BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the Matter of Arbitration between:	
FREEPORT-MCMORAN INC.,	
Claimant,	Case No. ARB/20/8
v.	
REPUBLIC of PERÚ,	
Respondent.	
	Volume 10

HEARING ON JURISDICTION, MERITS, AND QUANTUM

Friday, May 12, 2023

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

The Hearing in the above-entitled matter came on at 8:59 a.m. before:

MS. INKA HANEFELD
President of the Tribunal

MR. GUIDO SANTIAGO TAWIL
Co-Arbitrator

MR. BERNARDO M. CREMADES
Co-Arbitrator

ALSO PRESENT:

On behalf of ICSID:

MS. MARISA PLANELLS VALERO
ICSID Secretariat

MS. CHARLOTTE MATTHEWS
Assistant to the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON
Registered Diplomate Reporters (RDR)
Certified Realtime Reporters (CRR)
B&B Reporters/Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C. 20003
United States of America

SR. LEANDRO IEZZI
D.R. Esteno
Colombres 566
Buenos Aires 1218ABE
Argentina
(5411) 4957-0083

Interpreters:

MR. CHARLES ROBERTS

MS. SILVIA COLLA

MR. DANIEL GIGLIO

APPEARANCES:

On behalf of the Claimant:

MR. DIETMAR W. PRAGER
MS. LAURA SINISTERRA
MR. NAWI UKABIALA
MR. JULIO RIVERA RIOS
MR. SEBASTIAN DUTZ
MR. FEDERICO FRAGACHÁN
MS. MICHELLE HUANG
MS. ASTRID MEDIANERO BOTTGER
MS. LUCIA RODRIGO
MR. PEDRO FERRO
MS. MARY GRACE MCEVOY
MR. REGGIE CEDENO
MR. THOMAS MCINTYRE
MR. ORRIN CASE
MR. GREGORY A. SENN
MR. CHRISTOPHER V. TRAN
Debevoise & Plimpton LLP
66 Hudson Boulevard
New York, New York 10001
United States of America

MR. LUIS CARLOS RODRIGO PRADO
MR. FRANCISCO CARDENAS PANTOJA
MR. LOURDES CASTILLO CRISOSTOMO
MR. JOSÉ GOVEA
MR. ALEJANDRO TAFUR
Rodrigo, Elias & Medrano
Av. Pardo y Aliaga 652
San Isidro 15073
Perú

Party Representatives:

MR. DAN KRAVETS
MR. SCOTT STATHAM
Freeport-McMoRan Inc.

MS. PATRICIA B. QUIROZ PACHECO
Socied Minera Cerro Verde S.A.A.

APPEARANCES: (Continued)

On behalf of the Respondent:

MR. STANIMIR A. ALEXANDROV
Stanimir A. Alexandrov, PLLC
1501 K Street, N.W.
Suite C-072
Washington, D.C. 20005
United States of America

MS. JENNIFER HAWORTH McCANDLESS
MS. MARINN CARLSON
MS. MARÍA CAROLINA DURÁN
MS. COURTNEY HIKAWA
MS. ANA MARTÍNEZ VALLS
MS. VERONICA RESTREPO
MS. ANGELA TING
MR. NICK WIGGINS
MS. NATALIA ZULETA
MR. GAVIN CUNNINGHAM
MR. KEVIN DUGAN
MS. ARA LEE
MS. SADIE CLAFLIN
MR. NOAH GOLDBERG
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
United States of America

MR. RICARDO PUCCIO
MR. OSWALDO LOZANO
MS. SHARON FERNANDEZ TORRES
MS. ANDREA NAVEA SÁNCHEZ
MR. RENZO ESTEBAN LAVADO
Navarro & Pazos Abogados SAC
Av del Parque 195
San Isidro 15047
Lima
Perú

APPEARANCES (Continued)

Party Representatives:

MS. VANESSA DEL CARMEN RIVAS PLATA SALDARRIAGA
MR. MIJAIL FELICIANO CIENFUEGOS FALCON
Ministry of Economy and Finance

MR. EDMÓSTINES MONTOYA JARA
SUNAT, Republic of Perú

C O N T E N T S

PAGE

PRELIMINARY MATTERS.....2891

CLOSING STATEMENTS

ON BEHALF OF THE CLAIMANT:

By Mr. Prager.....2892
By Ms. Sinisterra.....2938
By Mr. Ukabiala.....2962
By Ms. Sinisterra.....2957

CONFIDENTIAL SESSIONS.....2918, 2924, 2957-2959

ON BEHALF OF THE RESPONDENT:

By Mr. Alexandrov.....2971

POST-HEARING MATTERS.....3047

P R O C E E D I N G S

PRESIDENT HANEFELD: Good morning. Welcome to Day 10 of our Hearing.

Are there any issues that the Parties wish to address before we start with the Closing Statements?

MR. PRAGER: Good morning, Madam President, Members of the Tribunal.

The only thing that I wanted to say is that, in the course of our presentation, we will refer to protected information, and we hope that the time that it takes to empty the room, et cetera, won't be counted against the 90 minutes that we have.

PRESIDENT HANEFELD: Anything from the Respondent's side?

MS. HAWORTH McCANDLESS: No, Madam President.

PRESIDENT HANEFELD: Thank you.

Then you are now granted the opportunity to make your Closing Statement.

CLOSING STATEMENT BY COUNSEL FOR

CLAIMANT

MR. PRAGER: Madam President, Members of the Tribunal, the past two weeks have confirmed that, when it came to honor the deal that Perú struck to attract foreign investment and generate employment and revenues, Perú substituted legal standards for political caprice. Even now, the Government's own witnesses and experts cannot muster a straight story about how stability guarantees work in Perú or why they don't apply to the Concentrator. And that's not for lack of trying.

The Hearing revealed that Perú withheld critical documents that didn't fit its novel position, coordinated oral testimony, and shared witnesses' written statements with each other.

Unable to protect their rights in Perú, SMCV and Freeport have come to this distinguished Tribunal as a neutral forum that can cut through the politics and see the law for what it plainly is: That stability guarantees apply to entire concessions and Mining Units, including the Concentrator.

Not only that, but the Hearing confirmed

that this was the interpretation that the Government applied to every other similarly situated mining company, until, it is, the Government arbitrarily changed tack, once the Concentrator investment transformed Cerro Verde into one of the world's leading copper assets and Arequipa's largest employer.

Simply put, honoring contractual and international obligations no longer fit the Government's agenda. And the Hearing made this plain.

Perú and its witnesses and experts could not agree on a proper definition of what constitutes the Investment Project, and at this Hearing alone offered four different versions: Mr. Tovar admitted that his memory was--I quote--"reconstructed," and Perú's experts could not offer any support for their conclusion that stability guarantees applied to Investment Projects, and, when asked, all admitted that they were not mining lawyers and had not considered any relevant sources.

But even if the Tribunal just heard Perú's arguments, witnesses and experts, it would be clear that Perú's defense is not remotely credible. At the

very minimum, though, the Tribunal would have to conclude that there was reasonable doubt about the scope of stability guarantees and that Peruvian law thus would have entitled Cerro Verde to a waiver of its penalties and interest.

But, considering all the testimony at the Hearing and all the documentary evidence, it is clear that the Mining Law and Regulations provided that stability guarantees apply to concessions and Mining Units and that the incorporation of the Concentrator into the stabilized Beneficiation Concession extended the guarantees of the Stability Agreement to the Concentrator.

Now, before I address the merits, I will start with a brief discussion on jurisdiction. I won't have time to go through all the five objections. I refer you to our Opening and written submissions, but I will briefly refer to the statute of limitations and the tax exclusion.

Now, with regard to the statute of limitations, you know Perú's argument that a single statute of limitations began to run for all of its

breaches once SUNAT notified Cerro Verde of the 2006-'07 Royalty Assessments. So, under Perú's position, Freeport should have brought premature and speculative claims for assessments that were not final and for future assessments not even rendered.

Now, as a matter of pure logic, that cannot be right, and that would lead to absurd results, and there are several reasons why as a matter of law that cannot be right.

First of all, the plain language of Article 10.18.1 clearly shows that the breach has to have occurred and the loss incurred in the past tense. And this has been confirmed by jurisprudence. So, you cannot bring a claim on the plain language for future and uncertain losses.

The second reason is that Perú's argument is based on the erroneous premise that there was one government act that caused one breach resulting in one single loss. But this here is not an expropriation case or a case where a single government act causes all the loss. Here, each of the government acts, which are here the final and enforceable assessments,

were independent and separate government acts that gave rise to separate causes of actions for breach of contract.

And the jurisprudence on this is clear: If there are multiple causes of action, even if they arise out of similar or related actions, then each of them has its own statute of limitations.

And you will recall the Nissan case, where there were separate breaches of a Memorandum of Understanding, and the Tribunal found that each of those constituted a separate breach giving rise to a separate statute of limitations period.

And this Hearing has confirmed that each of the final assessments were separate and independent administrative acts. Each of them gives rise to a separate breach and loss, and hence to a separate cause of action, as Professor Morales wrote in his First Report before he changed his view.

Third, the third reason is, as we have shown, that Perú cannot rely on the argument that the assessments have the same legal basis. That argument has been rejected in the Eli Lilly case. Nor was

SUNAT, under Peruvian law, bound on its--on a legal basis in the 2006-2007 Royalty Case. On the contrary, you will recall the testimony of Ms. Bedoya, who admitted that SUNAT could have ruled differently on other assessments.

And the final reason is, if we look at each assessment individually, the breach and the loss occurs only when the assessment creates an obligation on the investor to make a payment that the Investor does not owe, and, in Perú, this occurs when each royalty and tax assessment becomes final, as Professor Hernández explained yesterday. It's Article 115 of the Tax Code.

Until that moment, the taxpayer does not have an obligation to pay the assessment and SUNAT cannot start any collection procedures. And it's only at that moment that the breach occurs for each individual assessment, that liability arises, and that the taxpayer suffers a loss.

And we have shown you the Poderosa case, where a trial court and the appellate court in Perú held that SUNAT assessments only breached Poderosa's

Mining Stability Agreement when the Tax Tribunal issued its resolutions, and only then the statute of limitations starts to run.

Now, in quantum, Perú admits that the losses incurred only if the assessments are final and enforceable, because it's only then that it becomes certain that the assessment will--I quote--"actually result in the taxpayer making payments." Now, that admission alone is dispositive.

As you can see, all the assessments for which Freeport has submitted claims become final and enforceable against Cerro Verde within the cutoff period.

Now, let me say a few words regarding the other two claims, the 2006-'07 and the 2008 Royalty Claims. As you know, we are making due-process claims under the Minimum Standard of Treatment for them. Now, with regard to all the other claims, knowledge occurred when we were notified of the final and enforceable assessment. So, knowledge is not really an issue, but the knowledge of the due process violation before the Tax Tribunal, we only had in

2019.

And why is that? That is because it was only then when Freeport and SMCV were preparing the case, somebody pointed out, somebody who knew the Tax Tribunal: "Look at these initials, 'UV.' That refers to Ursula Villanueva. What is this initial doing there?"

If you look at the applicable standard for knowledge, it is for constructive knowledge. It's reasonable prudence, and nobody who receives a tax assessment looks at the initials of the people who worked there in order to find out, well, were they actually authorized to work on the assessment? That can't be a reasonable practice.

And the fact that the 2006-'07 and 2008 Royalty Resolutions were virtually identical, that alone does not suggest that, without all the other information, that there was something awry.

So, the applicable standard of reasonable prudence cannot mean that Cerro Verde, at that point in time, as soon as it received a negative assessment, should have filed a transparency request and asked for

all the emails of the Tax Tribunal precedent. That's quite an extraordinary measure. Imagine that every investor in order to protect their rights when they receive a negative tax assessment would have to go and ask for the entire email correspondence of the Tax Tribunal's President or of the responsible "vocales" at that point in time. That would certainly not be something reasonable to do and would cripple the entire transparency system in Perú.

But the more fundamental point is that, look, Perú cannot play hide and seek here. It cannot on the one hand commit due process violations and keep them away from us and on the other hand blame us for not having found out sooner about those due process violations.

And, you know, as this Hearing showed, what Freeport learned in 2019 was only the tip of the iceberg. You will have seen what we learned in the SMM Hearing and heard from Ms. Bedoya in this Hearing; again, where the due process violations at SUNAT were, all the assessments and then later on intendency resolutions were based on an obscure decision from

2006 that already predetermined how them--that already set the standard that then Ms. Bedoya used each time to render her intendency decisions.

Now, let me turn briefly to the tax exclusion in Article 22.3.1. As Mr. Sampliner explained, there's an exception to that tax exclusion for breaches of Investment Agreements, like the Stability Agreement, in Article 22.3.6 of the TPA. And for that reason, Perú has not made a tax exclusion objection to the Stability Agreement claims based on the royalty, tax, and penalty and interest assessments.

And regarding the MST claims, the tax exclusion is not applicable to Freeport claims based on the royalty assessments and the penalty and interest on the royalty assessments.

And that is because, under Peruvian law, royalties are not taxes, as Mr. Bravo and Mr. Picón just confirmed to us yesterday. And, again, for that reason, I assume Perú has not objected to the royalties and penalties and interest on royalties on the basis of the tax exclusion, as Ms. Kunsman

confirmed yesterday.

And Freeport doesn't bring MST claims based on the tax assessments. So, the tax exclusion objection is only relevant to Freeport's minimum standard of treatment claims for their failure to waive penalties and interest on the tax assessments.

But that objection, Perú's objection with regard to those penalties and interest, fails because, as Perú itself admits, penalties and interest are not taxes under Peruvian law, so they cannot be taxation measures under the TPA.

Now, only yesterday Mr. Bravo and Mr. Picón testified that, when asked what is absolutely clear and undisputed is that penalties--when they testified that what is absolutely clear and undisputed is that penalties and interest are not taxes and are fundamentally different in their nature and purpose.

So, Freeport is entitled to recover those 245 million in damages for penalties and interest on the tax assessment.

Now, let me come to the merits. And the way that we really want to present it is in a timeline to

show how the events unfolded over time. Now, 19--let's start in 1991. You will recall that Perú was ravaged by serious financial crisis, domestic terrorism that claimed thousands of lives, and Perú needed at that point to attract foreign investment in the mining sector. And what Perú recognized in this moment was that granting stability to Mining Units was the only way to do that.

There were at least three reasons to do that. First of all, it was consistent with international practice, including how Chile and other jurisdictions that Perú competed with extended the guarantees. Second, it was consistent with commercial reality; mining companies make, consistently and permanently, investments within the same Mining Unit. And, thirdly, Perú was desperate at that point in time for foreign mining investment.

And you will have heard, like Mr. Bullard's testimony, the last investment was made back in the 1970s. It needed that mining investment, and it had to make its fiscal regime attractive enough to do that. The more investments it would receive, the

better.

And the stability for the mining companies, for the Mining Unit, that was the incentive to the mining company. And there's one thing that I want to point out: It's a false supposition that the Government somehow would have a shortfall in tax income as a result of the stability, as Mr. Ralbovsky, for instance, suggested.

Now, don't forget: Taxes may also fall, and that has happened in the case of Cerro Verde with the income tax. For example, the Stability Agreement froze Cerro Verde's income tax at 30 percent, but during large periods of time, the income tax was below 30 percent, and in some years even reached 20 percent.

So, under the stabilized regime, Cerro Verde was paying more than it would have under the unstabilized regime.

But for the Government, the advantage of having that stability is that any additional investment that the mining company makes in the Mining Unit means more fiscal revenues for the Government, means more shops, and means more socioeconomic

development. And Perú at that point in time was really desperate for that. It prioritized the economic benefits from long-term investment over any short-term tax considerations.

Now, the second feature of the mining reform, you will recall that, was administrative simplification. To attract the foreign investors, it was important that the administration of stability agreement would be as simply as possible, and that was being done by--as you heard from Mr. Polo and others, by creating adhesion contracts for the stability agreements, by abolishing negotiations, by eliminating discretion, and the purpose of that was there should be no more delay, and corruption would be eliminated. Those were also key features.

Now, let's look at that mining reform that was created and the Mining Law that came from it.

Now, if you look at the scope of stability guarantees, in a Mining Law they are defined in Articles 82 and 83. Article 82's second paragraph clearly defines the Economic-Administrative Unit. Perú has not been able to explain that away. And the

second definition is in Article 83.

Now, as Ms. Chappuis testified, it's in fourth paragraph of Article 83, the effect of the contractual benefit shall apply exclusively to the activities of the mining company.

Now, as you see, that is as broad as it gets, "the activities of the mining company." And, as Ms. Chappuis explained, the way that this was drafted was that, if you look at the previous paragraph, it speaks of a requirement to access stability and investment that is being made in a state-owned conglomerate and a state-owned company.

So, that paragraph wanted to make sure that, if somebody invests in a Centromín or Minero Perú or one of those state-owned companies, that that investment would only benefit the Mining Unit, the mining enterprise owned by that conglomerate in whose favor that investment was made.

But even clearer are the regulations that further implemented the scope of stability guarantees when they determined which activities of the mining company would benefit from stability.

Now, those Regulations are binding, and they evidence also how the Government and MINEM understood the Mining Law at the time when they drafted those Regulations that implemented the Mining Law.

And the relevant provisions, you will recall, are Articles 1, 2, and 22. I submit they could not be any clearer. They say stability benefits apply to concessions and Mining Units. It can't get any clearer than that. There can be absolutely no doubt. They don't say stability benefits apply to Investment Projects. And Perú knows that that language cannot get any clearer, and that's why it always tries to hide those provisions from you.

We looked at the expert reports of Professor Eguiguren and others. They never cite--they never cite Article 2 or the second paragraph of Article 22. And whenever Perú talks about the Mining Regulations, those key provisions don't figure. And they clearly say, if you have an investment that is stabilized and another one that is not stabilized, you have--you have to separate the accounts between Mining Units. Not Investment Projects; Mining Units.

And that's, as we have seen in the case of Milpo, for instance, the--SUNAT did--you will remember the tables that actually has been implemented.

Now, Perú tries to rely on Article 25, but, actually, that article powerfully confirms what Articles 2 and 22 say, and, as Ms. Vega and Mr. Hernández have pointed out, they actually talk about new investments that are being made after the stability agreement has been signed, new expansions that are being made after that time, so that are entitled--that are entitled to stability.

