mr. Benavente from June 2006 to August 2007 discussing or recording that they communicated to SMCV’s management and/or to SMCV’s shareholders about discussions they had with Peruvian government officials (including any assurances they received) regarding whether soliciting or accepting voluntary contributions was confirmation by the State that the Stability Agreement applied to the Concentrator; and Documents created or received by Ms. Torreblanca from September to December 2011 discussing or recording that she communicated to SMCV’s management and/or to SMCV’s shareholders about discussions she had with Peruvian government officials (including any assurances they received) regarding whether soliciting or accepting GEM payments was confirmation by the State that the Stability Agreement applied to the Concentrator.” <p>While Respondent will be glad to receive such documents, it emphasizes that its Request also focuses on the documents “created or received by . . . <i>any other official from SMCV</i>” (emphasis added) (not only created and received by Ms. Torreblanca and/or Mr. Benavente). Respondent also emphasizes that its Request focuses on “[a]ny document(s) [from 2006 to 2007 or from 2011]” and not just the documents from June 2006 to August 2007 and from September to December 2011. While it is true that Perú mentions some examples of meetings that took place on June 2006 and August 2007 and September to December 2011, Respondent cannot know when Ms. Torreblanca exchanged documents with SMCV’s management and/or shareholders about said meetings and whether other meetings took place between Ms. Torreblanca and/or Mr. Benavente and Peruvian government officials. Also, contrary to what Claimant suggests, a time frame of three years is reasonable (three years is far less than some of Claimant’s Requests that have a time frame of 17 or 30 years (<i>see</i> Claimant’s document production Requests Nos. 1 and 29)).</p>
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	<p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 16 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> • <u>Specificity</u>: Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Claimant alleges that the time frame of the request is too broad because “Peru’s justification for the request only references meetings and events that occurred between June 2006 and August 2007 (with respect to voluntary contributions) and September to December 2011 (with respect to GEM).” That is precisely why the Request is limited to the years 2006, 2007, and 2011. In fact, the documents discussing the meetings that Claimant has mentioned could have been sent before and after the meetings, and thus it is reasonable to ask for the documents created or received in a three-year period. As discussed, Claimant itself is sometimes asking for documents created in a period of 17 or 30 years. This Request is reasonable and sufficient narrow and specific. It is worth noting that Claimant does not object to the specificity of the custodians in this case. • <u>Privilege</u>: Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> at p. ii.
Decision of the Tribunal	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Documents created or received by Ms. Torreblanca or Mr. Benavente from June 2006 to August 2007 discussing or recording that they communicated to SMCV’s management and/or to SMCV’s shareholders about discussions they had with Peruvian government officials (including any assurances they received) regarding whether soliciting or accepting voluntary contributions was confirmation by the State that the Stability Agreement applied to the Concentrator; and

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	<ul style="list-style-type: none">• Documents created or received by Ms. Torreblanca from September to December 2011 discussing or recording that she communicated to SMCV's management and/or to SMCV's shareholders about discussions she had with Peruvian government officials (including any assurances they received) regarding whether soliciting or accepting GEM payments was confirmation by the State that the Stability Agreement applied to the Concentrator. <p>Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal rejects the remainder of Respondent's Request No. 16 as overly broad.</p>
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Document Request No.	17.
Documents or Category of Requested Documents	<p>Any document(s) (<i>e.g.</i>, correspondence, contracts, letters, meeting minutes, agendas, presentations, reports, excel spreadsheets) discussing or recording oral or written guidance or information about the scope of the 1998 Stabilization Agreement and whether the Concentrator would fall within the scope of that Agreement, exchanged between (on one side) SMCV, Phelps Dodge (Claimant’s predecessor), or their advisors in the negotiations of the Participation Agreement and/or in the negotiations of the corporate bonds issuance program, and (on the other side) any of (i) the lenders that were interested in financing the Concentrator (including, but not limited to, the potential lenders listed in p. 1 of Exhibit CE-513) (“Interested Lenders”), or (ii) the legal entities involved in the corporate bonds issuance program for US \$90 million issued in order to finance the Concentrator. Respondent also requests the final bond prospectus.</p> <p><u>Time frame of the Request:</u> From the moment SMCV started the negotiations of the Participation Agreement with the Interested Lenders to the signing of the Agreement (<i>i.e.</i>, September 30, 2005), and/or (ii) from the moment SMCV started the discussions regarding its corporate bond issuance program with the underwriting banks to the issuance of the bonds (<i>i.e.</i>, April 26, 2006).</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, para. 122. • Master Participation Agreement [Exhibit CE-513]. <p>(2) Comments</p> <p><i>First</i>, Claimant alleges in its Memorial that on September 30, 2005, SMCV entered into a Master Participation Agreement with lenders interested in financing the construction of the Concentrator. Claimant also alleges that lenders agreed to lend up to US \$450 million to the Project and that SMCV later obtained financing of US \$90 million through a corporate bonds issuance program (<i>see</i> Claimant’s Memorial, para. 122). SMCV and Phelps Dodge (Claimant’s predecessor) can be expected to have discussed with potential and actual lenders its understanding of the stabilized (or not) status of the to-be-financed Concentrator Project. In fact, the scope of the 1998 Stabilization Agreement, and more precisely the issue of whether the Agreement may or may not cover the Concentrator Plant, is <i>explicitly</i> considered as one of the risks in the Participation Agreement:</p> <ul style="list-style-type: none"> • <u>See Exhibit CE-513, Clause 3.09 (1) (“No Material Dispute”)</u> (p. 20 pdf): “There shall be no material dispute that is reasonably likely to impair the ability of the

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	<p>Borrower to repay the Senior Loans or construct or operate the Business at the production volumes and cost levels and in the manner contemplated by the current Mine Plan with respect to the mining rights, rights of way, easements or surface interests relating to the mining property, water rights or other material rights necessary for the construction and development of the Sulfide Project or for the operation of the Business until the Final Maturity Date (<i>it being understood that an assertion or determination that certain benefits of the Stability Agreement do not apply to parts of the operations of the Borrower will not be treated as a material dispute that could cause this condition not to be satisfied</i>)” (emphasis added).</p> <ul style="list-style-type: none"> • <i>See also</i> Exhibit CE-513, Clause 12.05 (p. 47 pdf): “12.05 Stability Agreement. Each of the Senior Facility Lenders hereby acknowledges that a copy of the Stability Agreement has been made available to it and that it has had adequate opportunity to review the Stability Agreement. Each of the Senior Facility Lenders hereby accepts and acknowledges that the <i>Borrower does not intend to seek any new or amended stability agreement or other agreement of a similar nature with respect to the Sulfide Project</i>” (emphasis added). <p>Therefore, at the time of signing the Participation Agreement SMCV, Phelps Dodge, and the lenders knew that possibly “<i>certain benefits of the Stability Agreement do not apply to parts of the operations of the Borrower</i>” (emphasis added).</p> <p><i>Second</i>, regarding the corporate bonds issuance program, even if the bonds’ prospectus is not on the record, a draft of the prospectus can be found as Exhibit D of the Participation Agreement (<i>see</i> Exhibit CE-513, p. 173 pdf). Similarly, in this transaction, it is reasonable to believe that there were multiple conversations between the borrower (SMCV) and the lenders regarding the contracts underlying the transaction (including about the 1998 Stabilization Agreement and its scope). The text of the draft prospectus confirms the latter:</p> <ul style="list-style-type: none"> • <i>See</i> Event of Political Force Majeure (Article 1, p. 180 pdf): “the occurrence of an Expropriatory Action, War or a material breach or effective unilateral amendment or cancellation by the Republic of Peru of the Stability Agreement (it being understood that <i>an assertion or determination that certain benefits of the Stability Agreement do not apply to part of the operations of the Issuer will not be treated as an Event of Political Force Majeure</i>).”
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	<p>Thus, the requested documents are relevant and material to show SMCV’s contemporaneous understanding with respect to the negotiations of the corporate bonds issuance program of the scope of the 1998 Stabilization Agreement and whether it would include the Concentrator Project.</p> <p>The requested documents are relevant and material, among others, to the Tribunal’s assessment of Claimant’s legitimate expectations claim. The Participation Agreement predates the approval of the construction of the Concentrator Plant, and thus the requested documents are relevant and material to show SMCV’s understanding of the scope of the 1998 Stabilization Agreement and whether it would include the Concentrator Project before the approval of the Concentrator Project.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of irrelevance and immateriality, overbreadth, and possession, custody, or control for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request seeks documents that are plainly irrelevant and immaterial to the case. To start with, neither Party has made <i>any submissions</i> concerning the Master Participation Agreement or the bonds issuance program, much less submissions that Phelps Dodge and SMCV established their contemporaneous understanding of the scope of the Stability Agreement during the negotiation of them. The irrelevance of the requested documents is demonstrated by the fact that the only submission of either Party that Peru is able to cite to support its request is a single paragraph in Claimant’s Memorial recounting the conclusion of the Master Participation Agreement as a background fact. Moreover, the contemporaneous understanding of the lenders under the Master Participation Agreement and the legal entities involved in the corporate bonds issuance is not relevant because they are <i>non-parties</i>.</p> <p><i>Second</i>, this request is overly broad. It seeks <i>any</i> documents concerning the scope of the Stability Agreement exchanged between <i>unspecified individuals</i> and <i>any</i> of the parties involved in the financing of the Concentrator, none of which are parties to this dispute. The financing of the Concentrator was a process that occurred over the course of almost one year and ultimately involved seven different lenders from numerous different countries. Yet, Peru seeks an even broader category of documents; documents exchanged with unidentified “Interested Lenders.” It would be impractical and overly burdensome for Freeport to identify every document exchanged with any representative of any of these entities concerning the scope of the Stability Agreement. Moreover, the temporal limitation does not contain a specified start date and Peru has not narrowed the request by reference to specific custodians.</p> <p><i>Finally</i>, to the extent the request seeks documents solely held by the Interested Lenders or the legal entities involved in the corporate bonds issuance, it seeks documents that are not in the possession,</p>

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	<p>custody, or control of Freeport. <i>See</i> IBA Rules, Art. 3(3)(c)(ii). Moreover, Peru requests documents that are either in its possession or are publicly available such as the “final bond prospectus,” <i>i.e.</i>, the “Peruvian Bonds Indenture,” a form of which appears as Appendix D to the Master Participation Agreement. Ex. CE-513, p. 173 of PDF. As reflected in the first line of the form Peruvian Bond Indenture, that document was entered in the “Register of Public Instruments” and is, therefore, in the possession of Peru. Ex. CE-513, p. 175 of PDF; <i>see also</i> Securities Market Law (Texto Único Ordenado de la Ley del Mercado de Valores), D.L. 861, Art. [*]; Regulations on Initial Public Offerings (Reglamento de Oferta Pública Primaria y de Venta de Valores Mobiliarios), CONASEV Resolution No. 0414-1998 (16 October 1998), Art. [*].</p> <p>Without prejudice to the above objections and the General Objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Final minutes of meetings in 2005 and 2006 discussing or recording oral or written guidance or information about the scope of the 1998 Stabilization Agreement and whether the Concentrator would fall within the scope of that Agreement, exchanged between (on one side) SMCV, Phelps Dodge (Claimant’s predecessor), or their advisors in the negotiations of the Participation Agreement and/or in the negotiations of the corporate bonds issuance program, and (on the other side) any of (i) the lenders that were interested in financing the Concentrator (including, but not limited to, the potential lenders listed in p. 1 of Exhibit CE-513) (“Interested Lenders”), or (ii) the legal entities involved in the corporate bonds issuance program for US \$90 million issued in order to finance the Concentrator.
<p>Requesting party reply</p>	<p>Partially agreed production:</p> <ul style="list-style-type: none"> • Respondent notes that Claimant objects to this Request on the basis of, among others, relevance, specificity, and absence of possession, custody, or control. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce the following document(s): <p style="padding-left: 40px;">“Final minutes of meetings in 2005 and 2006 discussing or recording oral or written guidance or information about the scope of the 1998 Stabilization Agreement and whether the Concentrator would fall within the scope of that Agreement, exchanged between (on one side) SMCV, Phelps Dodge (Claimant’s predecessor), or their advisors in the negotiations of the Participation Agreement and/or in the negotiations</p>

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of the corporate bonds issuance program, and (on the other side) any of (i) the lenders that were interested in financing the Concentrator (including, but not limited to, the potential lenders listed in p. 1 of Exhibit CE-513) (“Interested Lenders”), or (ii) the legal entities involved in the corporate bonds issuance program for US \$90 million issued in order to finance the Concentrator.”

While Respondent will be glad to receive such documents, it emphasizes that its Request focuses on “*any documents* (e.g., correspondence, contracts, letters, meeting minutes, agendas, presentations, reports, excel spreadsheets) discussing or recording oral or written guidance or information about the scope of the 1998 Stabilization Agreement and whether the Concentrator would fall within the scope of that Agreement . . .” (emphasis added) and not only on “final minutes of meetings.” Respondent requests that the Tribunal order Claimant to produce all responsive documents to this Request.

Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 17 are misplaced for the following reasons.