Now, it's also important to keep in mind what the Law and Regulations don't say. They nowhere talk about Investment Projects. The Regulations say "Mining Units," "concessions." They don't say "Investment Projects." They nowhere say that the Feasibility Study defines the scope, and there are good reasons for that.

I mean, do you recall--do you remember the testimony of Mr. Polo, when we asked him some concrete example about Milpo and how to separate, where to draw the line between the stabilized and the nonstabilized

regime, if you only look at the Investment Project, as he said you should do.

Now, when I asked: "How do you draw the line?" He said: "We have to make a materiality test, a substance test, a criterion, because not everything is etched in stone. Things aren't black and white. Not everything is regulated by law."

Well, as you can hear from that, that concept would have created complete discretion, and not eliminated it, but the purpose of the mining reform was to eliminate it. That's why the Regulations say "concessions" and "Mining Units," and not "Investment Projects."

Now, for sure, investors could have used some accounting rules to separate different investments within a concession, but in the absence of detailed legal provisions that tell you how to separate the accounts between Investment Projects, the investor would have been at the mercy of SUNAT. SUNAT likely would have disagreed with them and would have exercised its discretion to tell you, "Well, this is included and that is not included." And those--the

detailed legal regulations only were passed in 2019. And the reason for that is because they were not needed before, because nobody separated Investment Projects. Everybody separated Mining Units, as Article 22 said.

And, actually, SUNAT was unable to separate Cerro Verde's accounts for a number of the taxes, for the temporal tax on new assets, for additional income tax, and for the complimentary mining pension fund. SUNAT did not know how to separate the Leaching Project from the so-called "Concentrator Project." And what did it do? It applied the nonstabilized regime to the entire Mining Unit--Mining Unit, because that makes sense--but the nonstabilized regime, including to the Concentrator.

Now, as a result of the Mining Law, Perú started to privatize mines, and the privatization of Cerro Verde was one of the major successes for that mining reform. And when the Government owned Cerro Verde, what it always tried to do since the 1970s was to develop the mining assets at Cerro Verde, and the major function of that development was to access the

Primary Sulfides that are in the porphyry deposit, and they tried to do that by building a Concentrator. Didn't have the means, so a key future of the privatization was not only to further develop the leaching, but also to build a Concentrator. And you see that in the Share Purchase Agreement in Phase IV of the Investment Program.

The Government always looked at it as one whole productive unit; further develop the leaching and build a Concentrator to access the primary assets, always as one unit. The Share Purchase Agreement even mentions Cerro Verde as a unit.

And the 1996 Feasibility Study was a step towards that. It provided for an investment to expand the leaching operations and concluded that investing in a Concentrator at that time was not yet economically feasible due to insufficient power and water resources, but--but--it--as Ms. Chappuis explained, it contained a line item for further Feasibility Study of the Concentrator and for some works to broaden the pits so that you can then access the Primary Sulfides. And it was always clear that

those developments go hand-in-hand. It was an integrated Mining Project. Accessing--Accessing the Primary Sulfides was the plan from the beginning.

Now, let me come--go on in time to 1998 and come to the Stability Agreement.

Now, consistent with what we have heard about Articles 2 and 22 of the Mining Regulations, the Stability Agreement covered the Cerro Verde Mining Concession and the Cerro Verde Beneficiation Concessions. And, consistent with the model stability agreement, those concessions were listed in Annex 1 of the Stability Agreement.

Now, the stability applied also to all the facilities--and that's important--that already existed at Cerro Verde at that time, that the government had built. So, when Cerro Verde was privatized, there were already leaching operations there, and they were not part--the existing facilities were not part of the expansion that was an Investment Program. But they were covered. The Government never argued that they would not be covered by the stability.

Well, that's another inconsistency with

their Investment Program doctrine.

There are four points that I wanted to point out about the Stability Agreement that have been discussed in the course of the Hearing.

The first one: In the Opening argument, Counsel for Perú argued, well, Cerro Verde is not an EAU because Cerro Verde was never formally designated as an EAU, an Economic-Administrative Unit, by MINEM. But that argument confuses the EAU under Article 44 of the Mining Law with that under Article 82, and I think you will recall that Ms. Vega and Ms. Torreblanca explained to you the difference. The Article 44 EAU that requires a formal resolution under the Administrative Procedure Law for MINEM is basically a way to put together a number of mining concessions into a unit within a certain radius, whereas the EAU, under Article 82, was established solely for stability--for the purposes of the Stability Agreement, and it identifies a production unit that consists of the mining concessions, beneficiation, and all the necessary facilities to form that unit. And that does not require a government resolution.

There's no formal process for obtaining that. It's a designation that MINEM makes in connection with approving an application for a stability agreement.

But, in addition, you know, nothing really turns on the EAU. It shows that Cerro Verde was an integrated operation, but whether it is an EAU or not, the Annex 1 contains the Mining Concession, the Beneficiation Concession, and the Concentrator was incorporated into the Beneficiation Concession that's included.

The second point I wanted to address is, you know, whether Cerro Verde could pick and choose from the model agreement, whether it wanted the agreement to apply to an EAU, a concession, or an Investment Project. And the answer is no, there is no pick and choose, and there are several reasons why it can't do that.

The first one is, I mentioned already the concept that stability agreements are adhesion contracts, and all experts you have heard, including Perú's experts, agree that adhesion contracts must implement the scope of the Mining Law and the

Regulations. And we heard the Mining Law and Regulations sets Units and concessions.

So, the Stability Agreement must also apply to concessions and Mining Units, and, as Mr. Bullard said, no more, no less. So, investors cannot negotiate--remember, negotiations were abolished. Investors cannot negotiate a different deal, such as restrict the scope to an investment. And it's undisputed that the Stability Agreement must set forth what's in the Mining Law.

You may recall I asked Mr. Eguiguren: "If the Mining Law said that the stability guarantees"--I quote: "If the Mining Law said that the stability guarantees apply to a concession or a Mining Unit--not an Investment Project, but to a concession or Mining Unit--the Parties could then not negotiate something different. The scope would be set by the Mining Law; right?"

And he replied categorically: "If the law provided for that, yes."

And the text of the model agreement, by the way, confirms that there is no Investment Project

option in the model agreement. The only thing that the model agreement allows the investor is to pick the name of the EAU, the name that the EAU will have for purposes of that Stability Agreement, and the reference to EAU in the model agreement conclusively also disproves Perú's arguments because if the Mining Law and Regulations limit stability to Investment Projects, the model agreement would directly contradict the Mining Law and Regulations by allowing investors to apply for Stability Agreements covering the EAUs.

Now, let me come to the third point I wanted to make with regard to the Stability Agreement, and that's the point of why does the model agreement say Economic-Administrative Unit and Cerro Verde did not use that term.

Now, first of all, the fact that the model agreement says Economic-Administrative Unit proves that the Mining Law and Regulations apply to Economic-Administrative Units. Why else would that word be here in Clause 1.1? If Perú were right, it would say "Investment Project."

But here including the term "EAU" was not necessary since, as Professor Bullard explained, the Stability Agreement referred in Clause 1.1 to Mining Concession Number 1, Number 2, and Number 3, which is and has to be equivalent to Cerro Verde's single EAU. And as I explained, it is not possible to change the scope set forth in a model agreement because it is not an adhesion contract.

So, whether "EAU" is crossed out or not, the Agreement applies to concessions or Mining Units. And Cerro Verde was not the only company that did not use the Economic-Administrative Unit terms.

MR. PRAGER: And now I come to protected information. David.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

SECRETARY PLANELLS VALERO: We can proceed. Thank you.

MR. PRAGER: So, just like Cerro Verde, Milpo also deleted the term "EAU" in its 2002 Cerro Lindo Stability Agreement. But SUNAT and the Tax Tribunal resolution still applied that stability agreement to the entire Cerro Lindo Unit, including to new investments that Milpo made and that were not contained in the Feasibility Study. So, deleting "EAU" does not have any significance.

And I'm already done with the protected information.

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MR. PRAGER: And the final pointed that I wanted to make, and I think that was sufficiently clear at the Hearing, that the term that you find in Clause 1.1, the referential name to the Leaching Project Cerro Verde, the theory that that somehow defined the scope of the Stability Agreement was disavowed. It was disavowed by Mr. Polo himself, and you'll all remember Exhibit RE-175, with the names of the Projects and that sort of disproves the idea that the name somehow could define the scope.

Now, let me jump up from '98 now to 2001. We talked a bit about the Settlement Agreement that was concluded in 2001.

Now, let me be clear. The Settlement Agreement itself does not define--it does not have any impact on the scope of the stability. Stability is defined in the Mining Law and Regulations and implemented through the adhesion contract system in the Stability Agreement. It is not defined by the Settlement Agreement.

But like the Share Purchase Agreement, it is

relevant to understand that the Government always saw the Concentrator as an integral part of Cerro Verde's development of its Mining Unit. And the Government wanted the Concentrator so badly that, we heard it, it initiated arbitration proceedings against Cerro Verde because it thought that Cerro Verde wasn't quick enough to build the Concentrator.

And so, the Parties entered into that Settlement Agreement. And that Settlement Agreement again confirmed the development of the Concentrator because it was so important to the Government.

So, if you look, for instance, in Clause 3(b) of the Settlement Agreement, there Cyprus undertook to continue research and technological development to find a way to exploit those Primary Sulfides. Or if you look at the investment commitment in Clause 3.8, Cerro Verde had to invest at least $50 million. And if you look at the investment commitment in Clause 4, a lot of that has to do with the Concentrator. Feasibility Study had to be built, access electricity, the electricity that was needed to make the Concentrator investment feasible. Investment

in public utilities, they needed water to build the Concentrator. That was all related to the Concentrator investment.

Now, the Settlement Agreement required Cerro Verde to spend at least $50 million in three years to meet the goal.

And guess what? The Government got much more. They got $850 million investment. They got the $850 million investment in the Concentrator, not only the 50 million in the Feasibility Studies and other preparatory work.

And let's see how the Government treated some of those investments. First of all, you already heard that the Government--sorry, that Cerro Verde performed an investment of 15 million to expand one of its--to expand the leaching facilities by adding a Pad 2. That already expanded the geographic area of the Beneficiation Concession. So, the issue faced was the same as with regard to the Concentrator where, in order to include that Pad 2 under the protection of the Stability Agreement, it had to be included in the stabilized Beneficiation Concession, and that was

done. The Beneficiation Concession was expanded with regard to its daily production limit and geographical scope. The approval doesn't mention "stability." It just says, we expand the Beneficiation Concession. No word about stability.

But, SUNAT treated that as stabilized because SUNAT perfectly understood that it formed part of the Beneficiation Concession in the Mining Law and it was stabilized. That's important to understand. So, thinking that the Beneficiation Concession sort of--that the amount of the production capacity in the Beneficiation Concession in Annex I of the Stability Agreement is frozen, that presupposes that the Feasibility Study only applied to a particular Investment Project.

But the moment you understand that the Stability Agreement applies to a Mining Unit, as the Mining Law and, in particular, the Regulations say, the amount of the capacity in a Beneficiation Concession cannot be frozen because there are going to be investments that are being made also in the processing--in a processing capacity of the plant

that--that are being covered, and it must--the Beneficiation Concession must increase.

And that happened elsewhere as well. That happened--gosh, I have another time-protected information. Sorry, David. It is just going to be like half a minute.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

MR. PRAGER: That happened, for instance, in Cerro Lindo, they started with a production capacity of 2000 MT for a processing plant they had and through their Stability Agreement and through expansions of the flotation plant that was increased to 10000 MT/d, and later even more, and SUNAT treated, as we have seen in a resolution, that expanded capacity as stabilized because it was made within the Cerro Verde Mining Unit.

(End of Attorneys' Eyes Only session.)

OPEN SESSION

Now, another example is the investment that Cerro Verde made in the Pillones dam. Cerro Verde needed water to develop the Concentrator, and so it invested in the dam project at the Pillones River, and that project ultimately provided 60 percent of the water to the population and for farming, and 40 percent of the water for the Concentrator Project.

And guess what? The water was used for the Concentrator Project, but Perú--SUNAT treated that investment as stabilized.

Now, let's look at the 2002 Pre-Feasibility Study that was mentioned.

Two points that I wanted to make. First of all, as Annex E shows, Cerro Verde performed due diligence by getting legal advice about the Stability Agreement, and Ms. Torreblanca and Mr. Davenport confirmed that Cerro Verde sought that legal advice about the scope.

Now, we had to redact the memo to preserve privilege but I just wanted to be very clear: Redacting for privilege does not mean hiding.

Redacting for privilege means protecting against a subject matter waiver that could go to correspondence, including here in the Arbitration, but protecting for privilege is an obligation we have. It doesn't mean that we are hiding something. Sometimes the information that is privileged is favorable, sometimes it's unfavorable, but you are not hiding anything when you redact for privilege.

But let's look at what the 2002 Pre-Feasibility Study assumed with regard to the Concentrator investment. It assumed that the investment would be stabilized.

MR. PRAGER: Yes, they can come back in. Sorry.

That's not in dispute. We can see that on Page 17, which reflects that the base case assumes that the Stability Agreement would apply to 2013, and that Cerro Verde would depreciate the assets, and we can see that assumption also in the financial model, which assumed as the base case the stabilized rate.

Now, the Pre-Feasibility Study also ran a sensitivity for a nonstabilized rate to account for

the risk of a breach, and it is interesting to note that the nonstabilized sensitivity was economically more favorable. That means if the Concentrator would not have been stabilized under that sensitivity, Cerro Verde would have gotten a better deal. Profits would have been higher, but the assumption was--the assumption was that it will be stabilized.

And I want also to remind you that it's another important point that I wanted to make. We are looking back at the time with the current dispute in mind, with the dichotomy of, is it a Mining Unit or is it an Investment Project? And we think that at that point in time that was the question that people posed themselves. It was not because the Investment Project theory did not exist at the time.

As Professor Otto testified, in 2002, when he was commissioned by the Peruvian Ministry of Economy and Finance to prepare a report on the financial system, nobody thought about investment stability being limited to Investment Projects. It was always clear as it was written in the Regulations that they apply to Mining Units.

Now, the 2004 Feasibility Study again assumed that the Stability Agreement would apply to the Concentrator, and it did not assume any royalties, and there were no sensitivities being run with an alternative model.

So, both the pre-feas and the Feasibility Study clearly showed that Phelps Dodge and SMCV relied on the Stability Agreement in making the investment.

Now, let's come to 2004. We have heard a lot about that. What happened in 2004? First of all, copper prices have started to rise as part of the global commodity supercycle. And that led certain members of Congress to push for a royalty Law. They were successful, it was ultimately enacted in June 2004. You will recall that was adopted against the opposition of the Government, including MINEM.

And the political opposition at that point claimed the royalties should also apply to the mining companies that had stability agreements. That was the situation. It was not like recognized that if you had a stability agreement you were exempted. That's what MINEM tried to explain. But for the political

opposition it was, no, all the mining companies, regardless of stability agreements, should pay royalties.

And it was in that context--and you have to keep that in mind. It was in that context that Cerro Verde sought the assurance from the Government before it would put in the $850 million investment.

Cerro Verde was not uncertain, as the Feasibility Study and the Pre-Feasibility Study showed, they were not uncertain about the scope of the stability guarantees. But they were not uncertain also about the legal entitlement they had under the Mining Law and Regulations. But they were concerned about the political risk with the ongoing debate that the Government would no longer observe the Stability Agreement.

And so, SMCV Cerro Verde went to the DGM, and I think it has been established that the DGM was the responsible entity for administering the stability agreements. Here we see Article 101 of the Mining Law. Perú's witness Mr. Tovar confirmed that.

Now, Cerro Verde starts its negotiations.

I wanted to point out one thing. Perú is in possession of all the internal email correspondence. Mr. Tovar told us that when he left he copied the entire hard drive that he had and took it with him. And what was produced? One single email about those negotiation, and one email with the purpose of impeaching Ms. Chappuis. Nothing else. It is not believable that that's the only email that exists from those negotiations, but here it is.

And it shows two things. It shows, first of all, if you look at the subject matter, she says "new stability agreement," and what Ms. Chappuis testified was that when she wrote the emails to put on her agenda the meetings for next week, she was under the wrong impression that Cerro Verde wanted to have a new stability agreement, something that Tintaya had attempted to do shortly before, and that was denied to Cerro Verde--to Tintaya, because Tintaya tried to incorporate all the concessions from the old stability agreement into the new ones. So, that's why she was asking: "Is this legal?"

It also shows that Ms. Chappuis doesn't make

decisions on her own. It shows that she calls her entire team and that was, again, confirmed by testimony, including by Mr. Tovar. She called her entire team to discuss the issue.

And what's her entire team? They have their own Legal Department at the DGM, so she called those lawyers. They have their technical people, she called them. The DGM work as a team and they considered Cerro Verde's request as a team. And in discussing the various options before confirming that the Concentrator was included in the Cerro Verde Mining Unit, Cerro Verde first made the following suggestion. They thought, you know, I want to have something in writing. Why don't we create a new Beneficiation Concession which would be outside of the Stability Agreement, and then we expand the Stability Agreement to include it.

You remember like Clause 3, second paragraph of the Stability Agreement has this clause? If you incorporate new mining rights, you know, through an addendum, then you can--then the Concentrator would be included.

So, it's a two-step process that needs approval for the expansion of the Beneficiation Concession and then needs approval by the Vice Minister. But that option the DGM did not like because of their experience with Tintaya.

So, what the DGM did after having internally thought about it is they said, well, Cerro Verde should just incorporate the Concentrator in the already-existing Beneficiation Concession. That is much simpler, and because that Beneficiation Concession was already stabilized, then the Concentrator would be stabilized as well. And it's important here to understand that the DGM had a choice; right? So, if the DGM thought the Concentrator should not be stabilized, what they could have said is, get your own Beneficiation Concession, and we are not extending the Mining Stability Agreement to include it. Or they could have said, it will be stabilized, included in the already-stabilized Beneficiation Concession. That was the choice they had.

So, if they wanted to have the Concentrator

outside, they would have said, you have to get--you have to get your own Beneficiation--separate Beneficiation Concession. You are going to be outside. We are not going to extend the Stability Agreement. Or they could say, no, we include it in the already stabilized concession. And that's what they decided, and that was the logical choice. It was the logical choice because, as I explained, from the Share Purchase Agreement on Settlement Agreement, they always saw it as one Mining Unit, as one development. How do we unlock the potential of Cerro Verde to extend the life of the mine? How do we create those additional jobs? How do we prolong the life of the mine?