- **Relevance and materiality:** The requested documents are relevant for the reasons stated in Respondent’s Request. Contrary to Claimant’s arguments, the requested documents will *not only* show the lender’s contemporaneous understanding of those issues. The requested documents *will also* show SMCV’s (one of the parties to the Participation Agreement and the bond issuance program) contemporaneous understanding of the scope of the 1998 Stabilization Agreement and whether it would include the Concentrator Project. In particular, the requested documents will shed light on SMCV’s and the interested lenders’ intention when drafting the following clauses regarding the scope of the 1998 Stabilization Agreement:
 - Exhibit CE-513, Clause 5.01 (1) (“No Material Dispute”) (p. 20 pdf): “There shall be no material dispute that is reasonably likely to impair the ability of the Borrower to repay the Senior Loans or construct or operate the Business at the production volumes and cost levels and in the manner contemplated by the current Mine Plan with respect to the mining rights, rights of way, easements or surface interests relating to the mining property, water rights or other material rights necessary for the construction and development of the Sulfide Project or for the operation of the Business until the Final Maturity Date (*it being understood that an assertion or determination that certain benefits of the Stability Agreement do not apply to*

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	<p><u><i>parts of the operations of the Borrower will not be treated as a material dispute that could cause this condition not to be satisfied</i></u>” (emphasis added).</p> <ul style="list-style-type: none"> • <u>Exhibit CE-513, Clause 12.05 (p. 47 pdf)</u>: “12.05 Stability Agreement. Each of the Senior Facility Lenders hereby acknowledges that a copy of the Stability Agreement has been made available to it and that it has had adequate opportunity to review the Stability Agreement. Each of the Senior Facility Lenders hereby accepts and acknowledges that the <i>Borrower does not intend to seek any new or amended stability agreement or other agreement of a similar nature with respect to the Sulfide Project</i>” (emphasis added). • <u>See CE-513, Event of Political Force Majeure (Article 1, p. 180 pdf)</u>: “the occurrence of an Expropriatory Action, War or a material breach or effective unilateral amendment or cancellation by the Republic of Peru of the Stability Agreement (it being understood that <i>an assertion or determination that certain benefits of the Stability Agreement do not apply to part of the operations of the Issuer will not be treated as an Event of Political Force Majeure</i>)” (emphasis added). <p>Also, it is relevant to note that Claimant does not cite to the Participation Agreement and the bond issuance program merely as a background fact. Claimant has also put into the record the text of the Participation Agreement and the draft bond prospectus (<i>see</i> Exhibit CE-513).</p> <ul style="list-style-type: none"> • <u>Specificity</u>: This Request is narrow and specific: Respondent requests a <i>narrow</i> category of documents (documents discussing or recording oral or written guidance or information about the scope of the 1998 Stabilization Agreement), and the Request is limited to a particular subject (communications among Phelps Dodge, SMCV, Claimant or their advisors, and the Interested Lenders), within a specific period of time ((i) from the moment SMCV started the negotiations of the Participation Agreement with the Interested Lenders until the signing of the Agreement, and/or (ii) from the moment SMCV started the discussions regarding its corporate bond issuance program with the underwriting banks until the issuance of the bonds). It therefore satisfies the requirements of Article 3.3(a) of the IBA Rules. Claimant alleges that Perú has not narrowed the request by reference to specific custodians. Respondent notes that Claimant is the one in the position to know who its own custodians of the requested documents are—as Claimant is the party that has access to the requested documents. Claimant cannot expect Respondent to list the specific persons who
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	<p>are in the possession, custody, or control of the requested documents as Respondent was neither a party to the negotiations of the Participation Agreement nor to the negotiations of the bond issuance program. Respondent notes that <u>Claimant itself has not identified specific custodians in most of its document production requests.</u>⁶ Also, Claimant’s assertion that it would be unreasonably burdensome to carry out the search for the requested documents is misleading. The requested documents could be easily identified by searching the email addresses of the banks that were involved at some point in the Participation Agreement and/or the corporate bond issuance program. Also, given the fact that the Participation Agreement was the largest financing transaction in Perú, one would expect SMCV to keep records of the transaction and its communications with the Interested Lenders.</p> <ul style="list-style-type: none"> • <u>Possession, custody, or control:</u> Claimant contends that “to the extent the request seeks documents solely held by the Interested Lenders or the legal entities involved in the corporate bonds issuance, it seeks documents that are not in the possession, custody, or control of Freeport.” As noted in Respondent’s general comments, Respondent only requests those documents “which Respondent believes are in the possession, custody, or control of Claimant” (<i>i.e.</i>, Respondent only requests the communications from the Interested Lenders that are in Claimant’s possession, custody, or control). Separately, Respondent withdraws from this Request the final bond prospectus. • <u>Privilege:</u> Respondent notes that Claimant has also agreed to produce the requested documents so long as they are not otherwise privileged. As to Claimant’s privilege objections, Respondent refers the Tribunal to its General Comments and General Replies, <i>supra</i> at pp. ii, x-xii. In particular, Respondent notes that the fact that some documents may be privileged, does not mean that they are not responsive to a given Request. Thus, Respondent requests that to the extent Claimant asserts that any responsive document(s) to this Request is/are protected by privilege, the Tribunal order Claimant to create a “privilege log” as described <i>supra</i> at p. ii.
Decision of the Tribunal	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Final minutes of</p>

⁶ See e.g., Claimant’s Document Production Requests Nos. 1, 6, 9, 10, 11, 12, 13, 14, 19, 20, 21, 22, 23, and 27.

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	<p>meetings in 2005 and 2006 discussing or recording oral or written guidance or information about the scope of the 1998 Stabilization Agreement and whether the Concentrator would fall within the scope of that Agreement, exchanged between (on one side) SMCV, Phelps Dodge (Claimant’s predecessor), or their advisors in the negotiations of the Participation Agreement and/or in the negotiations of the corporate bonds issuance program, and (on the other side) any of (i) the lenders that were interested in financing the Concentrator (including, but not limited to, the potential lenders listed in p. 1 of Exhibit CE-513) (“Interested Lenders”), or (ii) the legal entities involved in the corporate bonds issuance program for US \$90 million issued in order to finance the Concentrator. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal takes note that Respondent withdraws the final bond prospectus from Request No. 17.</p> <p>The Tribunal rejects the remainder of Respondent’s Request No. 17 as overly broad.</p>
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Document Request No.	18.
Documents or Category of Requested Documents	<p>Any agreements governing or contracting for the sale of copper cathodes and/or concentrates generated from the Cerro Verde Mine to which Phelps Dodge, SMCV, or Claimant was/is a party, including but not limited to:</p> <ul style="list-style-type: none"> (i) Shareholders agreements and any addendum/a thereto containing terms of sale of cathodes and/or concentrates between 2005 and 2013; and (ii) Any other purchase agreements or sale contracts. <p><u>Time frame of the Request:</u> From 2007 to 2013.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • See Claimant’s Memorial, para. 163. • See Respondent’s Counter-Memorial, paras. 63-66, 144, 200. • Stephen Ralbovsky Expert Report, paras. 72, 74-75 [RER-4]. • SMCV, Financial Statement 2011, at para. 12(b) (p. 35) [Exhibit CE-638]. • Fluor, Sociedad Minera Cerro Verde S.A.A.: Primary Sulfide Project Feasibility Study, Project Update, September 2004, at p. 45 [Exhibit CE-459]. <p>(2) Comments</p> <p>Claimant alleges that the scope of the 1998 Stabilization Agreement covers both ore produced from the Leaching Plant as well as ore produced from the Concentrator Plant. Respondent has argued that these products are different and, thus, ore produced from the Concentrator Plant would not be covered under the 1998 Stabilization Agreement which covered exclusively ore produced from the Leaching Plant (<i>see</i> Respondent’s Counter-Memorial, paras. 144, 200). Evidence of the difference in the two types of ore produced by the two plants (<i>i.e.</i>, the Concentrator Plant and the Leaching Plant) will be apparent from the different terms of sales of the two types of ore (<i>see</i> Respondent’s Counter-Memorial, paras. 63-66; Stephen Ralbovsky Expert Report, paras. 72, 74-75 [RER-4]).</p>

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	<p>The documents requested are relevant, because they will provide evidence that ore produced through the Leaching Plant is substantially different, in commercial as well as physical terms, from ore produced through the Concentrator Plant. To clarify, Respondent does not know and Claimant has not stated whether it or SMCV treats the sale of concentrates differently from the sale of copper cathodes and to what extent. The requested documents will provide precisely that information.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of irrelevance and immateriality, commercially sensitive information, overbreadth, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request seeks documents that are wholly irrelevant and immaterial to the issues in dispute. <i>See</i> IBA Rules, Art. 9(2)(a). It is undisputed that the Leaching Plant and the Concentrator produce copper products that are “different, in commercial as well as physical terms.” The Parties agree that the Leaching Plant produces cathode and the Concentrator produces concentrate. <i>See</i> Claimant’s Memorial ¶¶ 35, 39; Respondent’s Counter-Memorial ¶¶ 7, 67-68; Otto ¶¶ 46, 52; Davenport ¶¶ 11-14; Ralbovsky ¶¶ 53-56. The disputed issue is whether there is any basis in the Stability Agreement, the Mining Law, or the Regulations to limit the scope of stability to specific products produced within a single, integrated mining unit. Contracts for the sale of copper have no bearing on this issue whatsoever. In any event, if Peru wishes to marshal evidence to prove the undisputed fact that copper cathode and copper concentrate are different copper products, it can do so relying on publicly available sources.</p> <p><i>Second</i>, agreements for the sale of copper generated from the Cerro Verde mine may contain commercially sensitive information pertaining to copper pricing and the contractual rights of third parties unrelated to this dispute.</p> <p><i>Third</i>, this request is overbroad. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). It would be impractical and overly burdensome for Freeport to identify every contract for the sale of copper originating from Cerro Verde, one of the most productive copper mines in the world, entered into by three different companies, over a period of <i>seven years</i>.</p>
<p style="text-align: center;">Requesting party reply</p>	<p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 18 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: Claimant alleges that the requested documents are not relevant because “[i]t is undisputed that the Leaching Plant and the Concentrator produce copper products that are ‘different, in commercial as well as physical terms.’” Claimant’s claim is

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	<p>without merit. The documents requested are relevant for the reasons stated in Respondent’s Request. To reiterate, Respondent does not know and Claimant has not stated whether Claimant, Phelps Dodge, and/or SMCV treated or treat the sale of concentrates differently from the sale of copper cathodes and to what extent. The requested documents will provide precisely that information.</p> <ul style="list-style-type: none"> • <u>Specificity</u>: Claimant alleges that the Request is overbroad. It is not. Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent (i) identifies <i>one</i> narrow and specific category of documents in its Request (“[a]ny agreements governing or contracting for the sale of copper cathodes and/or concentrates generated from the Cerro Verde mine”); (ii) identifies the relevant parties (Phelps Dodge, SMCV, or Claimant); and (iii) limits its Request to a specific period of time (from 2007 to 2013). Even though there might be some relevant documents that fall within the scope of this Request dated before 2007 and after 2013, in a good faith effort to collaborate, Respondent specifically narrowed the scope of Request No. 18 to a time frame spanning only seven years (as Claimant acknowledges) from 2007 to 2013. This narrow time frame spanning fewer than ten years is established based on the time period after Claimant acquired Phelps Dodge in 2007. <p>Also, Claimant’s attempt to argue that “[i]t would be impractical and overly burdensome for Freeport to identify every contract for the sale of copper” is not tenable. <i>First</i>, as stated above, Respondent’s Request is sufficiently narrowed to a specific time frame of seven years from 2007 to 2013 after Claimant acquired Phelps Dodge; thus, Claimant’s concerns regarding the time frame of the Request is without merit. <i>Second</i>, the Request is not as broad as Claimant suggests: mining companies such as SMCV and Claimant necessarily have all their contracts on record, probably in a specific location. Also, the fact that Respondent is only requesting the contracts entered <i>after</i> Claimant acquired Phelps Dodge (<i>i.e.</i>, from 2007 onward) will facilitate Claimant’s search for the requested documents.</p> <ul style="list-style-type: none"> • <u>Confidentiality</u>: As to Claimant’s confidentiality and commercially sensitive information objections, Respondent refers the Tribunal to its general Replies, <i>supra</i> at p. viii. In particular in this case, Claimant can omit and/or redact the identifiable or commercially sensitive information to the extent protected by the IBA Rules or other rules. Respondent requests that the Tribunal order Claimant to show that any document(s) it wishes to protect on the basis of alleged confidentiality is/are, in fact, covered by some kind of technical or commercial confidentiality provided by law or contract and that, if appropriate, the Tribunal order the parties to agree to a confidentiality agreement to cover the allegedly confidential documents so that the documents could be used in these proceedings.
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	<ul style="list-style-type: none"> • <u>Possession, custody, or control</u>: Given that Respondent’s already-narrow Request seeks the contracts entered after Claimant acquired Phelps Dodge (<i>i.e.</i>, from 2007), the documents should be in Claimant’s possession, custody, or control.
Decision of the Tribunal	<p>The Tribunal rejects Respondent’s Request No. 18 as overly broad. In addition, the Tribunal does not see the materiality or relevance of the Request as the Tribunal understands that the difference between the two types of ore products is undisputed between the Parties.</p>

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Document Request No.	19.
Documents or Category of Requested Documents	<p>Documents recording any discussion involving Claimant, Phelps Dodge or SMCV on the issue of whether SMCV would produce copper concentrate (for sale as concentrate) or would further process the concentrate to produce copper cathodes (for sale as copper cathodes), including documents containing the reasoning underlying SMCV’s decision (as of September 2004) to produce copper concentrate for sale as concentrate.</p> <p><u>Time frame of the Request:</u> From 2004 to 2013.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • See Claimant’s Memorial, para. 119 (n. 260). • See Respondent’s Counter-Memorial, paras. 63-66, 144, 200. • Stephen Ralbovsky Expert Report, paras. 71, 72, 74-75, 77 [RER-4]. • See Participation Agreement, p. 5 (of PDF) [Ex. CE-906]. • SMCV, Financial Statement 2011, at para. 12(b) (p. 35) [Exhibit CE-638]. • See Fluor, Sociedad Minera Cerro Verde S.A.A.: Primary Sulfide Project Feasibility Study, Project Update, September 2004, at p. 45 [Exhibit CE-459]. <p>(2) Comments</p> <p>Claimant alleges that the scope of the 1998 Stabilization Agreement covers both ore produced from the Leaching Plant as well as ore produced from the Concentrator Plant. Respondent has argued that these products are different and, thus, ore produced from the Concentrator Plant would not be covered under the 1998 Stabilization Agreement which covered exclusively ore produced from the Leaching Plant (<i>see</i> Respondent’s Counter-Memorial, paras. 144, 200). Evidence of the difference in the two types of ore produced by the two plants (<i>i.e.</i>, the Concentrator Plant and the Leaching Plant) will be apparent from the discussions regarding whether SMCV would produce copper concentrate (for sale as concentrate) or to further process the concentrate to produce copper cathodes (for sale as copper cathodes) (<i>see</i> Respondent’s Counter-Memorial, paras. 63-66); Stephen Ralbovsky Expert Report, paras. 71, 72, 74-75 [RER-4]). Evidence of the difference in the two types of ore produced by the two plants will also be apparent from SMCV’s reasoning in</p>