That's why they decided to include it into the stabilized regime. Again, that decision was taken as a team by the DGM, and when they took the decision, they carefully, as Ms. Chappuis testified, considered what the--not only the Mining Law and Regulations, but also the previous decisions, such as, for instance, the 2001 Mining Council Resolution regarding Parcoy that found that stability is applicable to the Parcoy

EAU and the 2003 Mining Council Resolution that found that Tintaya's Mining Unit comprised its concessions and was entitled to stability.

And that's, by the way, corroborated by three independent witnesses. Now, Perú is saying, hey, Ms. Torreblanca remembers three meetings; Ms. Chappuis remembers one meeting; Mr. Davenport, I don't know, perhaps two. That happens if you don't coordinate witness evidence. That happens if each witness remembers by herself or himself what happened during that time. But all three witnesses are consistent about that the meetings took place and what the DGM decided and what the DGM told them.

The question has arisen, is there documentary evidence that that assurance was given? Yes, there is a lot. Phelps Dodge conveyed the Government's confirmation to its Board, explaining the expansion would avoid any royalties for the life of the original agreement. It referred it to Sumitomo, explaining that the expansion would mean that the Concentrator would be entitled to receive the same tax treatment that it received under the Stability

Agreement.

It was confirmed to the Phelps Dodge Board, you will remember that, in a Board presentation, and, in fact, Phelps Dodge was so certain, and that is also very important, that at the PDAC conference in Toronto, Mr. Red Conger of Phelps Dodge was giving a speech sitting next to MINEM officials to the--to representatives of the mining industry, and he said in the presentation that Cerro Verde had initiated discussions with the Government about stability agreement contract assurance, then that the Cerro Verde had made it in clear extensive interactions with the Government that certainty of stability was one of the requirements to proceed, and then, in his conclusion, he said that stability contract provides us now with the certainty to make an $850 million investment. That was in March 2005.

And what's more, Mr. Polo and Mr. Isasi, they expressly acknowledged at the Hearing that the DGM gave Cerro Verde that confirmation.

Now, Mr. Polo stated that he held a different opinion in October 2004. But there is just

no document that would show that that was actually the case. The one document that we have is the 2004 Royalty Presentation that he gave at an event organized by Congress, which, by the way, that Cerro Verde could not attend. And guess what? On his PowerPoint he used "Mining Unit" to tell the Congress members what would not be subject to stability guarantees. That's what Mr. Polo thought in March of 2004.

And by the way, Mr. Polo told you, well, that PowerPoint was prepared by Mr. Tovar.

That's the same Mr. Tovar who, in November 2004, wrote the decision approving the reinvestment of profit benefit, in which he wrote: "Cerro Verde enjoys tax stability under its Stability Agreement." He makes a decision regarding the Concentrator investment. He doesn't say: "Oh, it is only the leaching facilities that enjoy stability, or only an Investment Project." No. Cerro Verde. Because that's what people thought back then. Mr. Isasi had not yet created his novel theory about the Investment Project. That only came in June 2006.

At that point in time, that did not exist. Nobody thought about an Investment Project.

But even if Mr. Polo had thought differently, he said nothing, even though he knew it, and even if it were so clear, he knew that this was the biggest investment in the Peruvian mining sector. He was the Vice Minister for Mining. That was the biggest investment in the Peruvian mining sector in that year and beyond. And he said, well, you know what? Nobody came to ask me.

Well, is that the standard, like people don't come to me to ask me? Ms. Torreblanca testified she tried to talk with Mr. Polo, but guess what? The office sent him back to the DGM because they told him, don't talk to Mr. Polo. Go to DGM. They are responsible for that investment.

Now, in 2004, the DGM then approved the expansion of the stabilized Beneficiation Concession, and in doing so confirmed that the Concentrator would be stabilized.

And with that expansion, the Concentrator was brought into the box of the Stability Agreement.

To be clear, that did not expand the scope of the Stability Agreement. The Stability Agreement applied to the Mining Unit, to the Beneficiation Concession, but the Concentrator was brought within the scope of that Stability Agreement. And once that approval was given and the reinvestment of benefit approval then in December, Cerro Verde started to construct the $850 million Concentrator that, since 1970, Perú wanted to have.

I will now give the word to my partner Laura Sinisterra.

MS. SINISTERRA: Madam President, Members of the Tribunal. Up until this point in our timeline, December 2004, there was not a single document in the record saying what they are telling you here today, that under the Mining Law and Regulations, stability guarantees apply only to Investment Projects. Let me say that again: Not a single document in the record. This is even true on Perú's case. The only pre-2004 documents that they have relied on is a 2002 SUNAT Report which does not even contain the words "Investment Project," which Ms. Bedoya conceded before

your eyes was a consultation of what she called a consultation of a different sort, having to do with contributions to a housing fund, FONAVI, and which Mr. Cruz plainly conceded was not even binding. This pre-2004 world is the context in which SMCV started building the Concentrator. And you must assess Perú's arbitrary, inconsistent, and nontransparent conduct through the lens of the evidence based on pre-2004.

Let's consider, for instance, what was going on right about that time. Remember, recall what Mr. Cruz told you a few days ago.

Around March 2005 after SMCV sent a letter to SUNAT explaining its understanding that the Stability Agreement covered its entire Mining Unit, Ms. Torreblanca met with Mr. Cruz, the Head of SUNAT Arequipa. And Mr. Cruz confirmed on the stand, he confirmed that he knew that the Concentrator, one of the biggest investments in Perú's history at the time, was being built as they were speaking, as he was speaking with Ms. Torreblanca. And he also conceded that the crux of the meeting was whether SMCV was going to pay royalties on the Concentrator.

Did Mr. Cruz tell SMCV: "Hey, Ms. Torreblanca, your understanding on the scope of Stability Agreement is wrong. The Concentrator is not covered."

No. Did he explain that SUNAT allegedly always applied stability agreements just to Investment Projects, as Perú now falsely claims? No.

Did he at a minimum say, Ms. Torreblanca, your understanding might not be right. You should consider the 2002 SUNAT Report that allegedly supports Perú's position. No. If it was so clear to the Government that new investments are never covered, why didn't Mr. Cruz say a word to Ms. Torreblanca in March 2005?

Let's now also consider what Mr. Tovar told you a few days ago. He claims that Perú was somehow transparent because Mr. Polo--who by the way, doesn't remember the conversation--allegedly told Phelps Dodge that the Concentrator was not covered at the March 2005 PDAC conference. But as the Hearing revealed, you should accord Mr. Tovar's testimony absolutely no weight.

Again, we need to separate fiction from fact. On the one hand, you have Mr. Tovar's reconstructed memories about this meeting--those are his words, not mine--and on the other you have contemporaneous documentary evidence, Mr. Conger's presentation at PDAC. My partner Dr. Prager just showed you the presentation, and as you again see on the screen, the presentation stated clearly, in unequivocal terms it stated "Stability Contract provides certainty to make 850 million investment decision."

So, I ask you what I asked at the opening: Why would Mr. Conger make such a statement in public next to MINEM officials if the Government had just delivered shocking news to the contrary?

And parallel to this meeting in early 2005, after the benefit of profit reinvestment was approved, pressure was building significantly against the Government to collect royalties from stabilized companies. In March 2005, Congressman Diez Canseco, who you now know well, and other leaders organized marches and protests to demand enforcement of the

Royalty Law.

In April 2005, when the Constitutional Tribunal upheld the Royalty Law, Diez Canseco became even more emboldened, viewing the decision as allegedly allowing what he called "universal application" of royalties without being distorted by stability agreements. Those are his words in April 2005.

At this stage, however, MINEM was actually still defending stability agreements. That's what the record shows, notwithstanding Mr. Tovar's testimony. The record evidence demonstratively shows this. Take Mr. Isasi's April 2005 Report. It clearly says that mining concessions are exempt from royalties. That's why Perú's own Counsel argued before the Peruvian Transparency Tribunal that the Report puts: "Perú's legal defense at risk and would lead to international liability."

Now, this is not the only Isasi Report that you'll hear about today, but it is important to pause on how unequivocal it was.

April 2005 is the first time Mr. Isasi

meaningfully gets involved in this timeline, as both Mr. Isasi and Mr. Polo testified. So, what does that mean? Mr. Isasi became involved after the Government's confirmation concerning the expansion of the Beneficiation Concession and after political pressure begins to mount against MINEM. Yet, he still said in April 2005 unequivocally that Mining Concessions are exempt from royalties; concessions, not Mining Projects.

The ground started to shift in September 2005. As we detailed in our Opening, politicians began ramping up pressure on Government officials to take action against SMCV. This targeted pressure came to a head on 16 September 2005, when Congressman Diez Canseco threatened to denounce Minister Sánchez Mejía constitutionally.

Just three days later, on 19 September 2005, Diez Canseco motioned to create a congressional committee to investigate the so-called "irregularities" in MINEM's questionable decision to grant SMCV's profit reinvestment benefits.

The very same day that Congressman Diez

Canseco made his motion, Mr. Isasi circulated to MINEM officials a draft presentation from Minister Sánchez Mejía to deliver before Congress in order to adequately respond to Diez Canseco. This is what Mr. Isasi said expressly. This presentation is to respond to Congressman Diez Canseco that had created a commission to investigate SMCV and Minister Sánchez Mejía.

Madam President and Members of the Tribunal, this presentation is the first document on the record that takes the position that the Concentrator was not part of the stabilized regime. The first document on the record that expressly says so.

After this point in our timeline, Perú has attempted to confuse the record by providing a random spattering of additional documents that allegedly supported its interpretation. But all of these documents post-date the Concentrator investment, and the Government's sudden and politically-motivated volte-face in September 2005, so you should see those documents as only what they are; evidence of Government's arbitrary and politically-motivated

conduct against SMCV in particular.

I'll give you a few examples. Perú relied during its opening on October and November 2005 letters from Minister Sánchez Mejía to Congressman Oré and Diez Canseco allegedly to prove that the Ministry didn't cave under political pressure.

But let's recall, again, who these congressmen are. Congressman Diez Canseco fiercely led the political campaign against SMCV. And Congressman Oré was his compatriot in arms, and one of the earliest proponents of the royalty. He, Mr. Diez Canseco, and other congressmen barraged Minister Sánchez Mejía with letters, demanding action by the Ministry against SMCV.

So, Minister Sánchez Mejía didn't write to the Congressman in spite of political pressure. They did so in response to that pressure, in response to letters expressly demanding information regarding the payment of mining royalties in the Cerro Verde Primary Sulfide Project.

As you know in the summer of 2006, the national debate became local. Arequipa residents took

to the streets to protest the loss of revenue from Cerro Verde, threatening regional instability.

In light of regional unrest in Arequipa, Congress created the Roundtable Discussions. Mr. Tovar claims that Mr. Isasi made a presentation on 23 June 2006, informing SMCV that the Concentrator was not covered under the stability agreement. Curiously, however, Mr. Isasi does not recall the presentation, and Mr. Tovar testified that, initially, he also didn't remember the presentation. So, where does the presentation even come from?

It was attached to the amicus brief of FREDICON, in Dante Martinez complaint to SUNAT alleging that SMCV fraudulently applied the Profit Reinvestment Benefit to the Concentrator. FREDICON, an organizational front for a Peruvian anarchist with a vested interest against SMCV, is hardly a credible source for such document.

So, what happened? Perú's Counsel found this presentation in FREDICON's amicus, provided the presentation to Mr. Tovar, and after reviewing the presentation, and after recalling that the slide had

what Mr. Tovar called the style, the didactic style of a presentation of Mr. Isasi, Mr. Tovar now testifies: "Oh, actually. Actually, I do remember that presentation. I do remember Mr. Isasi making that presentation." That is the basis of his recollection.

So, let's take a step back and consider, what does the record really show about that meeting? Again, you have Mr. Tovar's reconstructed memory on the one hand, and on the other you again have contemporaneous documentary evidence. What evidence? The actual, official Congressional record, which does not mention any MINEM presentation on the scope of stability agreements.

And, even more, you have Congressional records expressly saying that SMCV agreed to contribute over 125 million in contributions that would help cover Arequipa's budget deficit to make up for the fact that SMCV was "legally exempt from paying royalties." That's what the contemporaneous documents show.

This is the political context in Perú when

Mr. Isasi issued his June 2006 Report, and when Ms. Bedoya and Mr. Guillén issued their 2006 internal SUNAT Report. Again, contrary to what Perú's Counsel has been telling you, neither of these June 2006 Reports say anything about the Government's position at the time that SMCV made its investment, or about the DGM's assurances to SMCV. Quite the opposites.

So, let's first discuss Mr. Isasi's June 2006 Report. This Report is when MINEM first developed its novel and restrictive interpretation, that the Stability Agreement was limited to the Investment Project clearly delimited by the Feasibility Study.

Madam President and Members of the Tribunal, let me ask you a key question: Have you seen any documents on the record, any document on the record, adopting, expressly adopting this legal interpretation before June 2006? You have not. Why? Because it was invented. It was devised in June 2006 to justify the Government's politically-motivated volte-face.

So, again, we urge you to carefully review the documents cited by Perú's Counsel, and you'll see

that this June 2006 Report is the first time that a document uses the term "Investment Project delimited by the Feasibility Study." It is the first time that it ever comes up in the record.

And Mr. Isasi admitted at the Hearing, he developed this nonbinding Report, without any reference or review of any of the MINEM's prior Mining Council resolutions on stability guarantees, even though the Mining Council standardizes administrative jurisprudence on mining issues.

Now, let's consider Ms. Bedoya and Mr. Guillén's June 2006 Internal Report, which was similarly issued just as political pressure came to a head. I want to make a few points here.

First, this Report cannot be accorded any weight as evidence of the Government's position before June 2006, as Counsel to Perú keeps telling you. Even though Mr. Cruz claimed that in 2002 the position of SUNAT on the scope of stability was clear, he then conceded on the stand that in June 2006--and these are his words--he actually needed more knowledge because the scope of stability was not totally clear at that

point.

Let me say that again. In June 2006, the scope of stability guarantees was not clear totally clear to the Head of SUNAT Arequipa. So, how was it supposed to be clear to SMCV?

And to make matters worse, Mr. Cruz and Ms. Bedoya knew full well that SMCV understood that the Concentrator was covered, and that SMCV wanted to have the certainty that the Stability Agreement covered the Concentrator. Did they gave a copy of the internal Report to SMCV? Did they ever tell SMCV about the Report? No.

Just like Mr. Cruz did in 2005, they stayed silent, or, as Mr. Cruz actually told you, he simply left Cerro Verde in the dark for years. In fact, Mr. Cruz said that they prepared this secret internal Report in June 2006 because the Concentrator would soon enter into operations.

But consider the timeline. SUNAT didn't even start auditing SMCV until 2008, so why the rush in June 2006 to then wait until 2008? I'll tell you why. The reason is absolutely clear. The Government

had to fix a position due to political pressure, and they wanted to string SMCV along to extract further contributions, including precisely during the summer in June 2006 with the Voluntary Contribution Program.

And I'll clarify a few points here. First, its name notwithstanding, these contributions were not voluntary. Its official name in Spanish was "programa minero de solidaridad con el pueblo," and mining companies were coerced into participating, and they all did.

Second, Perú fundamentally misrepresented Clause 6.2 in the Voluntary Contribution Agreement, to argue that SMCV agreed to pay both the contributions and royalties.

But the Voluntary Contribution Agreement was a form which applied to both stabilized and nonstabilized companies. Clause 6.2, titled "Declarations of the State" is on the screen, and all it says is that regional and local governments had to distribute the mining canon and royalty pursuant to applicable norms, despite receiving additional contributions from mining companies.

My third point, SMCV paid the contributions in full, although Clause 3.1.2 expressly allowed mining companies to credit 64.4 of any royalty payment. But SMCV paid in full, and nobody ever said, you know what, you need to credit because you're going to be paying royalties. No one.

And, finally, the architect of the Voluntary Contribution Program, Mr. Castañola, confirmed these facts in his witness statements, but Perú chose not to call him for cross-examination.

So, let's take another step back and consider, what does the evidence on the record really show? That even on Perú's own case, the Government knew full well that SMCV was going to make one of the biggest mining investments in Perú's history on an allegedly incorrect understanding of the scope of stability guarantees, and that the Government deliberately concealed its position to the contrary.

If this is not nontransparent conduct, then what is? In fact, this is precisely the kind of conduct that international Tribunals have found breaches MST or FET.

For example, in Dutch Telecom and CC/Devas, the Government did not disclose internal decisions made against the investor that put an agreement in jeopardy, despite holding a number of meetings with senior officials, Government Ministers, affirmatively created a misleading impression on the investment, and acted as if the Project were on track and business was as usual. The Tribunal in those cases said "this type of conduct is a manifest lack of transparency and forthrightness," and that is precisely what happened on this case.

We've briefed the issue in our papers, and you see further Authorities on the screen.

Now, what is Perú's response to its wholesale failure of transparency? Its response is to blame SMCV. Perú touts Article 93 of the Tax Code, which it misrepresents as a transparency cure-all to claim that SMCV should have obtained an Advisory Opinion from SUNAT on the scope of stability guarantees. But Article 93 offers a false cure.

As an initial matter, Mr. Cruz never suggested that SMCV should file a consultation under

Article 93 when he met with Ms. Torreblanca, and at the Hearing he clearly considered that the--clearly conceded that the mechanism would be structurally inadequate for addressing SMCV's concerns.

Indeed, SMCV could not have directly submitted a request, only certain organizations can file advisory Opinion requests, and, as he conceded, at the end of the day, it's the association, for example, the Chamber of Commerce of Lima, that has 13,000 members, who decides whether or not the inquiry is made, not a particular taxpayer.

Moreover, Mr. Cruz acknowledged that SMCV could not have made a specific inquiry into its contract and its Concentrator under Article 93 of the Tax Code.

Instead, the mechanism is only available for questions of a general scope, and there are no time limits for SUNAT to respond, and SUNAT's Advisory Opinions back then were not even binding. So, it would be fundamentally wrong on the facts, on the law, and on the equities to excuse Perú's conduct by essentially saying, well, instead of going to the

relevant authority, SUNAT and MINEM, as SMCV did, instead they should have convinced an organization to ask for a general, nonbinding opinion.