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	<p>deciding to produce copper concentrate for sale as concentrate at least as of September 2004 (Stephen Ralbovsky Expert Report, para. 77 [RER-4]; see Fluor, Sociedad Minera Cerro Verde S.A.A.: Primary Sulfide Project Feasibility Study, Project Update, September 2004, at p. 45 [Exhibit CE-459]).</p> <p>The documents requested are relevant, because they will provide evidence that ore produced through the Leaching Plant is substantially different in commercial terms from ore produced through the Concentrator Plant. To clarify, Respondent does not know and Claimant has not stated whether it or SMCV treat the sale of concentrates differently from the sale of copper cathodes and to what extent. The requested documents will provide precisely that information.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the same grounds set forth above in response to Request 18 above and on the additional grounds that this request covers a time period that is three years longer.</p>
<p style="text-align: center;">Requesting party reply</p>	<p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 19 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> • Relevance and materiality: Claimant alleges that the requested documents are not relevant because “[i]t is undisputed that the Leaching Plant and the Concentrator produce copper products that are ‘different, in commercial as well as physical terms.’” Claimant’s claim is without merit. The documents requested are relevant for the reasons stated in Respondent’s Request. To reiterate, Respondent does not know and Claimant has not stated whether Claimant, Phelps Dodge and/or SMCV treat the sale of concentrates differently from the sale of copper cathodes and to what extent. The requested documents will provide precisely that information. • Specificity: Claimant alleges that the Request is overbroad. It is not. Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent (i) identifies <i>one</i> narrow and specific category of documents in its Request (“Documents recording any discussion involving Claimant, Phelps Dodge or SMCV on the issue of whether SMCV would produce copper concentrate (for sale as concentrate) or would further process the concentrate to produce copper cathodes (for sale as copper cathodes), including documents containing the reasoning underlying SMCV’s decision (as of September 2004) to produce copper concentrate for sale as concentrate.”); (ii) identifies the relevant parties (Claimant, Phelps Dodge, SMCV); and (iii) limits its

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Request to a specific period of time (from 2004 to 2013). Even though there might be some relevant documents that fall within the scope of this Request dated before 2004 and after 2013, in a good faith effort to collaborate, Respondent specifically narrowed the scope of Request No. 19 to a time frame from 2004 to 2013, with 2004 being the year when SMCV decided to produce copper concentrate for sale as concentrate, and 2013 being the year that SMCV's audited financial statement shows sale of copper concentrates (to be clear, SMCV's audited financial statements of preceding years, including 2010, 2011, and 2012 also show sale of copper concentrates) (Stephen Ralbovsky Expert Report, para. 86 [RER-4]; SMCV, Financial Statement 2010, at para. 24 (p. 44) [Exhibit CE-606]; SMCV, Financial Statement 2011, at para. 22 (p. 43) [Exhibit CE-638]; SMCV, Financial Statements, 2012-2013, at para. 25 (p. 39) [Exhibit CE-671]).

Also, Claimant's attempt to argue that "[i]t would be impractical and overly burdensome for Freeport to identify [the requested documents]" is not tenable. *First*, as stated above, Respondent's Request is sufficiently narrowed to a specific time frame from 2004 to 2013; thus, Claimant's concerns regarding the time frame of the Request is without merit. *Second*, the Request is not as broad as Claimant suggests: mining companies such as SMCV and Claimant necessarily have all, if not certain key documents, recording important commercial decisions and the reasoning underlying those decisions, such as the decision as to whether SMCV would produce copper concentrate (for sale as concentrate) or would further process the concentrate to produce copper cathodes (for sale as copper cathodes), and probably store them in a specific location. Also, the fact that Respondent is only requesting documents that are in Claimant's possession, custody, or control in the time period when SMCV decided to produce copper concentrate for sale as concentrate (*i.e.*, from 2004 onward) will facilitate Claimant's search for the requested documents.

- **Confidentiality**: As to Claimant's confidentiality and commercially sensitive information objections, Respondent refers the Tribunal to its general Replies, *supra* at p. viii. In particular in this case, Claimant can omit and/or redact the identifiable or commercially sensitive information to the extent protected by the IBA Rules or other rules. Respondent requests that the Tribunal order Claimant to show that any document(s) it wishes to protect on the basis of alleged confidentiality is/are, in fact, covered by some kind of technical or commercial confidentiality provided by law or contract and that, if appropriate, the Tribunal order the parties to agree to a confidentiality agreement to cover the allegedly confidential documents so that the documents could be used in these proceedings.

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	<ul style="list-style-type: none">• <u>Possession, custody, or control</u>: Given that Respondent’s already-narrow Request seeks documents that are relatively close in time to Claimant’s acquisition of Phelps Dodge in March 2007 and onward (<i>i.e.</i>, from 2004 to 2013), the documents should be in Claimant’s possession, custody, or control.
Decision of the Tribunal	The Tribunal rejects Respondent’s Request No. 19 as overly broad. In addition, the Tribunal does not see the materiality or relevance of the Request as the Tribunal understands that the difference between the two types of ore products is undisputed between the Parties.

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Document Request No.	20.
Documents or Category of Requested Documents	<p>All of SMCV’s policies regarding the distribution of dividends that were in effect at any time, including but not limited to Exhibit 1 to the Participation Agreement dated March 16, 2005 [Exhibit CE-906]; and any minutes of SMCV’s Board of Directors meeting(s) or/and Freeport’s Board of Directors meeting(s), from 2007 onward, discussing or recording SMCV’s dividend distributions (including discussions related to decisions not to issue dividends), including type (e.g., cash, stock), amount, dividend declaration date, dividend distribution date, and reason for distribution or for non-distribution.</p> <p><u>Time frame of the Request:</u> Between 2007 and the present.</p>
<p>Relevance and Materiality:</p> <p>(1) Paragraph Reference to Submissions</p> <p>(2) Comments</p>	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 447-449. • Compass Lexecon Expert Report, para. 93 [CER-1]. • Respondent’s Counter-Memorial, paras. 784-788. • AlixPartners Expert Report, paras. 17, 83-87 [RER-5]. <p>(2) Comments</p> <p>Compass Lexecon asserts that SMCV has a well-established practice of dividend distributions and assumes that SMCV would have distributed as dividends all of the lost cash flows resulting from Perú’s alleged breaches of the Treaty (Claimant’s Memorial, para. 448).</p> <p>Claimant has not submitted on the record any evidence of SMCV’s alleged dividend distribution “policy.” Compass Lexecon relies almost entirely upon SMCV’s financial statements for the timing and amount of dividend distributions, but it fails to cite or attach any document that describes SMCV’s actual dividend distribution policy, as provided in a corporate governing document.</p> <p>The documents requested are relevant to assess whether Compass Lexecon’s damage calculation is consistent with SMCV’s documented dividend distribution policy and actual distribution practice.</p>