Now, let's take another step back from the timeline and consider, what did the evidence of Perú's witnesses really show. That SUNAT and MINEM had different positions on the scope of stability guarantees. You see on the screen testimony from Mr. Cruz, Ms. Bedoya, and Mr. Polo from this past week.

Mr. Polo testified that certain additional investments could be stabilized so long as you stick with all the characteristics that the Project has. Ms. Bedoya of SUNAT flatly disagreed. She excluded additional investments entirely, saying that stability guarantees cover the Investment Project amount, not one dollar more, not one dollar more. And even within the same regional Government agency, SUNAT Arequipa, Ms. Bedoya, and Mr. Cruz disagreed. Mr. Cruz said, oh, you need to look at it on a case-by-case basis.

So, even now, looking back in retrospect, and despite all of Perú's highly improper witness

coordination, Perú still cannot get its story right. And much less can Perú explain why SUNAT and the Tax Tribunal, to this day, continue to apply stability guarantees for other companies, as we tell you, is mandated by law to concessions and Units.

Let's take a look at those documents. And this is protected information.

(End of open session. Attorneys' Eyes Only information follows.)

CONFIDENTIAL SESSION

MS. SINISTERRA: Yesterday, during the cross of Perú's tax experts, we saw multiple resolutions from SUNAT and the Tax Tribunal, the most recent from December 2022, which consistently applied stability guarantees across the entire Mining Units of Milpo, Yanacocha, and Tintaya, including two additional investments that were not part of the initial Investment Program.

For instance, in 2014, SUNAT applied Milpo's stability agreements to each of the Cerro Lindo and El Porvenir Economic-Administrative Units. SUNAT did not distinguish between Stabilized and Nonstabilized Investment Project. It did not.

SUNAT also applied the stabilized regime to investments not set forth in Milpo's Investment Programs, some of which substantially increased the Mining Unit's production capacity. What is Perú's response to these compelling documents? What is its response? The response is that you should, essentially, ignore the documents because they really didn't consider the scope of the company's Stability

Agreement. That is, frankly, absurd, and demonstrably wrong.

Contrary to Mr. Bravo and Mr. Picón's remarkable testimony, before auditing any company with a stability agreement, SUNAT must, of course, first determine if the company has a stability agreement in force. Otherwise, how would they even know what legal regime to apply?

And in these resolutions, both SUNAT and the Tax Tribunal expressly cited Article 82 of the Mining Law, Article 22 of the Regulations, and the relevant stability agreement as the grounds for applying the stabilized regime to the entire Mining Units of Milpo, Yanacocha, and Tintaya.

You see a concrete example on the screen. In September 2022, the Tax Tribunal said "as a preliminary matter, it should be noted, regarding the legal framework of the income tax applicable to the Cerro Lindo Economic-Administrative Unit, that Milpo executed a stability agreement."

And you have another example on the screen concerning Milpo's El Porvenir Unit. These statements

that you have on the screen are not an indication of SUNAT ignoring Milpo's Stability Agreement as, again, Perú is telling you. They are a clear and unequivocal statement of SUNAT applying the stability agreement to Milpo's Economic-Administrative Unit, not "Investment Projects."

It's little wonder, then, that Perú fought tooth and nail to keep the documents out of the record. But now that you have them in front of you, now that you have read these documents, how could you possibly give any credence to Perú's shifting and inconsistent theories on the scope of stability agreements?

On the face of these documents, how could you possibly find that the Government always had a consistent position, as they keep telling you? And how could you possibly find that the Government acted transparently, and in a nonarbitrary manner, when it came down to SMCV?

I'm done with the protected information.

(End of Attorneys' Eyes Only session.)

OPEN SESSION

MS. SINISTERRA: During our Opening, you heard about the Tax Tribunal due process violations made at the hand of President Olano and Úrsula Villanueva. I'll refer you to the papers on that point.

Instead, I'll focus on SUNAT's due process violations, which were shockingly first revealed at the SMM Cerro Verde Hearing. At this Hearing, SUNAT's witness testimony further confirmed that, in blatant violation of both Peruvian and international law, SUNAT deprived SMCV of its right to be heard by independent and impartial decision-makers.

Ms. Bedoya revealed that the June 2006 Internal Report secretly established the tax position of the Concentrator, and that, based on the conclusions of the Internal Report, SUNAT then issued the 2006, '07, and 2008 Royalty Assessments, and all subsequent royalties assessments after that. SUNAT's conduct was highly irregular.

Indeed, Mr. Cruz acknowledged that the Report was issued because of a controversial issue,

which was not usual practice, before the Concentrator even started operating, and before SUNAT was even given legal authority to assess royalties.

Further, the Report was entirely outside the bounds of any official procedure or practice, as Ms. Bedoya conceded, and contrary to basic notions of due process.

Ms. Bedoya also conceded that the Report did not consider the key evidence that would actually allow SUNAT to understand what SMCV's operations are like.

And, to make matters worse, SUNAT concealed the Report from SMCV, despite having ample opportunities to inform SMCV of its position. But time and time again, SUNAT said nothing.

SUNAT's violations did not even stop there. The two authors of the Report, Ms. Bedoya and Mr. Guillén, they, the two authors, then personally rejected SMCV's challenges.

With regard to the Supreme Court decision, we will refer you to our papers and to the very clear testimony from Mr. Morales and Mr. Hernández,

confirming what I told you in the opening, that, if you blindly follow the Supreme Court's decision, if you follow what they are asking you to do, you would be doing what no Peruvian courts, including the Supreme Court, would do or has done, regard the 2008 Royalty Case decision as decisive, and you have our slides with all of the testimony that was presented at the Hearing on this point.

With regards to penalty and interest, we will also refer you to our papers, and to the testimony and the slides that we have presented.

Thank you.

MR. UKABIALA: Madam President, Members of the Tribunal, I'll conclude our presentation this morning by discussing the damages Cerro Verde has suffered as a result of Perú's breaches that have been confirmed over the last two weeks at this Hearing.

I'd like to just first describe our two claim scenarios. We have the breaches of the Stability Agreement, based on all the final and enforceable royalty and tax assessments, except the 2006, 2007, and 2008 Royalty Assessments, and that

includes penalties and interest.

And we also have the breaches of MST based on all of the final and enforceable royalty assessments, including penalties and interest.

Now, in the alternative--the reason that we don't have the 2006, 2007, 2008 Royalty Assessments under the Stability Agreement is because, as Dr. Prager explained this morning, those assessments became final and enforceable outside of the cutoff date.

Now, in the alternative claim scenario--no, I'm sorry. Staying in the main claim scenario, under MST, we have all of the royalty assessments, including the 2006, 2007, and 2008 Royalty Assessments, and those are timely, the claims for the 2006, 2007, and 2008 Royalty Assessments are timely because as Dr. Prager explained this morning, we only learned of those due process violations in 2019.

Now, in the alternative claim scenario, we have the breaches of the Stability Agreement based on the application of the nonstabilized regime to the Concentrate--to the Leaching Facility, which

Perú--which is stabilized, even on Perú's case. And then we have breaches of MST for failing to waive the penalties and interest, and for failing to reimburse GEM overpayments.

Now, damages for the main claim are 942.4 million, as of September 2022, and for the alternative claim, 719.9 million, as of the same valuation date.

Now, the dispute between the damages experts on economic issues is basically limited to pre-award interest assumptions. Perú's biggest adjustment to damages at 62.1 percent is based on Perú's absurd mitigation defense, and Perú's argument lacks any economic basis.

Ms. Kunsman confirmed that her mitigation adjustment is not based on any independent economic assumption, and it is hard to imagine how it could be. It is contrary to even a basic conception of law and economics, the purpose of mitigation is to prevent the Respondent from being out of pocket for losses that the Claimant couldn't have prevented, but that wouldn't be the case if the Respondent has those

losses.

Here, Cerro Verde paid the money to Perú. So, Perú cannot be allowed to keep the money.

And Perú's argument is logically flawed. Perú argues that Freeport should have mitigated the penalties and interest by paying the assessment sooner because Cerro Verde's interpretation of the Stability Agreement was unreasonable. But once the Tribunal reaches damages, the Tribunal has already decided that SMCV's legal position was correct. So, it cannot also decide that SMCV's legal position was unreasonable.

So, Freeport is entitled to recover on behalf of Cerro Verde and the last two weeks of this Hearing have confirmed that. Perú's mitigation defense is just another absurd attempt to avoid liability.

With that, we'll conclude our Opening Presentation. Thank you.

MS. SINISTERRA: I actually believe we have a few minutes left. Right? Marisa?

SECRETARY PLANELLS VALERO: You have four minutes left.

MR. UKABIALA: Okay.

MS. SINISTERRA: There's a lot to cover in an hour and a half, Madam President, as you, I'm--surely appreciate.

So, I'm going to turn to our last point, reasonable doubt. As we have explained, the Mining Law and Regulations leave no question that the Stability Agreement apply to concessions or Mining Units, and no question that the Government consistently applied guarantees to concessions and Mining Units until its volte-face.

So, when the Peruvian Authorities, nonetheless, arbitrarily applied--did not apply stability to the Concentrator, at the very least, they had an obligation, under Peruvian law and international principles of fairness, to waive the exorbitant penalty and interest that SUNAT imposed on SMCV.

Professor Hernández explained to you yesterday, Article 92(g) and 170 of the Peruvian Tax Code expressly provide that if a reasonable doubt exists regarding the interpretation of a provision,

taxpayers have the right to a waiver of penalty and interest.

And, in fact, twice yesterday, Perú's own tax experts accurately characterized the application of Articles 92(g) and 170 as a taxpayer's right in cases of reasonable doubt.

This norm makes eminent sense. It would be fundamentally unfair and inequitable to impose penalty and interest when the Government's own rules are unclear.

As Professor Hernández also explained, the purpose of the waiver is to avoid punishing the taxpayer for reasons fully attributable to the Government because it issued an ambiguous provision and, therefore, there is more than one reasonable interpretation. Professor Hernández and we together have taken you to several facts in documents that objectively show that, at the very least, on this case, there is a reasonable doubt as to the proper scope of stability benefits under the Mining Law.

Just consider SUNAT's 2012 Report. Consider the 2019 amendments to the Regulations, expressly

saying that Article 22 that applied to SMCV could misleadingly lead a taxpayer to consider that the guarantees actually applied to mining concessions and Units.

And, again, also consider the testimony of Perú's own witnesses. As I mentioned, Mr. Polo, Ms. Bedoya, and Mr. Cruz were all over the map when asked to define the scope of stability guarantees under the Mining Law.

Just think about that for a moment. Even Perú's own Government witnesses cannot articulate a common view on the scope of stability guarantees. If that is not proof of reasonable doubt, then what could possibly be?

And when confronted yesterday with the same question, Perú's tax experts did not fare any better. You will recall the long pause and hesitation when I asked them to concretely identify their views on the scope of stability guarantees.

What is Perú's response to this? They say that SMCV was not entitled to a waiver because the relevant Peruvian authorities didn't issue a

clarification noting that Article 170 of the Tax Code applies.

They also say the power to issue that clarification is entirely discretionary. That is the fox guarding the hen house.

The Government cannot deny, at will, what is a right, a taxpayer's right to relief from ambiguity when it created that right. That would be a--inherently unfair and inequitable, and importantly wrong as a matter of Peruvian law.

Professor Hernández explained that Article 170 imposes a duty and an obligation on the Government to clarify the provision giving rise to reasonable doubt. Otherwise, Article 170 would not have the purpose that it is supposed to have.

And, indeed, Article 170--you see it on the screen--provides that, if there is reasonable doubt, the Peruvian Authorities must issue a clarification so that taxpayers know what's the correct reading of a provision in question. The "may" in the Article that Perú so heavily relies on, merely recognizes that the Government's discretion to decide the means by which

the Authorities can issue the clarification, just the means.

And I'm going to close now. Perú's tax experts also said that Article 170 applies only if the taxpayer has yet to pay taxes, but as Professor Hernández explained, that, of course, does not apply to SMCV. It always paid under protest.

So, Madam President, Members of the Tribunal, on the wealth of evidence on this record, there can be no question whatsoever that, at the very least, there was reasonable doubt.

Thank you for your attention.

PRESIDENT HANEFELD: Thank you very much.

Then we will have now our 15-minutes break until 10 minutes to 11:00, if this is okay with--

MR. ALEXANDROV: May I very quickly raise two points, one is to avoid any concerns or interruptions during our Closing presentation, we will not discuss any protected information, so there will be no need to stop the record or have people leave the room.

My second point is, by our count, Claimant

exceeded the time by a few minutes and skipped a few slides. We do not object to that, provided that, if it comes to that in our closing presentation, we'll be granted the same courtesy. I don't anticipate that to happen, but if it happens, we ask for the same courtesy. Thank you very much.

PRESIDENT HANEFELD: That is noted.

MR. PRAGER: May I just say, probably that two minutes are the time for the--sending David in and out of the room.

MR. ALEXANDROV: I don't think so, but, again, we don't object.

(Brief recess.)

CLOSING STATEMENT BY COUNSEL FOR RESPONDENT

PRESIDENT HANEFELD: We will now hear the Closing Statement by the Respondent.

Please go ahead.

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

We begin Respondent's Closing Argument with a brief introduction just to put everything in context. The introduction will not tell you anything

you already don't know, but the context is important.

And, very briefly, in '96 Cerro Verde submitted a Feasibility Study to MINEM for the sole purpose of investing 238 million to expand its existing facility for processing Oxide and Secondary Sulfide to produce cathodes, and that is the Leaching Project. And that is the scope of the Feasibility Study.

On the basis of that '96 Feasibility Study, Cerro Verde applied to enter into a stabilization agreement with MINEM with respect, again, to the Leaching Project.

And in 1998, Cerro Verde and MINEM entered into this 15-year stabilization agreement, which incorporated the Feasibility Study as an integral part of the agreement and explicitly limited Cerro Verde's stability benefits to the Leaching Project, as we heard, as the Hearing testimony reinforced.

What happened then? Six years later, in 2004, Cerro Verde started to develop an entirely new and different Investment Project, the "Concentrator Project." New and entirely different. And, in fact,

we have on the screen an admission by Claimant's Counsel that this was a totally different project. Said in Spanish--I'll say it in English--there is a great difference between a Leaching Plant and a Concentrator Plant. Nobody denies that.

The fact that both the 1996 Feasibility Study and the 1998 Stabilization Agreement refer explicitly and only to the Leaching Project became "the elephant in the room," and I'm using Claimant's witnesses' words, for Cerro Verde and for Phelps Dodge when they decided to invest in the Concentrator. And we will come back to this elephant in the room and how they dealt with it.

So, what did the testimony at the Hearing establish?

It established, one, that Cerro Verde knew that the 1998 Stabilization Agreement did not apply to the Concentrator, and that Cerro Verde would therefore need to pay royalties, pursuant to the 2004 Royalties Law, with respect to the ore processed in the Concentrator.

Two, Cerro Verde sought, but never obtained,

written assurances from MINEM that the '98 Stabilization Agreement applied to the Concentrator. And this is undisputed.

Three, Claimant presented only dubious and controverted evidence of purported oral assurances from MINEM, in fact, from Ms. Chappuis only, that the 1998 Stabilization Agreement applied to the Concentrator.

And, four, Cerro Verde and its then-majority Shareholder Phelps Dodge consciously decided to gamble on investing in the Concentrator while simultaneously recognizing a significant risk that the '98 Stabilization Agreement did not apply to the Concentrator.

And we will expand on these points in a moment.

Testimony at the Hearing also established that, one, throughout the period leading up to Cerro Verde's and Phelps Dodge's decision to invest in the Concentrator, the '98 Stabilization Agreement applied only to the Leaching Project; two, that Cerro Verde tried to sneak the Concentrator into the '98

Stabilization Agreement through the backdoor and got caught.

SUNAT recognized that Cerro Verde was avoiding paying royalties and taxes with respect to the Concentrator and began issuing assessments for the unpaid amounts. Cerro Verde challenged those assessments, before SUNAT first, then before the Tax Tribunal, then before Perú's first instance and appellate courts, and finally before Perú's Supreme Court. At each stage, Cerro Verde claimed, exactly as Claimant does again in this Arbitration, that the '98 Stabilization Agreement applied to the Concentrator.

Cerro Verde lost in Perú. As Respondent showed at the Hearing, the decisions of Perú's administrative tribunals and courts that were issued in Perú were grounded in the text of the 1998 Stabilization Agreement and consistent with Peruvian law.

So, Peruvian courts--and we said that over and over again--interpreted the Stabilization Agreement and Peruvian law when they reached their conclusions.

The conclusion was that the Stabilization Agreement does not extend to the Concentrator Plant. Again, that is the result--the conclusion was the result of an interpretation of the 1998 Stabilization Agreement under Peruvian law and interpretation of the provisions of the Peruvian laws and regulations.

So, let's talk more specifically about what happened in the Hearing. And we say the testimony of Claimant's witnesses and experts is not credible.

You heard that Claimant reserved its rights, in a somewhat dramatic fashion, in relation to an alleged witness coordination. They called it a "shocking admission" by Perú's witnesses that they coordinated their testimony. Let's look at that in a little bit--in a little bit of detail.

So, Mr. Tovar testified truthfully that he reviewed signed statements of two other witnesses before signing his own statement. On that basis, Claimant's Counsel said, "Oh, there's a shocking admission of witness coordination."

Well, first, the facts. There was no such witness coordination as alleged. Mr. Tovar testified

that he reviewed other witness statements when his own witness statement was already completed and ready to sign. He also testified--and you see his words on the screen--that he did not rely on other witness statements in preparing or while preparing his witness statement, and he testified that he did not change his own witness statements after reviewing other witness statements. You have his evidence on the screen.

To the contrary--and Claimant's Counsel dwelled on the fact that Mr. Tovar recalled a detail about Mr. Isasi's presentation that Mr. Isasi himself could not recall.

Well, if there were "witness coordination" as alleged, both Mr. Tovar and Mr. Isasi would have recalled that detail, the exact same detail, and would have testified consistently. The fact that one witness didn't recall but another did speaks exactly against what Claimant's Counsel is arguing here, that there was this detailed witness coordination where all witnesses testify in harmony.