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<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of overbreadth, Peru’s possession, custody, and control, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request is overbroad because it sweeps into its purview a large number of documents that are already on the record. For example, the information sought by Requests 15(ii)-(iii) is largely already on the record. Freeport has already submitted SMCV’s Financial Statements from 2006 to 2020 and press releases from 2021, which reflect SMCV’s dividend distribution history, dividend declaration dates, and reasons for not distributing dividends in the years it did not do so. <i>See, e.g. Exs. CE-561</i>, Note 1.b.i, 14.e; <i>CE-574</i>, Note 12.f; <i>CE-596</i>, Note 11.f; <i>CE-606</i>, Note 11.f; <i>CE-638</i>, Note 1.b, 11.d; <i>CE-671</i>, Note 1.b, 14.d; <i>CE-711</i>, Note 13.c; <i>CE-749</i>, Note 12.c; <i>CE-779</i>, Note 12.c; <i>CE-851</i>, Note 12.c; <i>CE-807</i>.</p> <p><i>Second</i>, this request seeks documents that are in the possession, custody, or control of Peru. <i>See</i> IBA Rules, Art. 3(3)(c)(i). As a Peruvian company listed on the <i>Bolsa de Valores de Lima</i> (Lima Stock Exchange), SMCV is required to file its dividend policies with the Comisión Nacional Supervisora de Empresas y Valores (“CONASEV”), Peru’s national securities regulator). <i>See</i> Securities Market Law (Texto Único Ordenado de la Ley del Mercado de Valores), D.L. 861, Art. 85 (“Companies with publicly offered securities . . . must have a dividend distribution policy [A]pproval of such policy and its amendment, if applicable, shall be notified at least 30 days before its application.”).</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • SMCV’s dividend distribution policies.
<p style="text-align: center;">Requesting party reply</p>	<p><u>Partially agreed production:</u></p> <ul style="list-style-type: none"> • <u>Respondent</u> notes that Claimant objects to this Request on the basis of overbreadth, Peru’s possession, custody, and control, and for the reasons set forth in its General Objections. As explained below, Claimant’s objections are without merit. Respondent notes, however, that notwithstanding Claimant’s objections, Claimant has agreed to produce “SMCV’s dividend distribution policies.” <p>While Respondent will be glad to receive such documents, it emphasizes that it also requested “any minutes of SMCV’s Board of Directors meeting(s) or/and Freeport’s Board</p>

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	<p>of Directors meeting(s), from 2007 onward, discussing or recording SMCV’s dividend distributions (including discussions related to decisions not to issue dividends), including type (e.g., cash, stock), amount, dividend declaration date, dividend distribution date, and reason for distribution or for non-distribution.” The purpose of this second part of this Request is to determine SMCV’s actual dividend practice (and, in particular, whether SMCV actually distributed 100 percent of available cash immediately on the next dividend distribution date, as Claimant and its experts assume).</p> <p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 20 are misplaced for the following reasons</p> <ul style="list-style-type: none"> • Overbreadth: Claimant first argues that “this request is overbroad because it sweeps into its purview a large number of documents that are already on the record. For example, the information sought by Requests 15(ii)-(iii) is largely already on the record” because “Freeport has already submitted SMCV’s Financial Statements from 2006 to 2020 and press releases from 2021.” This argument makes no sense; this is Request No. 20, not Request No. 15, and there are no subparts (ii) or (iii) in this Request. Moreover, this Request explicitly requests “any minutes of SMCV’s Board of Directors meeting(s) or/and Freeport’s Board of Directors meeting(s)” —not the financial statements to which Claimant cites. Claimant’s response is completely irrelevant to this Request. • Possession, custody, or control of Peru: Claimant argues that Respondent should already be in possession of SMCV’s dividend distribution policies. However, Claimant has already (with certain caveats) agreed to produce those policies, which Respondent appreciates. Those policies, therefore, are not the issue. Claimant presents no argument that the remaining category of documents that Respondent moves to compel—e.g., the minutes of meetings—are already in Respondent’s possession, custody, or control.
<p>Decision of the Tribunal</p>	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: SMCV’s dividend distribution policies. Accordingly, the Tribunal orders Claimant to produce such Documents.</p> <p>The Tribunal rejects the remainder of Respondent’s Request No. 20 as overly broad.</p>

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Document Request No.	21.
Documents or Category of Requested Documents	<p>For purposes of analyzing and/or calculating Freeport’s (and all other equity holders)⁷ opportunity cost of lost cash flows (<i>i.e.</i>, lost dividends):</p> <ul style="list-style-type: none"> (i) In the event that Freeport or SMCV’s other equity holders invested the dividends received from SMCV in other projects (whether a re-investment in SMCV or investment in non-SMCV projects), any document(s) containing (i) the description of the project, (ii) the amount invested; and/or (iii) the return that Freeport or the other equity holder(s) generated from any such projects (and over what time period); (ii) In the event that Freeport or SMCV’s other equity holders had the opportunity to invest in other projects (whether a re-investment in SMCV or investment in non-SMCV projects), any document(s) discussing or recording that Perú’s measures at issue in this case prevented Freeport or SMCV’s other equity holders from raising capital to invest in said project(s) through equity or debt; (iii) Any document(s) discussing or recording that SMCV would have been able to obtain the rate of interest equivalent to SMCV’s WACC, Perú’s cost of debt, or SUNAT’s tax reimbursement rate in its normal course of business or would have paid such rate for funds borrowed to replace those due for the alleged breach by Perú. <p><u>Time frame of the Request:</u> Between 2007 and the present.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 451-453. • Compass Lexecon Expert Report, paras. 97-98 [CER-1]. • Respondent’s Counter-Memorial, paras. 790-796. • AlixPartners Expert Report, paras. 18-20, 97-108 [RER-5].

⁷ To be clear, Respondent is only requesting documents in Claimant’s possession, custody, or control.

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	<p>(2) Comments</p> <p>Compass Lexecon applies SMCV’s Cost of Equity in calculating the pre-award interest (<i>see</i> Compass Lexecon Expert Report, paras. 97-98 [CER-1]). However, Compass Lexecon has not provided evidence that Claimant or SMCV’s other equity holders had the opportunity to have generated over the relevant period a return similar to SMCV’s Cost of Equity, by either reinvesting in SMCV or another project similar to the Cerro Verde operation.</p> <p>Compass Lexecon also applies alternative interest rates (SMCV’s WACC, Perú’s cost of debt, and SUNAT’s tax reimbursement rate) in calculating damages to SMCV to support its calculation of damages to SMCV’s equity holders using SMCV’s Cost of Equity. However, Compass Lexecon has not provided evidence supporting the rationale for using these alternative interest rates.</p> <p>The documents are relevant to assess whether Freeport’s (and the other equity holders’) lost dividend cash flows had the opportunity cost equivalent to SMCV’s Cost of Equity.</p>
<p style="text-align: center;">Agreement to produce or Summary of objections by disputing Party to production of requested documents</p>	<p>Freeport objects to this request on the grounds of irrelevance and immateriality, overbreadth, commercial sensitivity, absence of possession, custody, or control, commercial sensitivity, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request seeks documents that are wholly irrelevant and immaterial to the issues in dispute. <i>See</i> IBA Rules, Art. 9(2)(a). Freeport does not make any submissions based on investment opportunities that Freeport and/or SMCV’s other shareholders lost as a result of Peru’s breaches of the Stability Agreement and the TPA. Nor do Dr. Spiller and Ms. Chavich, Freeport’s damages experts, make any assumptions in their model on this basis. Peru’s breaches have caused SMCV’s shareholders to forego dividends from SMCV, effectively forcing them to reinvest in SMCV. Thus, Dr. Spiller and Ms. Chavich calculate SMCV’s damages by modeling the lost cash flows to SMCV’s shareholders in the form of lost dividend distributions. They update and discount lost cash flows at SMCV’s cost of equity because that is “the minimum rate required by equity holders to voluntarily invest (or retain their cash flows) in the firm.” Spiller-Chavich Report ¶ 81. Therefore, it is the rate at which SMCV’s shareholders expect SMCV to compensate them for delaying dividends to shareholders. Dr. Spiller and Ms. Chavich shared the relevant cost of capital calculations in their Report. Spiller-Chavich Report, Annex 4.</p> <p>Moreover, SMCV’s WACC, Peru’s cost of debt, and SUNAT’s tax reimbursement rate are not part of Dr. Spiller’s and Ms. Chavich’s valuation, on which Freeport bases its damages claim. Rather, Dr. Spiller and Ms. Chavich use these rates to “subject [their] damages assessment to a</p>

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	<p>reasonableness test.” Spiller-Chavich Report ¶¶ 6, 83, 91, § V.1.2.b, Tables 1 & 6. Dr. Spiller’s and Ms. Chavich’s basis for doing so is not based on the assumption that Peru’s breaches forced Freeport or SMCV’s other shareholders to forego investment opportunities at those rates of return.</p> <ul style="list-style-type: none"> • <u>SMCV’s WACC</u>: The basis for using the WACC of a company with comparable risks to SMCV is that it represents the average cost of capital of SMCV. By definition, the WACC is the average rate that companies like SMCV pay to obtain capital. • <u>Peru’s Cost of Debt</u>: The basis for using Peru’s cost of debt is that Peru has wrongfully extracted revenues from SMCV, effectively forcing SMCV to become a creditor of Peru. • <u>SUNAT’s Reimbursement Rate</u>: The basis for using SUNAT’s Reimbursement Rate is that it is the interest rate Peru would be required to pay under its own internal law. <p><i>Second</i>, this request is overbroad. <i>See</i> IBA Rules, Art. 3(3)(a)(ii). Peru has not explained why it cannot obtain most of the information sought in this request from publicly available sources such as the financial statements of Freeport and SMCV’s other shareholders.</p> <p><i>Third</i>, documents concerning the investment opportunities of Freeport and SMCV’s other shareholders contain commercially sensitive information unrelated to this dispute.</p> <p><i>Finally</i>, to the extent the request seeks documents solely held by SMM Cerro Verde, SMM, and/or Buenaventura, shareholders in SMCV, it seeks documents that are not in the possession, custody, or control of Freeport. <i>See</i> IBA Rules, Art. 3(3)(c)(ii).</p>
<p>Requesting party reply</p>	<p>Respondent moves to compel production of the requested documents. Claimant’s objections to Request No. 21 are misplaced for the following reasons.</p> <ul style="list-style-type: none"> • <u>Relevance and materiality</u>: Claimant alleges that the requested documents are not relevant because “Freeport does not make any submissions based on investment opportunities that Freeport and/or SMCV’s other shareholders lost as a result of Peru’s breaches,” “[n]or do Dr. Spiller and Ms. Chavich, Freeport’s damages experts, make any assumptions in their model on this basis.” Claimant’s response is without merit. The requested documents are relevant for the reasons stated in Respondent’s Request, as elaborated below. <p>According to Claimant, Compass Lexecon assumes that SMCV’s cost of equity is “the minimum rate required by equity holders to voluntarily invest (or retain their cash flows) in</p>

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	<p>the firm” and, “[t]herefore, it is the rate at which SMCV’s shareholders expect SMCV to compensate them for delaying dividends to shareholders.” That assumption is wrong. SMCV’s cost of equity is not the rate that SMCV’s shareholders (including Freeport) would have required to willingly delay dividends from SMCV. The rate that SMCV’s shareholders (including Freeport) would have required to willingly delay dividends from SMCV depends on what investment opportunities SMCV’s shareholders (including Freeport) would have had at that time, and the corresponding returns for those opportunities—<i>i.e.</i>, the opportunity cost. And Claimant has failed to provide any evidence to show that SMCV’s shareholders’ (including Freeport) lost dividend cash flows would have had the opportunity to achieve returns equal to SMCV’s Cost of Equity. Claimant’s pre-award interest calculations are based on wishful thinking. “A party has the burden of proving the case it advances,”⁸ and in this case, if Claimant does not produce the requested documents to prove its assumptions to calculate the pre-award interest, Respondent asks the Tribunal to draw adverse inferences.</p> <p>Moreover, even if Claimant disagrees with Respondent’s explanation, this is a merits issue that the Tribunal should decide, if necessary, in its award. Document production is not the appropriate place to decide this issue. If Claimant has the requested documents, it should provide them to Respondent and make its argument on the merits at the appropriate juncture.</p> <p>With respect to SMCV’s WACC, Peru’s cost of debt, and SUNAT’s tax reimbursement rate (part (iii) of the Request), Claimant plainly admits that “Dr. Spiller and Ms. Chavich <u>use</u> these rates to ‘subject [their] damages assessment to a reasonableness test’” (emphasis added). Claimant cannot “use” these rates to support its arguments and then try and shield Respondent from documents related to these rates by arguing that the documents are “wholly irrelevant and immaterial.”</p> <ul style="list-style-type: none">• <u>Specificity</u>: Respondent’s Request is sufficiently narrow and specific, in accordance with Article 3.3(a) of the IBA Rules. Respondent (i) identifies three narrow and specific categories of documents in its Request; (ii) explicitly limits its Request to “documents in Claimant’s possession, custody, or control”; and (iii) limits its Request to a specific period of time (from 2007 onward). Respondent also notes that under this Request it is not asking for publicly available information (which is extremely limited and would not show SMCV’s
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⁸ See M. Bühler and T. Webster, HANDBOOK OF ICC ARBITRATION (2005), Section 20-59, n. 179.