Second, the law. A witness is not sequestered from the moment he or she is identified as

a potential witness. Sequestration, if ordered, prohibits a witness from hearing the oral examination of other witnesses. And the purpose is to protect the integrity of a witness' testimony under cross-examination. Therefore, it's not improper and there is nothing nefarious for a witness to have reviewed signed or finalized witness statements of others after the witness' own witness statement has been completed or to attend the preparation sessions with other witnesses in the presence of others.

Claimant has not pointed to a single international arbitration rule that requires sequestration before a hearing starts. And Procedural Order 1 in this case, Paragraph 19.10, provides that sequestration starts "once direct examination begins."

Claimant has reserved its rights. We don't know if Claimant will take this any further. If Claimant does, we reserve our right to respond and to bring Authorities that support this proposition, and those Authorities would include, if that issue is taken further, Authorities such as Gary Born, Gabrielle Kaufmann-Kohler, Jan Paulsson, William Park,

Albert Jan van den Berg, and others.

Indeed, Claimant's Counsel, Debevoise, recently published a comprehensive "International Arbitration Clause Handbook" in 2022 with the participation of Dr. Prager. Nowhere in the 211 pages of the handbook does it say that the witness is sequestered from the moment he or she is identified as a witness.

Speaking of "shocking admissions," we want to point out that Claimant's witnesses--all of Claimant's fact witnesses, with the possible exception of Ms. Torreblanca--admitted that they were compensated for their testimony. And you see the chart on the screen: Mr. Davenport, $300 per hour--his only client as of today is Cerro Verde; Ms. Chappuis, $250 per hour--and you will recall that she fought tooth and nail not to disclose how much she was paid and what she was paid for, extremely reluctant to disclose anything about her compensation as a witness; Mr. Estrada, he charged 420, 428 per hour, double the rate of his partners, higher than Claimant's own legal experts, Ms. Vega and

Mr. Hernández; and Mr. Herrera charged 250 per hour--he's a fact witness, remember, not an expert, and that rate is higher than his typical hourly rate a consultant, as he admitted.

In stark contrast with Claimant's witnesses, none of Respondent's witnesses is being paid or has been paid to testify.

Ms. Torreblanca is testifying for her 26-year employer, Cerro Verde, to whom she owes her entire legal career. At the time, she cannot speak credibly about Cerro Verde's understanding of the scope of the '98 Stabilization Agreement when the Agreement was signed because she was not involved at all in the negotiations of the Stabilization Agreement.

And Mr. Estrada and Mr. Herrera, while supposedly appearing as fact witnesses, admitted to testifying about matters that were beyond their personal knowledge.

So, you have to take--at the minimum, you have to take the witness testimony of Claimant's witnesses with a grain of salt.

The Experts. Well, Ms. Vega worked for 17 years at Estudio Rodrigo. She was a partner there for 13 years. Members of the Board of Estudio Rodrigo, which only had six members, Cerro Verde was a client of Estudio Rodrigo when Ms. Vega worked at the law firm and she attended meetings with Cerro Verde when she was working at Estudio Rodrigo.

Dr. Bullard worked for five years at Estudio Rodrigo, and he was partner there for two years.

Mr. Hernández has a close personal relationship with partners from Estudio Rodrigo, and he omitted from his Reports multiple publications coauthored with the founding partner of Estudio Rodrigo.

Mr. Otto, who appeared to testify as a witness, relied heavily on his factual experience in Perú in 2002, and we submit that his reliance for his expert conclusions on his personal experience taints his testimony as an expert because having been there and relying on his personal experience taints his expert testimony. We also submit that his testimony on factual matters should be ignored by the Tribunal

because he did not appear as a fact witness and was not subject to cross-examination on factual issues on which he testified.

Testimony at the Hearing demonstrated that the Stabilization Agreement covered only the Leaching Project, and you will recall that we put side-by-side the boilerplate, the model stabilization agreement, and the 1998 Stabilization Agreement, and it is uncontested that the blanks were filled in by Cerro Verde. And it was Cerro Verde that applied for this Stabilization Agreement on the basis of the Feasibility Study and the specific project described in the Feasibility Study.

Ms. Torreblanca confirmed that the '96 Feasibility Study neither refers to nor contemplates the Concentrator Project. It only includes a budget for a future study to assess the feasibility of the Concentrator Project.

And Mr. Davenport confirmed at the Hearing that multiple Feasibility Studies, including one completed in 1998, the very year when the Stabilization Agreement was signed, reached the

conclusion that it was not economically feasible to build the Concentrator.

So, clearly the Concentrator was not part of the Investment Project that was proposed in the '96 Feasibility Study and that was stabilized in '98.

The Concentrator Project was very different from anything--when implemented, it was vastly different from anything that was previously studied, and it became feasible only in 2004. You'll recall the discussion about the '94 Share Purchase Agreement between Minero Perú and Cyprus. It did not place Cerro Verde's 2004 Concentrator Plant inside the 1998 Stabilization Agreement.

Mr. Davenport and Ms. Torreblanca confirmed that the 2001 Settlement Agreement between Cyprus and Minero Perú was a result of Cerro Verde's deliberate effort to release itself from any obligation to build a Concentrator because it was uneconomical at the time.

Mr. Davenport testified that the Concentrator envisioned in the '94 Share Purchase Agreement was vastly smaller in size from the

Concentrator Project that was built starting in 2004 with a capacity of 28,000 MT/day--with a capacity of 28,000 MT/d, versus the later 108,000 MT/day, which is more than four times higher. And the '94 envisioned Concentrator did not use the new, different technology that was chosen for the Concentrator Plant in 2004.

So, it was not until May 2004, eight years after the '96 Feasibility Study was submitted, that it became feasible to build a Concentrator.

And so, at the time Cerro Verde completed the '96 Feasibility Study and at the time it entered into the Stabilization Agreement in '98, Cerro Verde clearly did not intend to include the not-yet-envisioned and not-yet-feasible Concentrator in the '98 Stabilization Agreement.

What Claimant argues is there is a concept of a "mining unit" or a "production unit" and the Stabilization Agreement applies to those mining units or production units and anything that's invested in them. So, according to Ms. Torreblanca, for example, Cerro Verde understood that the Cerro Verde Leaching Project referenced in the 1998 Stabilization Agreement

was purportedly synonymous with "mining unit" or "production unit," and this was allegedly, according to Ms. Torreblanca, "the understanding of the industry."

Well, to begin with, it is undisputed that there's no provision in the Mining Law or the Mining Regulations that defines the concept of "mining unit" or "production unit," as Ms. Torreblanca herself admitted. Look at her testimony in the Hearing: "A 'mining unit,' it is not defined. In point of fact, the law doesn't define those terms."

Now, Ms. Torreblanca also conceded that there is no evidence on the record that "the industry" understood that "mining project," "mining unit," and "production unit" are the same concepts.

She said--when asked about the Settlement, she said: "I don't have it right here. We haven't presented this as far as I know."

Indeed, they haven't.

And, indeed, Claimant essentially admitted that the industry's understanding was outside of Ms. Torreblanca's knowledge because, when she was

confronted with the letter of another mining company, Southern Perú, which showed Southern Perú's contrary understanding of the practice of the industry, Claimant's Counsel objected because this was "evidence outside of the witness' knowledge."

Well, we agree. The practice of the industry does not appear to have been within Ms. Torreblanca's witness' knowledge.

The other theory, new theory that Claimant came up with is that: Well, okay, maybe Claimant cannot rely on mining unit and production unit, but now Claimant asserts they had a de facto Economic-Administrative Unit. There is no dispute that they did not have a de jure to use a contrary terminology, Economic-Administrative Unit. So, they now say: Oh, but we had a de facto.

Well, let's look at that.

The fact that the Mining Law and the Mining Regulations do not require an Economic-Administrative Unit in order to sign a stabilization agreement--and it doesn't; you can sign a stabilization agreement without having an approved Economic-Administrative

Unit--but that does not mean that the Investment Projects described in the Stabilization Agreement somehow turn into de facto Economic-Administrative Units.

Article 82 of the Mining Law and Article 18 of the Mining Regulations are explicit that: "Economic-Administrative Units are created"--from Article 82--"for the purposes of stabilization agreements." For the purposes of stabilization agreements. "They require"--those Economic-Administrative Units require--"the approval of the General Directorate of Mining."

So, if you create an Economic-Administrative Unit for the purposes of "a stabilization agreement," you need to obtain an approval from the DGM.

At the Hearing, Ms. Vega testified that, under the definition of Article 82 of the Mining Law, a so-called "mining unit" needs to be approved by the DGM. And, of course, Claimant has failed to submit a single document proving that it ever sought, let alone obtained, any such approval for the purposes of the 1998 Stabilization Agreement.

In its Reply in this proceeding, Cerro Verde--Claimant admits that Cerro Verde did not submit an application requesting the creation of an Economic-Administrative Unit.

Cerro Verde did not and does not have an Economic-Administrative Unit.

So, Claimant now has come up with this new argument, and Ms. Torreblanca conveniently testified in support, that Cerro Verde had this de facto Economic-Administrative Unit, and, again, the argument is based on Article 82, which I showed on the previous slide and I'm showing you here again, because, as you see--you see why this argument is incorrect--the reference to Economic-Administrative Unit in Article 82 does not include anything about stabilization agreements applying to the entire unit.

As you see, the first paragraph of Article 82 does not discuss at all the creation of something called a "de facto Economic-Administrative Unit." It simply states that a prerequisite for a stabilization agreement is a certain level of capacity, or a certain level of production, generated

from one or more concessions or Economic-Administrative Units. That's all it says about Economic-Administrative Units. That capacity must be generated by--within concessions or Economic-Administrative Units.

By contrast, the first paragraph of Article 82 does refer to the execution of a specific new investment or an expansion which are stabilized by the stabilization agreement. The reference to "Economic-Administrative Unit" simply indicates that the production capacity intended to be reached through the Project may be generated through activities conducted in one or more concessions or Economic-Administrative Units. But that, of course, does not mean that every other activity or every other investment conducted within those concessions or those Economic-Administrative Units is stabilized.

And so, this theory of a de facto Economic-Administrative Unit does not find any support in Article 82. And it's a new argument that is advanced now because Claimant has realized that it cannot rely on concepts such as a "mining unit" or a

"mining project."

The 1998 Stabilization Agreement, therefore, cannot apply to the entirety of Cerro Verde's alleged Economic-Administrative Unit, or de facto Economic-Administrative Unit, as Claimant claims, simply because--well, for many reasons, but one simple reason is because Cerro Verde does not have one. It does not have an Economic-Administrative Unit.

Claimant cannot compare Cerro Verde to other mining companies that do have Economic-Administrative Units, whether it's to untimely support its claim of alleged disparate treatment by SUNAT or for any other reasons.

Claimant has not demonstrated that other companies were in the same circumstances or in similar circumstances for the purposes of Claimant's comparison. We discussed that at length in our Opening. We're happy to answer specific questions, but we don't have time to get into that, so we rest on our written submissions and what we said in the Opening.

I simply emphasize: For them to make out

that claim and to prove that claim, which is their burden, they have to show that the other companies were in the same circumstances as Cerro Verde has been, and they have failed to show that. They need to compare stabilization agreements. They need to compare every element to say they are in the same circumstances and they were treated differently. They haven't made out that case.

Testimony at the Hearing showed that the Mining Law and the Regulations provide that stabilization agreements apply only to the Investment Project for which the agreements are entered into.

Now, let's start with Ms. Chappuis, who claimed she played a central role, the central role, in drafting the Mining Law, and she said several times "I wrote the law." But she conceded that this statement was incorrect. She failed to provide an answer when she was confronted with Mr. Polo's testimony on how the Mining Law was drafted.

Remember, Mr. Polo described a very inclusive process, with broad consultations with legal--with representatives of the legal professions

who knew about the subject matter, with representatives in the industry, and a broad discussion within MINEM itself.

By contrast--and you'll remember that Ms. Chappuis was telling you: "I was sitting here. Mr. Polo was sitting here. He was writing, I was typing, and that was it."

Well, that wasn't it, with all due respect to Ms. Chappuis. It was a broad discussion, broad consultations with various representatives. Her testimony is not credible; Mr. Polo's testimony is.

Specifically, with respect to Article 83, Ms. Chappuis admitted that it was Vice Minister Polo who wrote Article 83 of the Mining Law, and, in particular, who proposed to include the provision: "The effect of the contractual benefit shall apply exclusively to the activities of the mining company in whose favor the investment is made."

And Vice Minister Polo confirmed that he was the author of the provision in Title Nine of the Mining Law, Decree 708, and explained--he, the author of the provision, explained that Article 83 provides

that stabilization benefits apply exclusively to the Investment Project defined by the investor in its Feasibility Study.

And you have his testimony on the screen, the testimony from the author of that provision. And I cannot emphasize enough that the stabilization benefits apply exclusively to the Investment Project defined by the investor in the Feasibility Study.

Claimant alleges that Articles 2 and 22 of the Mining Regulations indicate that stability guarantees apply to entire concessions and Economic-Administrative Units. However, Claimant avoids discussing other important provisions of the Mining Regulations which, read together with the rest of the Mining Regulations and the Mining Law, clearly demonstrate that stability guarantees apply exclusively to Investment Projects.

In particular, Claimant does not want you to see Articles 19, 24, and 25 of the Mining Regulations.

You see on the screen Article 19, which imposes very specific requirements that the Feasibility Study should provide, and thus delineates

the Investment Project that is proposed to be stabilized. If the Feasibility Study were--if the purpose of the Feasibility Study were only to show that the investor would make an investment above the minimum, those requirements would be meaningless.

Article 24, which Claimant doesn't want you to see, provides that the investments detailed in the Feasibility Study or Investment Program will be the basis to determine the investments that are the subject matter of the stabilization agreement. The investments that are the subject matter of the Stabilization Agreement are defined in detail in the Feasibility Study.

And Article 25 provides that mining companies are required to have available for the tax authority's documents that demonstrate the application of the stabilized regime to the specific investment project--that is, new investments or expansions for which the stabilization regime was approved. And, therefore, Article 25 obliges the company to use separate accounting for specific stabilized Investment Projects--that is, new investments or expansions.

You see it on the screen. And, as Mr. Polo testified, the mining company with the stabilized project needs to keep those--he referred to them as "demonstrative annexes"--so that SUNAT can identify which results and assets are part of the stabilized Investment Project and which are not.

We discussed that in the Opening. I'm not going to elaborate on that point, but we noted in the Opening that Claimant's own witness Mr. Aquiño showed that Cerro Verde actually separates the cost and revenues of the Leaching Plant from the cost and revenues of the Concentrator Plant.

Claimant alleges that Respondent--Perú's witnesses and experts have stated inconsistent views with respect to the scope of stabilization agreements, particularly where the mining company has made additional investments related to the Project described in the Feasibility Study and the stabilization agreement. This is incorrect.

First, the views are not inconsistent; just the opposite. The Tribunal has the written statements and the Transcript of the Hearing and can easily form

a view on this. So, I'm not going to elaborate, but two points are worth emphasizing.

One, the discussion about the additional investments related to the Project, in this case to the Leaching Project, is not relevant to the question before this Tribunal. Claimant cannot be heard to argue that the Concentrator Plant was a mere additional investment into the Leaching Project. Recall the Profit Reinvestment Program episode. The Concentrator Plant was always referred to as a new Investment Program. It is not an additional investment, additional to the Leaching Project. So, this discussion is not relevant.

The second point: In this case, whatever the alleged discrepancies Claimant thinks it has found among Respondent's witnesses and experts about additional investments, all of the witnesses and experts of Perú are consistent that the Concentrator Plant is not covered by the 1998 Stabilization Agreement; only the Leaching Project is. And that's the question before this Tribunal.

There is--the testimony demonstrated that

there is no basis for this Tribunal to question, much less disagree and overturn, the Supreme Court's ruling on the scope of the stabilization agreement.

Peruvian courts have confirmed SUNAT's interpretation of the 1998 Stabilization Agreement and SUNAT's interpretation of the Mining Laws and regulations. Peruvian courts have confirmed Perú's interpretation that the Stabilization Agreement covered only the Leaching Project. Perú's interpretation of Peruvian law, particularly the Mining Law, in this Arbitration is fully consistent with the interpretation given by the Peruvian courts.

So, Claimant asked this Tribunal to sit as a court of appeal of the final Judgments of the Peruvian courts and to conclude that those Judgments are incorrect as a matter of Peruvian law. But Claimant has made no claim of denial of justice with respect to the proceedings before the Peruvian courts, and, therefore, there is no basis to question the outcome of the Peruvian proceedings.

And I will recall again the Non-Disputing Party Submission of the United States that said that,

as a matter of customary international law, international tribunals will defer to domestic courts interpreting matters of domestic law unless there is a denial of justice.

And, again, Claimant never raised any denial-of-justice claims against the Peruvian court's decisions regarding the scope of the 1998 Stabilization Agreement.

I think the language of the United States' Non-Disputing Party Submission is worth recalling: "As a matter of custom, international Tribunals will defer to domestic courts interpreting matters of domestic law unless there is a denial of justice."

Down the last lines of the block quote: "A fortiori, domestic courts performing their ordinary function in the application of domestic law as neutral arbiters of the legal rights of litigants before them are not subject to review by international Tribunals absent a denial of justice under customary international law."

And then, again, on the right-hand side: "Were it otherwise, it would be impossible to prevent

Chapter 10 Tribunals from becoming supranational appellate courts on matters of the applications of substantive domestic law, which customary international law does not permit."

So, what you have here, Members of the Tribunal, is both contracting Parties to the TPA, to the applicable Treaty in this case, have stated their views that domestic court decisions "are not subject to review by international Tribunals absent a denial of justice."

Perú has stated its understanding in these proceedings. The United States has stated its understanding in its Non-Disputing Party Submissions. Both contracting Parties have the same understanding of the meaning of the TPA. And the Tribunal, we submit, should respect this joint position of the Contracting Parties.

Testimony at the Hearing confirmed that Cerro Verde and Phelps Dodge knew at the time that the Stabilization Agreement did not cover the Concentrator. And that was demonstrated by the testimony of Claimant's witnesses under

cross-examination.

First, Cerro Verde and Phelps Dodge knew that the '98 Stabilization Agreement covered only the Leaching Project and not the Concentrator Plant.

Two, Cerro Verde's alleged reliance on any purported, but undocumented, oral assurances from Ms. Chappuis was reckless.

Three, Cerro Verde and Phelps Dodge failed to conduct adequate due diligence regarding the scope of the 1998 Stabilization Agreement; and four, the expansion of the Beneficiation Concession did not result in the Concentrator being covered by the '98 Stabilization Agreement. And I will discuss those four points in some detail.

So, first, the fact that the Feasibility Study and the Stabilization Agreement expressly referred to the Leaching Project was "the elephant in the room" when Phelps Dodge and Cerro Verde decided to invest in the Concentrator. You see--these are not our words. These are the words from--the words of Mr. Davenport. Because it is confined, because the Stabilization Agreement is confined to the Cerro Verde

Leaching Project, Mr. Davenport testified, well, you know, some people, particularly in Phelps Dodge said, well, how can you build a Concentrator, it is not called a "Stabilizing Leaching Project"?

The elephant in the room was, why in the heck did they call it the "Leaching Project"? Well, Perú is asking the same question. Ms. Torreblanca says the Energy and Mining Minister agrees that the Stabilization Agreement also includes the Concentrator, in spite of the fact that there is no literal reference to the Concentrator in the contract. This was the elephant in the room. Why in the world did they call it a "Leaching Project" and not a "Concentrator"? We have heard no satisfactory answer from Claimant to the question posed by their own witness and the CEO of Cerro Verde at the time.

What did the evidence at the Hearing show? Phelps Dodge demanded written assurances, and that is, again, undisputed. In 2004, Phelps Dodge demanded that Cerro Verde obtain written assurance from MINEM that the Concentrator would be covered. They now say, well, we wanted a confirmation, but if they had

written assurance before, they would not have needed this confirmation in writing. And they didn't get it. So, they then sought to amend the 1998 Stabilization Agreement, and Claimant's witnesses confirmed that Cerro Verde made presentations to MINEM in July and August of 2004 asking for an amendment to the '98 Stabilization Agreement to include the Concentrator. They needed to amend the contract because the Concentrator was not otherwise covered.

Clearly Claimant recognized in July and August of 2004 that the Concentrator Plant was not at the time covered by the '98 Stabilization Agreement. This is contrary to the cost testimony of Ms. Torreblanca and Ms. Chappuis that the 1998 Stabilization Agreement covered the Concentrator Project from the time of its signing.

If the '98 Stabilization Agreement covered the Concentrator from the time it was signed in 1998, why amend it to cover the Concentrator Plant in 2004?

The decision to proceed was reckless and we'll talk a little more about that. But look at the testimony of Claimant's own legal expert, Mr. Bullard,

who said, well, in this situation, in response to a question by Arbitrator Cremades, in this situation I might have advised my client to take a precautionary measure. See if that's covered. Well, the precautionary measure they wanted to take was written assurances. They never got them.

I will not dwell on the 2003 episode of the Profit Reinvestment Program, except to recall they asked in writing twice--they asked for a legal opinion by MINEM twice and obtained two Legal Opinions that the revenue of the Leaching Project qualified for the Profit Reinvestment Program. They knew--and then only after those two written requests, two formal written requests and two formal Legal Opinions, they actually applied.

This shows that they knew perfectly well how to ask the Government in writing. And so, an extension of the elephant in the room is the question why they didn't do the same thing in 2004. Why they didn't ask in writing the Government to confirm that the Concentrator Plant was covered. They would have received a legal opinion.

They didn't.

They knew how to ask. They didn't. Why didn't they? Well, in our submission, they knew they would not receive the answer they wanted. And look at the testimony of Mr. Davenport. He says: "We felt we had to have some type of written confirmation that the Concentrator would be stabilized, and I knew at the time and it was pretty obvious that, you know, a Minister, Mining Minister or Finance Minister, if they didn't have to, they were not going to go on a limb and say, you build a Concentrator, you're stabilized. They were not going to do that."

If you're so comfortable what the answer is, submit a formal request and get a legal opinion. But they were afraid they would get the answer they wouldn't like. And you will recall Ms. Chappuis's cross-examination and the reference to her evidence in the February Hearing when she testified that when Cerro Verde asked whether to submit a written request in writing, they testified they asked her: "Shall we submit a written request in writing?" And she told them: "I think not." And they didn't.

Now, MINEM confirmed to Cerro Verde in writing that the benefits of the Stabilization Agreement applied to the Leaching Project--that is, the option to reinvest the profits from the stabilized Leaching Project into the new Investment Project, the Concentrator Plant, and you'll recall we had extensive discussions of this Paragraph 4 of the September 8, 2003, Legal Opinion, the text of which you see on the screen: "The application of the stabilized regime is granted to the Cerro Verde Leaching Project and not to the company," and the regime is the one described in the aforementioned agreement.

A formal Legal Opinion approved by Ms. Chappuis, what did she have to say about that at the Hearing? She essentially admitted that the language of the letter defeats Claimant's theory. She testified that, in hindsight, to be consistent with Claimant's theory and her own current claims about the scope of the Stabilization Agreement, the letter would have had to say that "the scope of stability applies to the mining unit, not to the Leaching Project, rather than to the company itself." That's what now,

in hindsight, she says should have been said. But that's the opposite of what it said.

It said that the application of the stabilized regime is granted to the Cerro Verde Leaching Project and not to the company. That is what Ms. Chappuis wished it would have said to support her claim now in Claimant's claim. That's not what this resolution said.

Let's take a step back and compare the Profit Reinvestment Program and the Concentrator Plant. It was the Profit Reinvestment Program that was the decisive factor to build the Concentrator, not whether the Concentrator would be covered by the 1998 Stabilization Agreement. Ms. Torreblanca confirmed at the Hearing that Cerro Verde was mainly interested in the reinvestment of profit benefit rather than the stabilization of the Concentrator. She was asked by President Hanefeld: "I understand that the reinvestment of profits was one of the very decisive economic decisions whether to build a Concentrator or not; right?"

Answer: "Yes. It was important for the

Shareholder to have a reinvestment of profits to finance this Project," this Project being the Concentrator Plant, and then the question about the Concentrator Plant, again from the President of the Tribunal: "The income generated by the Concentrator would be stabilized or not under the old '96 regime. Was it also an economic factor that was decisive for the decision to build the Concentrator or not?"

Answer: "As far as I know, no."

The profit reinvestment benefit was decisive to build the Concentrator and Mr. Davenport confirmed that as well. He said that Cerro Verde was mainly interested in the reinvestment of profit benefits. Again, remember, Cerro Verde asked twice in writing to confirm that Cerro Verde is covered by the profit investment benefit. It is essential to know. It is essential that we know, with absolute certainty, the scope and characteristics of the Profit Reinvestment Program, they said, and for this reason we would appreciate it if you would take the time to confirm certain aspects of the most important feature of this program in light of the stabilized tax system. This

is what they said in writing. Absolute certainty of the scope of characteristics of the Profit Reinvestment Program. Contrast that with the absence of any such request in writing and any written assurances, any such formal request in writing and any written assurances about the scope of the Stability Agreement in relation to the Concentrator Plant.

And when at the Hearing Mr. Davenport was asked why Cerro Verde needed to write twice to seek this confirmation about the Profit Reinvestment Program, he said "because it's important." Apparently, whether the Concentrator Plant was covered by the scope of the Stabilization Agreement was not that important.

Claimant wants you to think that Cerro Verde would not have invested in the Concentrator if it had not obtained written assurances the Concentrator would be covered by the '98 Stabilization Agreement. However, Perú's expert Mr. Ralbovsky showed--as he showed, the Concentrator Project turned the 1.7 billion Cerro Verde Mine into 10.7 billion operation at the copper prices known to Cerro Verde

when it made the decision.

You see his slide on the right-hand side of the screen.

So, whether or not the Concentrator was covered by the '98 Stabilization Agreement was not the decisive factor in Cerro Verde's decision to invest in the Concentrator.

Obviously, Cerro Verde would have invested in the Concentrator Project to secure the 10.7 billion operation regardless, even if it had to gamble on the '98 Stabilization Agreement coverage.

This morning Counsel--I'm referring to the Transcript, the provisional Transcript, Line--Page 40, Line 7, to Page 40, Line 15, said that the 2002 Pre-Feasibility Study also had a sensitivity for nonstabilized rate to account for the risk of breach, and it's interesting to note that the nonstabilized sensitivity was economically more favorable. This means the Concentrator would not have been stabilized under the sensitivity; Cerro Verde would have gotten a better deal.

This is incorrect, with all due respect.

What the sensitivity ran by the 2002 Feasibility Study was not about whether the Concentrator Plant was covered by the '98 Stabilization Agreement with respect to royalties. Royalties did not exist yet in 2002.

I'm not going to take you through the provisions of the 2002 Pre-Feasibility Study. I will point out to you and you can take a look at it. This sensitivity was ran about the Profit Reinvestment Program, and those were the sensitivities that were put in the 2002 Pre-Feasibility Study. It was not about royalties, and it was not about tax rates. And it confirms our point that it was the pre-investment program that mattered to Cerro Verde.

So, again, in contrast to the Profit Reinvestment Program, in 2004 Cerro Verde decides to rely on oral assurances given by Ms. Chappuis. She confirmed at the Cerro Verde Hearing that she convened a team meeting on June 15, 2004, to discuss the legality of Cerro Verde's request to include the Concentrator under the '98 Stabilization Agreement. You see her testimony, and you see also the email.

I'm not going to dwell on them much, but I will do say that President Hanefeld asked Ms. Chappuis about the team's conclusion at the end of the meeting, and Ms. Chappuis answered that the team, including the DGM lawyers, confirmed her view that the expansion of the Beneficiation Concession would bring the Concentrator under the scope of the 1998 Stabilization Agreement.

But this answer raises a critical question: If Ms. Chappuis' reply about the outcome of this June 15, 2004, meeting is to be believed, why did Cerro Verde continue coming to the Ministry in July and August 2004 with presentations proposing the amendment of the 1998 Stabilization Agreement? If she told them: "You're covered, the Concentrator Plant is covered," as a result of this meeting where there was a unanimous confirmation, she says, of her view and she conveyed that, why did they keep coming, making one presentation, then another, seeking an amendment to the 1998 Stabilization Agreement? There is no answer to that question.

As the email showed, Ms. Chappuis had doubts about the legality of including the Concentrator in

the 1998 Stabilization Agreement, and you see Mr. Tovar's testimony--who was one of the persons to whom this email was addressed. You see his testimony how he understood that email, and he says in Paragraph 17: "I can confirm that this discussion never took place, and I never stated nor could have stated that this expansion"--the Concentrator Plant--"could have included the Concentrator under the scope of the Stabilization Agreement."

So, you contrast Ms. Chappuis' testimony with Mr. Tovar's testimony. She was confronted with that testimony. Mr. Tovar explained he reviewed her testimony, this is his evidence. When she was confronted with Mr. Tovar's testimony, she said: "I'm not going to opine on other witnesses." She didn't even say he is wrong. She just said: "I'm not going to opine on what other witnesses say."

Ms. Torreblanca testified that she received the infamous oral assurances--infamous is my word, of course, not Ms. Torreblanca's word. She testified she received oral assurance about the '98 Stabilization Agreement's coverage from Ms. Chappuis before 2004.

So you see, she remembers in 2003, and she was asked, that is not what Ms. Chappuis says, so is she misremembering, do you think? Ms. Torreblanca says, perhaps. So, Ms. Torreblanca's testimony is, Ms. Chappuis is misremembering; I remember well, in 2003 we received oral assurances. But look at what Ms. Chappuis is saying: "Is it your testimony that, until June 11, 2004, the date of the email, you did not know that their position, Cerro Verde's position, was that the Concentrator Plant was covered by the existing agreement and they wanted a confirmation of that? You did not know that, and you thought they wanted a new agreement."

Answer: "I had not met with them and I did not know exactly what they were going to ask." So, as of June 11, 2004, Ms. Chappuis testifies: "I did not know what they were asking. I was confused." Contrast that with Ms. Torreblanca's testimony: "In 2003 we received written assurances, perhaps Ms. Chappuis is misremembering."

On top of that, Cerro Verde knew that the written assurances were--sorry, that the oral

assurances were meaningless. Ms. Torreblanca testified in the Cerro Verde Arbitration that the oral assurances have no legal value under Peruvian law. In this Arbitration, Ms. Torreblanca testified that she did not think it was important enough to print the email in which she supposedly reported to Phelps Dodge the alleged assurances, oral assurances, provided by the Government. She admitted that those oral assurance had no probative value, the email had no probative value. And look at what she said when she was asked why she did not submit this email to SUNAT during the assessment proceeding: "It did not occur to you or anybody to show SUNAT this email?"

It has--Answer: "It has no probative value. It has no value. It is as though I were to send an email to my secretary or to SUNAT. That is like that's what I say, and I tell the secretary, I met with so-and-so. SUNAT is not interested in the email. It doesn't use it as evidence."

So, the email, even if it existed, was meaningless, has no probative value. The oral assurances, therefore, are meaningless. They were not

even worth documenting.

Now, Cerro Verde knew that Vice Minister Polo took the opposite position, that the Stabilization Agreement did not apply to the Concentrator Plant. Mr. Davenport and Ms. Chappuis confirmed at the Hearing that they knew Vice Minister Polo, Vice Minister Polo, who was Ms. Chappuis' boss, had a different opinion on the scope of the '98 Stabilization Agreement. You see on the left-hand side Mr. Davenport's testimony on that.

He was skeptical. He said, you know, we never really--he never really gave me a technical reason, a legal reason, but on this we did not agree.

Mr. Polo and Mr. Davenport did not agree on the scope of the Stabilization Agreement. Mr. Polo maintained it did not cover the Concentrator Plant.

Ms. Chappuis says: "Well, it seems strange. My impression was just to listen and say, this person comes with that gossip."

So, she refers to the views of her superior, her supervisor, Vice Minister Polo, her testimony is she had no idea other than somebody told her about

Vice Minister Polo's views, and she says, well, this is gossip. I'm not going to pay attention to that.

Think about this. Mr. Davenport knows very well. He has met several times with Mr. Polo, he knows very well, we did not agree on the scope of the Stabilization Agreement. Ms. Chappuis does not know the views of her superior. She says: "Oh, I thought this was just gossip." We submit that is not credible.

But, more importantly, just think about this for a moment. Cerro Verde know Vice Minister Polo's view that the '98 Stabilization Agreement doesn't cover the Concentrator. They go to Ms. Chappuis and allegedly obtain oral assurances from her.

The Beneficiation Concession. So, the latest theory is, well, even if it was not covered, the Beneficiation Concession was covered by the '98 Stabilization, and by extending the Beneficiation Concession, we extended the 1998 Stabilization Agreement to cover the Concentrator Plant.

Well, first, it is undisputed that there were no written assurances. Claimant has not

submitted any document about any written assurances. Mr. Polo and Mr. Tovar confirmed that MINEM never assured Cerro Verde orally or in writing that the Concentrator Plant would be covered. You see the testimony of Mr. Tovar: "Did you ever confirm that the Primary Sulfides Project could be included in the '98 Stabilization Agreement for the Leaching Project?" "No."

So, what you have is the person above Ms. Chappuis in the hierarchy, Mr. Polo, never gave any assurances. He had an opposite view. The person just below, Mr. Tovar, never gave any written or oral assurances and had the opposite view. But Phelps Dodge decided to proceed with the investment anyway, with nothing more than Ms. Chappuis' alleged, undocumented oral assurances that the Beneficiation Concession extension, that said nothing about stabilizing the Concentrator Plant under the '98 Stabilization Agreement, would take care of it. And that's what we say was reckless.

By the way, we discussed that already. Nothing in the application for the extension of the

Beneficiation Concession and the various approvals that were necessary and that were obtained says anything about the scope of the 1998 Stabilization Agreement, let alone about its coverage of the Concentrator Plant.

Now, due diligence. Claimant's witnesses testified that Cerro Verde consulted "third parties" and outside counsel regarding the scope of the 1998 Stabilization Agreement.

And they relied on that today. You remember the discussion about obtaining legal advice which is privileged, which doesn't mean they are hiding it, and you remember their discussion on Slide 48 of their Opening. I'm sorry, 46 of their Opening.

This Tribunal cannot and should not let Claimant imply that they obtained supportive legal advice, but then refused to disclose that advice. If Claimant seeks to rely on having obtained legal advice with the implication that it was supportive and therefore they did their due diligence, Claimant must waive privilege and disclose that legal advice. They haven't, but they want you to assume that they

obtained legal advice with the implication that it was supportive. They did their due diligence. Just the opposite.

This Tribunal should draw the opposite conclusion here because, if Claimant had, indeed, received legal advice saying, you're covered, the stabilization plant was covered by the 1998 Stabilization Agreement, Claimant would not have hesitated to waive privilege and disclose these reports and emails. And they didn't.

You should draw adverse inferences. But at the minimum, you cannot rely on the fact that they sought legal advice to assume what they want you to do, that this legal advice supported their view in this Arbitration.

Now, going back to written requests. They never submitted a written request to MINEM about the scope of the Stabilization Agreement in relation to the Concentrator Plant. There was a discussion at the Hearing about obtaining an opinion from SUNAT. Cerro Verde could have asked the National Mining Society to make a formal request to SUNAT under Article 93 of the

Tax Code regarding the interpretation of the scope of Mining Stabilization Agreement. This is undisputed. You see Article 93 on the screen.

Mr. Davenport testified that Cerro Verde and its Shareholder, Buenaventura, were very active in the National Mining Counsel. The--sorry, the National Mining Society. The National Mining Society members all would have had a clear interest in the answer.

Recall also that at that time Buenaventura's General Counsel was the president of the National Mining Society.

They could have asked the National Mining Society to formally ask SUNAT for an opinion. Mining companies, through business associations, sent multiple consultations to SUNAT. I'm using the language of Article 93. Two of those, which are specifically related to mining stabilization agreements, are on the record. So, this happens. And it happens all the time. In fact, every year, including during the period 2002-2006, SUNAT responded to hundreds of consultations. Why didn't they use their very powerful influence over the National Mining

Society to ask? There is no explanation.