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	<p>shareholders’ potential investment opportunities, if any). Claimant’s argument that “Peru has not explained why it cannot obtain most of the information sought in this request from publicly available sources” is contradicted by Claimant’s very next (equally unavailing) complaint that the “documents concerning the investment opportunities of Freeport and SMCV’s other shareholders contain commercially sensitive information”; presumably this potentially “commercially sensitive information” is not publicly available (and, if it were, then Claimant would have no ground to complain about its disclosure here).</p> <p>Claimant’s argument that “documents concerning the investment opportunities of Freeport and SMCV’s other shareholders contain commercially sensitive information” is also unpersuasive. <i>First</i>, Claimant cites to no provision in Procedural Order No. 1, the TPA, or IBA Rules that would support the withholding of relevant documents on this basis. <i>Second</i>, even if Claimant did have such support, Claimant has failed to explain why potential investment opportunities up to 15 years old would still be “commercially sensitive.” And, <i>third</i>, Claimant ignores that Procedural Order No. 1, at Section 30.2, explicitly provides the procedure for the protection of such information: “In the event of specific concerns about document security, any Party may, at any time during the Proceeding, request that the Tribunal issues a Confidentiality Order in respect of any particular document/s that contain sensitive information” Thus, even if Claimant could show that the documents covered by this Request contain certain commercially sensitive information, Claimant is free to seek a Confidentiality Order—not to simply withhold the documents.</p> <ul style="list-style-type: none"> • <u>Possession, custody, or control</u>: Claimant claims that “to the extent the request seeks documents solely held by SMM Cerro Verde, SMM, and/or Buenaventura, shareholders in SMCV, it seeks documents that are not in the possession, custody, or control of Freeport.” This point is entirely irrelevant: Respondent explicitly limited its request to “documents in Claimant’s possession, custody, or control.” Respondent did not, to any “extent,” request documents not in Claimant’s (or SMCV’s) possession, custody, or control and, instead, held by other shareholders in SMCV.
Decision of the Tribunal	The Tribunal rejects Respondent’s Request No. 21 as overly broad.

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Document Request No.	22.
Documents or Category of Requested Documents	<p>(i) Any document(s) upon which Compass Lexecon relied in calculating SMCV's depreciation mitigation (<i>i.e.</i>, non-stabilized tax depreciation schedule for disputed assets in its present and future income tax declarations and their amendments) ("Depreciation Mitigation") for the years 2012-2026, including, but not limited to, the documents that record details and calculations supporting SMCV's effect of recovered depreciation up to 2020 [<i>see</i> Exhibit CE-853]; and</p> <p>(ii) Any document(s) upon which Compass Lexecon relied for the 2013 income tax assessment No. 012-003-0113991.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Compass Lexecon Expert Report, paras. 49, 88, 95 [CER-1]. • AlixPartners Expert Report, paras. 117-119 [RER-5]. <p>(2) Comments</p> <p><i>First</i>, Compass Lexecon adjusts (reduces) the damages based on the Depreciation Mitigation that it calculates for the years 2012-2026. The documents are relevant to assess the accuracy of the Depreciation Mitigation calculated by Compass Lexecon.</p> <p><i>Second</i>, Compass Lexecon also references Exhibit CE-278 for the 2013 income tax assessment No. 012-003-0113991 in its damages calculation model but that does not appear to be the correct document.</p>
Agreement to produce or Summary of objections by disputing Party to production of requested documents	Without prejudice to the General Objections, Freeport will produce non-privileged documents responsive to this request, if any, within its or SMCV's possession, custody, and control, which can be located after a reasonable search.
Requesting party reply	Agreed production: Respondent notes that Claimant has agreed to produce the requested documents so long as they are not otherwise privileged (and within its or SMCV's possession, custody, and

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	control). As to Claimant’s potential privilege objections, Respondent refers the Tribunal to its General Objections and its General Replies, <i>supra</i> pp. ii, x-xii.
Decision of the Tribunal	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce non-privileged documents responsive to this request, if any, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> (i) Any document(s) upon which Compass Lexecon relied in calculating SMCV’s depreciation mitigation (<i>i.e.</i>, non-stabilized tax depreciation schedule for disputed assets in its present and future income tax declarations and their amendments) (“Depreciation Mitigation”) for the years 2012-2026, including, but not limited to, the documents that record details and calculations supporting SMCV’s effect of recovered depreciation up to 2020 [<i>see</i> Exhibit CE-853]; and (ii) Any document(s) upon which Compass Lexecon relied for the 2013 income tax assessment No. 012-003-0113991. <p>Accordingly, the Tribunal orders Claimant to produce such Documents.</p>

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Document Request No.	23.
Documents or Category of Requested Documents	<p>Documents showing the payment (if any) of (i) outstanding liabilities (USD 36.9 million) that Claimant and Compass Lexecon assumed to were paid on October 19, 2021; and (ii) USD 5.1 million in additional employee profit sharing (“PTU”).</p> <p><u>Time frame of the Request:</u> From May to October 2021.</p>
Relevance and Materiality: (1) Paragraph Reference to Submissions (2) Comments	<p>(1) Paragraph Reference to Submissions</p> <ul style="list-style-type: none"> • Claimant’s Memorial, paras. 442-443. • Compass Lexecon Expert Report, paras. 86-87 and Appendix K [CER-1]. • Respondent’s Counter-Memorial, paras. 778-783. • AlixPartners Expert Report, paras. 61-64 [RER-5]. <p>(2) Comments</p> <p><i>First</i>, the outstanding liabilities identified by Compass Lexecon in its expert report have been accruing since 2006. However, it is unclear from available evidence when those outstanding liabilities will be paid, if at all. Nevertheless, Compass Lexecon does not discount the amounts in calculating damages because Compass Lexecon assumes they are paid on 19 October 2021. The documents requested are relevant to assess the appropriateness of considering outstanding liabilities in calculating damages.</p> <p><i>Second</i>, Compass Lexecon cites CE-904, Additional PTU Payments (26 May 2021-14 October 2021), to support the payment of USD 5.1 million in Additional PTU. However, the document is unrelated to PTU payments.</p>
Agreement to produce or Summary of objections by disputing Party to production of requested documents	<p>Freeport objects to this request on the grounds of overbreadth, Peru’s possession, custody, or control, and for the reasons set forth in the General Objections.</p> <p><i>First</i>, this request does not relate to a narrow and specific category of documents. Peru has not narrowed the request by reference to specific custodians. Rather, Peru seeks all documents created by anybody concerning the payment of the outstanding liabilities. As drafted, the request captures publicly available documents like Freeport’s financial disclosures.</p>

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	<p><i>Second</i>, the request seeks documents that are in the possession, custody, or control of Peru. SMCV owes outstanding liabilities to Peru and, therefore, Peru is in possession of documents concerning the payment of those liabilities.</p> <p>Without prejudice to the above objections, Freeport will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search:</p> <ul style="list-style-type: none"> • Proof of payment of any of the outstanding liabilities.
Requesting party reply	<p><u>Agreed production:</u> Respondent notes that Claimant has agreed to produce “[p]roof of payment of any of the outstanding liabilities” so long as they are not otherwise privileged (and within its or SMCV’s possession, custody, and control). Respondent asks for no further documents under Request No. 23. As to Claimant’s potential privilege objections, Respondent refers the Tribunal to its General Objections and its General Replies, <i>supra</i> pp. ii, x-xii.</p>
Decision of the Tribunal	<p>The Tribunal takes note that Claimant, without prejudice to its objections, will produce the following non-privileged documents, if any, responsive to this request, within its or SMCV’s possession, custody, and control, which can be located after a reasonable search: Proof of payment of any of the outstanding liabilities. Accordingly, the Tribunal orders Claimant to produce such Documents. The Tribunal also takes note that Respondent asks for no further Documents under Request No. 23.</p>