The 2004 expansion of the Beneficiation Concession, as I said, did not result in extending the coverage of the '98 Stabilization Agreement to the Concentrator Plant. That is their new theory because they failed to obtain any written assurances. But Claimant's witnesses confirmed at the Hearing that, regardless of the 1998 Stabilization Agreement, under Peruvian law, Cerro Verde could not build and operate a Concentrator without obtaining an expansion of the Beneficiation Concession because an expansion was required every time there was an increase in the concession's capacity beyond 10 percent. So, they needed to obtain an expansion of the Beneficiation Concession whether or not they had a Stabilization Agreement.

It was necessary regardless of the existence of the Stabilization Agreement. It had nothing to do with the expansion of the Stabilization Agreement. You have Ms. Torreblanca's and Mr. Davenport's testimony on the screen.

Second, as you saw in the previous slide,

Ms. Torreblanca testified in her witness statement and at the Hearing that the Ministry would have rejected the expansion of the Beneficiation Concession if the Ministry considered that the 1998 Agreement did not apply to the Concentrator.

That's what Ms. Torreblanca says. If the Ministry believed the Concentrator Plant was not covered, they would have rejected the expansion of the Beneficiation Concession. But that's not what Ms. Chappuis testified in both Hearings.

She rebutted that claim. She said there were no--first, on the left you see her testimony at the Cerro Verde Hearing: "It is an Administrative Procedure which is not subject to restrictions. No company is going to be denied expansion of its concessions."

Then on the right-hand side you see her testimony in this Arbitration: "There were no restrictions for extending the capacity or the geographical area, no provision imposed in the restriction to the very country."

So, contrary to Ms. Torreblanca's testimony

that, if the Ministry thought the Concentrator Plant was not covered, it would have denied the extension of the Concentrator concession, Ms. Chappuis is saying, no, that's not true. If they wanted higher capacity, we would have granted, as they did, without any reference, without any mention of the scope of the Stabilization Agreement, and here I'm just showing you the documents, the application and the three approvals and you have to read them from A to Z. I represent to you that there is no mention at all of extending the stability guarantees of 1998 Stabilization Agreement to the Concentrator in either the application or the various approvals.

Next point, former MINEM officials have testified that, under MINEM's regulations and procedures, the expansion of the Beneficiation Concession does not and cannot change the scope of a stabilization agreement.

Mr. Tovar, the Director of Mining Promotion and the person responsible for authorizing the expansion of the Beneficiation Concession in 2004, explained that the application and procedure to expand

the Beneficiation Concession was an independent procedure unrelated to the Stabilization Agreement. You see his testimony on the screen.

In response to a question by President Hanefeld, Mr. Isasi, MINEM's former Legal Director, confirmed that the approval to expand the Beneficiation Concession did not have the effect of amending a stabilization agreement. And, again, you see his testimony on the screen: "No one can amend an agreement, one would have had to have incorporated that expansion in order for it to enjoy stability. It would have had to be included in the agreement, the expansion. No doubt they would have had to consult with me because, in that case, they would be compromising or involving the Minister of the sector, and it's likely that I would have been consulted." Remember, the Stabilization Agreements are signed by the Minister or the Vice Minister, and they cannot be amended by the extension of the Beneficiation Concession by oral assurances by Ms. Chappuis.

Mr. Polo, the Vice Minister of MINEM at the time, authorized the expansion of the Beneficiation

Concession and explained that DGM cannot amend stabilization agreements and that a third-level official, Minister or Vice Minister, Director of DGM, Ms. Chappuis, cannot act beyond the powers he or she is granted by the law, and thus cannot change what higher-ranking officials have approved, such as a stabilization agreement signed by the Minister or the Vice Minister. Again, you have his testimony on the screen.

Fifth, Claimant says that after months of meetings with MINEM officials, Cerro Verde finally received, via the Beneficiation Concession expansion, the long-sought written assurances.

Yet, that "win" was never reported or recorded. Mr. Davenport testified that he did not remember any celebration, not even a celebratory drink. Well, ignore the drink for a moment, but he conceded that there is no internal document reporting the news to Phelps Dodge that they received the long-sought assurances: "Whether or not," he says, "there was a written document, I didn't see it in the materials that I reviewed. I don't remember that

other than the presentations I made." He's referring to earlier presentations.

Well, just think about it. They now say, the extension of the Beneficiation Concession was the assurance we needed that the Concentrator Plant was stabilized, and there is no single document that reports this as: "We just saved Phelps Dodge hundreds of millions of dollars." No record of that whatsoever.

Sixth, Claimant has no explanation for Phelps Dodge's continued uncertainty in its SEC filings about the effect that the new Royalty Law would have on the operations at Cerro Verde.

The only answer that Claimant's witness could offer was Mr. Davenport, who says: "I didn't write this. You know, I'm not involved in Phelps Dodge's 10-Ks. All I can speculate is, you know, it's just identifying political risk, you know."

Well, focusing only on the new Royalty Law is too specific. It's not a general statement about political risk in Perú. It is too specific and cannot be interpreted as a general statement about political

risk in Perú. It talks specifically about the new Royalty Law.

We've been hearing a lot throughout this arbitration about how Perú inconsistently interpreted the hope of the Stabilization Agreement. No. We say the Peruvian Government's position on the scope of the Stabilization Agreement was consistent, transparent, and public, and we explained in the Opening Statement that the Government did not devise its interpretation in a dark backroom.

And there were many public statements made about the position of the Peruvian Government that the Stabilization Agreement covered the specific Investment Project, which were the subject matter of the agreement.

Now, we heard again today--and there was a quote from SUNAT's 2002 Report, and I refer you to Claimant's Slide 76 where they put on the screen a quote, and they said, well, it doesn't say this 2002 SUNAT Report doesn't say that it's only the Investment Project that are covered.

Well, look at this quote, which, of course,

Claimant didn't show you. And this is a quote from RE-26, the SUNAT 2002 Report of September 23, 2002, and it reads: "These Tax Stability Agreements only stabilize the applicable tax regime with respect to the investment activities that are the subject matter of the agreement, for their execution in a determined concession or an Economic-Administrative Unit."

The investment activities that are the subject matter of the agreement, which take place in a concession or in an Economic-Administrative Unit. It doesn't say "with respect to the activities, all the activities in the concession, all the activities in the Economic-Administrative Unit." It says "with respect to the investment activities that are the subject matter of the agreement within the concession or within the Economic-Administrative Unit."

At the Hearing, Ms. Bedoya and Mr. Cruz explained that this public report constituted a binding opinion within SUNAT. The report--again, Claimant says "we never saw it." It was--one, it was published on SUNAT's website and, two, Cerro Verde was very aware of this report. It referred to it, as we

showed in the Opening, in its August 2004 presentation to MINEM.

Now, you heard Mr. Polo testifying at the Hearing about his presentation at the Mining Royalty Forum in March 2004, and he said--and testified at the Hearing, that what he said. "It's not the company. It's just the Project of investment. A concession may have several Investment Projects, one protected by a stability agreement, but the other ones do not have it."

Mr. Isasi. He has a series of documents--he has authored a series of documents that say this exact same thing, and you have them on the screen, beginning with the--the April 2005 Report and then other presentations leading to the June 2006 Report, which they say is the volte-face.

He has a number--he has authored a number of documents that say the exact same thing before that.

Now, Claimant chose not to cross-examine Mr. Isasi at the Cerro Verde Hearing. After calling him for this arbitration, Claimant--they chose not to examine him after all. Claimant did not want and does

not want the Tribunal to hear the testimony because, we submit, Mr. Isasi's testimony is devastating to Claimant's case.

Let's start with the April 2005 Report.

Claimant has consistently misquoted and misrepresented Mr. Isasi's Legal Opinion, and would like to cut the highlighted text out of his report. In all written submissions, at the Hearing, this Hearing and the previous Hearing, when they quote from this report, they stop at the word "titleholder" just before the text we have highlighted. They don't want any Tribunal to see or hear this text. But we do want you to hear this text, and look at what it says.

"Depending on whether or not they are part of a Project set out in a stability agreement signed prior to the enactment of Law 28,258. Therefore, only the mining projects referred to in these agreements will be excluded from the royalty calculation basis."

In fact, today in their Opening, Slide 85, Claimant, again, showed you this Paragraph 17 of Mr. Isasi's report without the highlighted Section. They just don't want you to see that, which, in our

submission, is very clear. The position of Mr. Isasi has been very clear.

And if you have any doubt, you can look at the conclusion of this report, which Claimant also ignores where Mr. Isasi says--expressly says that "the mining royalty will not be applicable to the Stabilized 'Investment Project'."

So, June 2006 was not at all the first time that Mr. Isasi and MINEM, in general, took this position.

The Toronto meeting with Phelps Dodge. Claimant has spun a story, elaborate story about Mr. Conger's presentation--and you've heard that. But his seat is empty. Claimant has not brought him here to testify. You have the discussion at the Arequipa Roundtable presentation. Mr. Tovar's testimony about the presentation that was made, a confirmation in an independent third-party court document that the presentation was made and Cerro Verde's representatives were there.

You have the Minute Meetings that show Claimant's representative there. They deny ever

having seen this.

SUNAT's 2007 Report is important, one, because it reiterates the position set out in the 2002 Report, and it is undisputed that this report constitutes an opinion that must be followed by SUNAT. And unsurprisingly, Claimant has not questioned the content of this report in its Reply or at the Hearing.

But it reiterates the position in the 2002 SUNAT Report.

Now, we've been hearing about conspiracy theories in relation to political pressure. Mr. Polo and Mr. Tovar testified that, despite discontent from the Arequipa community, many officials never succumbed to political pressure. To the contrary, they consistently defended Cerro Verde's Leaching Project's stabilized status before Congress.

And you have the testimony of Ms. Bedoya, Ms. Olano, Mr. Sarmiento. There was never any political pressure on them, in no way whatsoever.

Due process rights. Claimant alleges that its due process rights were violated because Ms. Bedoya participated in the preparation of SUNAT's

June 2006 Report, as well as in the resolution of the royalty administrative challenges.

Claimant complains that the June 2006 Report was never shared with Cerro Verde. Well, this is unsurprising because it was an internal report, and as Ms. Bedoya explained under cross-examination, it was not prepared in the context of an official administrative procedure.

But Claimant had it since July 25, 2022, in this proceedings. They did not raise any complaints in the Reply regarding Ms. Bedoya's participation in the preparation of the report and in the royalty administrative challenges. So, to begin with, this due process complaint is untimely.

But, more importantly--oh, and speaking of untimeliness, on their Slide 72 of this morning, Claimant alleged that it was only when they were preparing this case that they saw the initials of Ms. Villanueva on the Tax Tribunal's decisions regarding the 2008 Royalty Assessment.

But that misses the point because those initials have been in the resolution, notified to

Cerro Verde since 2013. So, we don't understand the Claim that they only saw it now.

So, that is also untimely, that particular argument, but Ms. Bedoya and Mr. Cruz, more importantly, they clarify that it is SUNAT's prerogative as part of its oversight function to investigate and analyze certain issues with respect to specific taxpayers, and perform the duties based on those analyses. There is nothing inappropriate for persons who have prepared such analysis to then participate in the resolution of administrative challenges on similar or related basis.

Claimant says it's something nefarious. We say there is nothing inappropriate, and we have here a reference to the Glencore Tribunal that said, "in administrative proceedings, the decision-maker is often the investigator, the accuser, the adjudicator, and the related officer, and often the one who rules on appeal. Due process does not require a strict separation of those functions, provided that the final administrative decision is subject to full judicial review."

Which is the case here. And Peruvian audit proceedings are no exception. So, to accept Claimant's argument on this, this Tribunal would have to find that SUNAT is systemically, across the board, breaching due process rights of taxpayers in administrative proceedings, which we say, is not the case.

Mr. Estrada provides no support for these conspiracy theories. At the Hearing, it was established that the fact witness, Mr. Estrada, has no firsthand knowledge of the royalty case against Cerro Verde because he was not a "vocal" in the Chamber deciding those cases.

And interestingly, he was the only former employee of the Tax Tribunal that responded to Claimant's search for someone to parrot Claimant's conspiracy theories. You have his evidence on the screen.

We've discussed that already so I'll be brief. Claimant provides no rationale or motive that would explain the supposed irregularities allegedly perpetrated by the Tax Tribunal. The sole suggestion

comes from Mr. Estrada, who says, Ms. Olano wanted to pay performance bonuses to herself and the "vocales" so she wanted to get more money. But he admitted, including during the Hearing, that, in fact, the Regulation that would have allowed the payment of performance bonuses at the Tax Tribunal was never adopted.

And you have a reference to his testimony. And, indeed, Mr. Estrada's allegation is not only baseless, it's nonsensical because, even if that were the case, which, of course, it was not, there would--no reason for President Olano or anybody to single out the case of Cerro Verde out of all the taxpayers cases in Perú that were before the Tax Tribunal.

And two important points here. Even assuming, which we strongly deny, of course, that there were some due process irregularities at the Tax Tribunal--and we say there weren't--the Peruvian courts have confirmed the correctness of the merits of the Tax Tribunal decisions. So, even when there was some due process violation, this did not affect the

outcome on the merits because it was confirmed in proceedings before Peruvian courts.

And, finally, as you heard from Claimant's damages expert, Dr. Spiller, Claimant has not identified any damages arising out of the Tax Tribunal claim.

A point about Southern Perú. They--in their Opening, Claimant continued to insist that Southern Perú's '94 Stabilization Agreement covered two Economic-Administrative Units. But we see--we saw a letter from Southern, including Claimant's own witness, Mr. Flury, then Legal Director of Southern, a long-standing client--Southern, a long-standing client of Claimant's local Counsel, Rodrigo, they understood, whether we--they took legal advice or not. We don't know.

But they, Southern, understood that the '94 Stabilization Agreement covered only Southern's Leaching Project. And you see the letter that was sent by Southern in August of '94, signed also by Mr. Flury, confirming that Southern's Stabilization Agreement applied exclusively to the Investment

Project including in the agreement, that is the Leaching Project, and that Southern would keep separate accounting for that specific project.

We heard nothing about this. So, this argument remains unopposed, and we submit this contemporaneous letter by Southern, signed by Claimant's own witness, Mr. Hans Flury, Southern being advised by the law firm of Rodrigo, this document is devastating to Claimant's case, as a whole, including to their so-called "discrimination claim."

Reasonable doubt point, which I will go through quickly. So, Claimant asserts that, if there is any "reasonable doubt" about the application of a rule of law, interest and penalties must be waived pursuant to Article 170.1 of the Tax Code, one, and, two, the 2019 amendment of Article 22 of the Mining Regulation was a clarification of this provision, which demonstrates, they say, the provision wasn't clear prior to the amendment.

We disagree. A taxpayer's subjective understanding of whether a provision of law is unclear is not sufficient to trigger the application of

Article 170.1 of the Tax Code.

Under Peruvian law, "reasonable doubt" exists only if a law or rule is clarified through a special procedure, the procedure that requires a reference to Article 170.1. And you see that language on the screen "provided that the clarifying provision expressly states that this paragraph is applicable," this paragraph is Paragraph 1 of Article 170.

This point was confirmed at the Hearing by Perú's tax law expert, Mr. Bravo: "But not just any clarifying provision. It has to be a clarifying provision that says that Article 170.1 applies."

Well, there was never a clarifying provision pursuant to Article 170.1, with respect to the provisions of the Mining Law and the Regulations that Cerro Verde now claims are unclear. And, therefore, there could not have been any reasonable doubt that would have justified the waiver of interest and penalties under Article 170.1, and the Peruvian adjudicating bodies rightly dismissed Cerro Verde's appeals.

Very quickly, on jurisdiction, first,

ratione temporis. You have a timeline, February 1, 2009, is when the TPA entered into force, so you see the various events, measures, acts, or omissions that happened before that, before the TPA entered into force. They are outside of the scope.

On the right-hand side, February 28, 2017, is the cutoff date of the TPA limitation period. Everything that happened before that is outside of the statute of limitations. You see, we've put on the timeline everything that happened before that cutoff date. And so, Claimant is essentially saying, that's not relevant, look at what happened later.

But all their claims are, to use the word--the language "deeply and inseparably rooted," that's language from the Spence Tribunal's Award, in all those events that we showed you on the screen that are outside of this Tribunal's jurisdiction ratione temporis.

And you have the testimony of Mr. Herrera, who says "the term 'incurred' in Article 10.18.1 of the TPA means actual loss, or that the loss must have materialized. And so, until the loss materializes,

there is no measure," and Claimant says "any claim would be premature."

Well, you have the submission of the United States on the right-hand side of the screen. The term "incurred" broadly means to become liable or subject to, and therefore an investor may have incurred loss or damage even if the financial impact of that loss or damage is not immediate.

So, Mr. Herrera's testimony is directly contradicted by the United States' submission, and no weight should be given to it.

Taxation measures, you know the exclusion of taxation measures in Article 22.3.1. They are excluded from the scope of the protection. In its Reply, Claimant agrees that the claims of alleged breaches of the TPA based on tax assessment are barred under that exception because Claimant acknowledges tax assessments are taxation measures.

What Claimant argues is that penalties and interest, which are imposed on the assessed tax amount in the same tax assessments, are not taxation measures, and, thus, the claims relating to penalties

and interest are not barred by the exception.

Well, in our view, the United States disagrees. The United States says a measure is defined broadly to include any law, Regulation, procedure, requirement, or practice. Any practice related to taxation is, therefore, addressed by the exception. A practice in this context includes not only the application of or failure to apply tax but also the enforcement or failure to enforce a tax.

The enforcement of a tax by applying penalties and interest is a practice relating to "taxation." And, moreover, interest and penalties are instruments for the enforcement of a tax. Therefore, they're also covered. So, Claimant's attempt to limit "taxation measures" to "taxes" only and ignore interest and penalties arising from those taxes must fail.

Now, there's been a discussion about tax assessment versus royalty assessment. So, to be clear, everything I said so far relates to the tax assessments and the penalties and interest relating to those tax assessments. Perú submits that the Tribunal

has no jurisdiction either over penalties and interest on the royalty assessment, but that's for a different reason, because those claims fall outside of the statutory limitations.

Now, the deeply and inseparably rooted standard of the Spence tribunal. Claimant has admitted during this Hearing that MINEM's interpretation contained in this June 2006 Report authored by Mr. Isasi, the volte-face, directly caused SUNAT to issue the 2006-2007 Royalty Assessments against Cerro Verde, and they have--Claimant has also admitted that this June 2006 Report, that they say is the volte-face, the measure, it was the basis of SUNAT's assessment because the corresponding audit explicitly relied on MINEM's interpretation, and Mr. Isasi's report.

So, of course, those assessments were deeply and inseparably rooted into the 2006 Report. Claimant also admits that the SUNAT audit that began in 2008 "culminated in SUNAT's 2006-2007 Royalty Assessment." You see an excerpt from Claimant's Opening Statement.

So, again, to use the words of the Spence

Tribunal, the standard asset up by the Spence Tribunal, Claimant's claims based on the SUNAT's assessments are: "Deeply and inseparably rooted in pre-TPA acts of fact, MINEM's June 2006 Report, SUNAT's 2008 audit, which 'culminated in the assessments'."

One word on the fork in the road. Claimant admitted during the Hearing and in its Pleadings that SUNAT's Claim Division is an Administrative Tribunal, that the same alleged breaches of the '98 Stabilization Agreement were submitted to the SUNAT's Claim Division, the Tax Tribunal, and the Peruvian courts. You see the relevant quotes on the screen.

And so, because Cerro Verde has already submitted the same alleged breaches to "Administrative Tribunals or courts of the Respondent," and "binding dispute settlement procedures," Cerro Verde may not submit the same claims, especially the Claim for breach of and Investment Agreement, in this case the 1998 Stabilization Agreement, to international arbitration under the fork-in-the-road provision.

Just one word on the merits. Alleged

breaches of the 19--they have two claims. Alleged breaches of the 1998 Stabilization Agreement and alleged breaches of the TPA. On the first claim, Respondent did not breach the 1998 Stabilization Agreement because it provided stability guarantees to the Leaching Project only.

The Peruvian courts, including Perú's highest court and the Supreme Court, have decided, as a matter of Peruvian law and contract interpretation, that the 1998 Stabilization Agreement covered only the Leaching Project and wasn't breached.

As I said earlier, absent of the denial of justice claim, this Tribunal must respect the Peruvian court's decisions on the matter of Peruvian law. And, again, Cerro Verde, Claimant, has not alleged any denial of justice, with respect to the Peruvian court decisions. That takes care of this claim.

The second claim, breaches of the TPA, the fair and equitable treatment obligation. This claim falls also because the customary international law minimum standard of treatment that is applicable to the obligations under Article 10.5 does not protect

investors against frustration of legitimate expectations, arbitrary, inconsistent, and nontransparent actions.

So, even if you agree with Claimant on the facts, which we strongly disagree, that Perú acted in a manner that was inconsistent, not transparent, and undermined their arbitrary and undermined their legitimate expectation, this is not covered by Article 10.5. The obligations under the TPA explicitly recognize only one rule that has crystallized into customary international law.

The obligation not to deny justice--and, again, I refer you to the United States submission, the oral submission in the beginning of the Hearing.

Well, as a final point in Article 10.5, while customary international has crystallized to establish a minimum standard of treatment in a few cases, concepts such as legitimate expectations and transparency are not components of fair and equitable treatment under customary international law that give rise to independent host state obligations.

An investor's claim challenging adjudicatory

measures under Article 10.5.1, is limited to a claim of denial of justice." This is our position and this is the position of the other Contracting Party. And because the Claimants have not asserted a denial-of-justice claim, with respect to Perú's judicial branch, Claimant's 10.5 claim must also fail.

MR. PRAGER: Madam President, I think we are well over time now.

MR. ALEXANDROV: And you have a claim on damages, on which I will spend one second.

That second has now expired. I thank you for your attention. This concludes our closing argument.

PRESIDENT HANEFELD: Thank you very much. Then we will have now a break of 15 minutes, and then a brief discussion on the next steps in the proceedings so that we can conclude in time at around 1:00 p.m.

(Brief recess.)

PRESIDENT HANEFELD: Welcome back.

POST-HEARING MATTERS

PRESIDENT HANEFELD: It is now to discuss

the Post-Hearing steps, and we saw that Counsel have conferred on these issues, so maybe we go right away into the report about this discussion.

MR. ALEXANDROV: Can we have, Madam President, 30 seconds? Because one of our colleagues is just entering the room.

PRESIDENT HANEFELD: My apologies.

MR. ALEXANDROV: No, my apologies.

(Pause.)

MR. PRAGER: Madam President, Members of the Tribunal, we have conferred, and, unfortunately, we are not able to reach an agreement on the issues. So, let me set forth Claimant's position.

We believe that we should have Post-Hearing Submissions. This has been a two-week Hearing, as you all know. The documentary record is also very extensive, and now we have extensive witness and expert evidence. There are numerous issues before the Tribunal, there are five jurisdictional objections, and we believe that the Tribunal would also much benefit from Post-Hearing Submissions.

We believe there should be a page limit for

the submissions. Given the breadth of the issues and objections, we would propose a 100-page limit. I think it would be very important to have precise rules on the formatting, such as--well, whatever the Tribunal prefers, like 1.5 lines, font 12, Times New Roman, and no argument in the footnotes, so that all Parties have the same rules when it comes to those 100 pages.

We also believe that we should move relatively quickly with the Post-Hearing Briefing, because I'm sure the Tribunal wants to get on to the job of drafting the Award. So, our proposal would be that we submit them by the end of June. I don't have now an exact calendar, but something like the 30th of June or whatever--whatever a date is at the end of June that doesn't fall on a Saturday or Sunday.

Then, on the issue of Transcripts, we believe that we can get that done within a month, within 30 days. I don't think there is a need to drag out the process for 45 days. And if you want to do then the Post-Hearing Brief at the end of June, it is useful to have the Transcript in the middle of June so

that we can use the finally corrected Transcripts.

With apologies, if I can come back to the Post-Hearing Briefs for a second, there's an important point that I wanted to make.

We would obviously appreciate any questions that the Tribunal has, either today or in a subsequent communication. We believe it's very helpful, obviously, for the Parties to address specific questions or concerns of the Tribunal in the Post-Hearing Submissions. And, obviously, the primary focus of the Post-Hearing Submissions--maybe not the exclusive, but the primary focus--would be to answer the Tribunal's questions. So, if you have any questions, we would very much encourage those, so that we can specifically address what is on the mind of Tribunal where you still need additional clarification.

Coming to the third issue, which were the Cost Submissions, we believe that there should be, like, a short five-page submission on the costs by the Parties. As to the timing, we believe they should be submitted, obviously, after the Post-Hearing

Submissions are in.

Those are our views.

PRESIDENT HANEFELD: And also comments on the other side's Cost Submissions?

MR. PRAGER: Yes, brief comments. And, again, it can be page-limited, such as--I don't know--three pages.

ARBITRATOR TAWIL: Sorry. With the submissions, are you speaking about only one round? Because we understood in the other Arbitration you were having two rounds.

MR. PRAGER: Sorry. You're referring to the Cost Submissions or the Post-Hearing Brief Submissions?

I think for the Post-Hearing Submissions, one round should be sufficient.

PRESIDENT HANEFELD: Thank you. This is clear.

And the Respondent's position?

MS. HAWORTH McCANDLESS: Thank you, Madam President.

In Respondent's view--first we'll discuss

the Post-Hearing Submissions. In Respondent's view, we do not think it's necessary or useful for the Tribunal to have Post-Hearing Submissions, certainly not an additional--100 pages additional, for, in our perspective, it would just be a matter of the Parties rehashing arguments that the Tribunal has already seen and heard and read extensively in the past and do not think that it would be useful for the Tribunal to hear once again.

This is true, in particular, because we have just had the Hearing, and we have just had Closing Arguments in which the Parties have been able to put forward their best evidence with respect to the testimony that came out of the Hearing. And it serves the Tribunal's best interest to hear it at the moment once the testimony is still fresh in the minds of the Tribunal. And, in Respondent's view, that best serves the purpose of the Tribunal.

However, if the Tribunal had questions and put those questions in writing to the Parties, of course Respondent would welcome that and be willing to respond to those questions.

From Respondent's perspective, it's most useful for the Tribunal to listen to responses to the Tribunal's own questions, much as the Tribunal was asking questions prior to cross-examination of the witnesses and experts in which the Tribunal was able to elicit responses to questions that were important to the Tribunal.

So, in Respondent's view, if the Tribunal has additional questions, Respondent would be happy to answer those. Respondent would ask the Tribunal to identify a limited number of pages in that circumstance so that it's not a substantially large submission. And that would directly respond to the Tribunal's questions. And if that were to happen, in Respondent's view, it should only be one simultaneous submission responding to those questions.

With respect to the Transcript, we had in the previous case had 30--we had originally had 45 days and agreed to 30 days. In this case, the PO4 asks--or identifies 45 days once the receipt of the sound recordings and Transcript have been received. With all due respect, we tried to do it in 30 days,

and it didn't work very well. So, unfortunately, it seems it will take longer to do than, ideally, one would hope. But, in any case, so we think that what is identified in PO4, Paragraph 53, is realistic, and more realistic than 30 days.

So, we would--if there were any questions from the Tribunal, we would suggest 15 days thereafter or so, as long as it doesn't fall on a weekend, to submit those questions--responses to the questions.

With respect to Cost Submissions, Respondent is of the view that there is only need for one simultaneous Cost Submission without arguments. At this point, we believe the Tribunal is obviously well-experienced Tribunal and will be able to determine cost appropriately as needed without any argumentation from the Parties.

And we would suggest that that would happen 21 days from the date on which the ICSID Secretary communicates to the Parties that the Arbitration is closed.

PRESIDENT HANEFELD: The positions are duly noted. We need to consult with each other briefly.

And--

(Comments off microphone.)

PRESIDENT HANEFELD: So, excuse us, please, for a minute, and then we--

(Overlapping speakers.)

MS. HAWORTH McCANDLESS: I'm sorry. Just in--because I know you're interested in leaving at a certain hour. But from our perspective, from Respondent's perspective, if you wish to notify us later, that's fine as well.

PRESIDENT HANEFELD: I think it will be a short discussion. We already pre-discussed what are the other things.

(Tribunal conferring.)

PRESIDENT HANEFELD: In light of the Parties' provisions, the Tribunal has discussed how to proceed and wishes to give the following directions.

With regard to the Transcript, we would like to stick to Section 53 of our Procedural Order 4, which provides a further 45 days' deadline after the date of receipt of the sound recordings or Transcripts, whatever is late. If the Parties manage

to do earlier, this would certainly be appreciated, but we do not want to impose a stricter deadline.

With regard to Claimant's request for Post-Hearing Briefs, in the light of fact that we had a 10-day Hearing, we understand if one of the Parties wishes some additional time to digest the evidence.

We would just mention now the following: We would request the Parties to be concise and refrain from repeating previous submissions. Now, please be so kind to focus on the assessment of the evidence, what both Parties have done already in their Oral Closing submissions, but this is what we are interested in.

As you may have seen, we have really carefully studied the documentary records, and now it's a reflection of the record in the light of what the witnesses and experts have testified.

With regard to questions, the Tribunal has discussed the issue of questions already, and we have no questions at the moment. So, the Parties should draft their Post-Hearing Submissions on the understanding that there will be no additional

questions from the Tribunal. We have asked a lot of questions during the Hearing, which may give an indication of what our--where are our points of unclarity for the Tribunal.

With regard to the time limit for the Post-Hearing Briefs, we heard Claimant proposing end of June for the Post-Hearing Briefs. The 40 days for the Transcript will only have expired on June 29, so maybe, in the light of that, a 30 June time limit for the Post-Hearing Briefs is not realistic; but, before we enter into this detail, we have not yet heard the Respondent's position on the time limit for Post-Hearing Briefs, if any.

The Parties are really at liberty and so forth. What would be a time limit realistic for the Respondent?

MS. HAWORTH McCANDLESS: I think that we were thinking 15 days after the Transcripts were finalized.

PRESIDENT HANEFELD: Which would lead us, then, to middle of July.

MS. HAWORTH McCANDLESS: Yes, that's

correct.

PRESIDENT HANEFELD: July 15. Would this be proper for both Parties?

MR. PRAGER: Well, we would have preferred a bit sooner. I mean, maybe, given the Tribunal's indication regarding the Transcripts, we can do it on the 7th of July.

MS. HAWORTH McCANDLESS: Well, yeah. The 14th, I think, of July is what it would be. I mean, we don't know exactly--I haven't done the calculation, but I think we were thinking approximately 14th of July. And partly that--I mean, perhaps it doesn't affect lots of people here, but there is a holiday in the United States on the 4th of July. So...

PRESIDENT HANEFELD: I think, then, we can fix 14th of July and have a realistic time frame after the finalization of the Transcript.

With regard to the page limit, we heard that Claimant proposed a page limit of 100 pages. We do not want to restrict any Party any further, but we can just repeat: It's really not about the quantity of pages that will matter.

You asked for specific directions as to format, footnotes, and these kind of details. We would kindly request the Parties to notify us of any agreement that they can reach on these details, because I'm really not an expert on formatting details, and I think I will not become one.

So, I think this was the issue on Post-Hearing Briefs, or have I missed a point?

(Comments off microphone.)

PRESIDENT HANEFELD: Then we come to the costs.

We appreciate the Parties' proposal that we have very short statements without reasonings, so it's more or less an affidavit by Counsel, of the costs that have been incurred.

MS. HAWORTH McCANDLESS: Sorry. Just going back to the Post-Hearing Submissions. Are you accepting the 100 pages proposed by Counsel for Claimant?

If you'd like our view, we would like something shorter. So, it would be--first of all, we had none, but then I would say perhaps 50 or something

that would be less than 100.

I didn't understand whether or not the Tribunal was saying that the Tribunal was agreeing with Claimant's proposal of 100 pages.

PRESIDENT HANEFELD: Yes. We do not want to limit that.

MS. HAWORTH McCANDLESS: Okay.

PRESIDENT HANEFELD: And our understanding is that we will have, in principle, only one round for Cost Submissions unless a Party sees an urgent need to give comments.

And for those time limits, we thought or considered the Respondent's proposal. You suggested that we stipulate 21 days from official closing of the proceedings?

MS. HAWORTH McCANDLESS: Yes, the notification that often comes close to the finalization of an Award or Decision. So, yes, it's 21 days from that notification.

PRESIDENT HANEFELD: Yes. We can proceed on this basis.

So, we do not have a fixed date yet, then,

for the Cost Submissions, but we will notify the Parties accordingly.

Is there any additional aspects we would need to discuss on the post-hearing steps?

MS. HAWORTH McCANDLESS: Yes. Sorry. I may have missed it. Did the Tribunal have a view on whether arguments would be permitted in the Cost Submission or no arguments?

PRESIDENT HANEFELD: Sorry. I was not clear. We thought about without reasoning.

MS. HAWORTH McCANDLESS: Without reasoning. Thank you.

PRESIDENT HANEFELD: In the form of an affidavit.

MS. HAWORTH McCANDLESS: Thank you.

PRESIDENT HANEFELD: So, if there is nothing more to discuss for the moment, it remains on us to thank the Parties and the Counsel of both sides for this excellent preparation and conduct of this Hearing.

We particularly thank and appreciate the amount of hard work done during these days and also in

the course of today. We also thank the United States for having submitted their observations and having attended today again the Hearing.

Our great thanks go to all support people that are here in the room and that are outside the room, and I want to extend our particular thanks to the technicians, to the Interpreters, to our excellent Court Reporters, which provided us--and all the staff outside of this room, which provided us with such an exceptional service for the past 10 days.

And I also wish to thank particularly our Secretary, Ms. Planells Valero, for all the work and support for the Parties during now more than two years. I highly appreciated and highly appreciate to work with Ms. Planells Valero, and also my thanks to our Secretary, Charlotte Matthews.

Before we now close the Hearing and we wish you all safe travels, may I kindly ask the Parties whether they are satisfied so far with the conduct of these proceedings, including the Hearing?

MR. PRAGER: Madam President and Members of the Tribunal, we are subject to any objections that we

have made, and I want to use that opportunity to thank the Members of the Tribunal very, very much for their attention to the arguments through witness evidence over the past two weeks. It has been really a great pleasure arguing before this Tribunal.

I also wanted to thank the team from Sidley and from Estudio Navarro and the members of the Peruvian Government. It was a pleasure spending another two weeks with you.

And I can only--I want to thank the Tribunal's Secretary for so diligently taking notes, and the Secretary of ICSID, Ms. Planells Valero, and I wanted to second all the thanks you gave to the really excellent Interpretation and Court Reporter staff, and to the entire ICSID team that made it possible for us to have, like, all the good food, coffee, and even cheese.

So, we are enormously appreciative. Thank you very much.

PRESIDENT HANEFELD: Thank you very much.

(Comments off microphone.)

MR. PRAGER: So, let me--I forgot that you

are, for a long time, no longer at Sidley. So, obviously, you are included, Stanimir.

MS. HAWORTH McCANDLESS: Madam President, Members of the Tribunal, on behalf of the Republic of Perú, we also thank you. It has been a great pleasure, and we really appreciate and have no complaints about the handling of the proceeding by the Tribunal.

I think all Parties' rights were heard, and we appreciate that the Tribunal was very well-prepared for the Hearing. It makes it very useful for Counsel.

And thank you to ICSID Secretary for having an unenviable job of managing all of us--so, thank you very much for all of your time, and I'm sorry for all the late submissions--and also for the President's assistant. Thank you for all of your assistance to her and to the Tribunal.

Of course, to our opposing Counsel, I will just say everybody at that table, but of course--and also Party representatives, thank you for engaging in an active dialogue and discussion, and also the rest of our--I'll say for all of the team on our side for

all of their long hours and work.

And to the Translators and Court Reporters, thank you very much. We all apologize for the speed with which we speak, and apologize for not giving as much time in between translations as needed to make your work a lot easier. Apologies for making that hard, but thank you very much for all time that you have committed to this.

And to the U.S. Government as appearing as a Non-Disputing Party and providing comments and your input into the Hearing.

So--and thank you to ICSID Secretariat, as a general matter, for providing the facilities, and, of course, the food and beverages.

So, thank you very much on behalf of the Republic of Perú.

PRESIDENT HANEFELD: Thank you. We are pleased about this positive feedback, and now thereby declare the Hearing closed, and wish you all very safe travels back home.

Thank you.

(Whereupon, at 1:08 p.m., the Hearing was

concluded.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing English-speaking proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the English-speaking proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

Dawn K. Larson