

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO ARB/23/50

GLENCORE INTERNATIONAL AG

CI PRODECO SA

CONSORCIO MINERO UNIDO SA

&

CARBONES DE LA JAGUA SA

Claimants

-v-

THE REPUBLIC OF COLOMBIA

Respondent

**SUMMARY OF CLAIMANTS' POSITION
ON JURISDICTION AND ADMISSIBILITY**

12 OCTOBER 2026

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1. Glencore International AG (**Glencore**), CI Prodeco SA (**Prodeco**), Consorcio Minero Unido SA (**CMU**), and Carbones de La Jagua SA (**CDJ**) and jointly with Prodeco and CMU, the **Subsidiaries**) summarize their position on jurisdiction and admissibility in the above-captioned proceedings initiated pursuant to the 2006 Agreement between the Republic of Colombia (**Colombia**) and the Swiss Confederation on the Promotion and Reciprocal Protection of Investments (the **Treaty**).

I. CLAIMANTS' CLAIMS FALL WITHIN THE TRIBUNAL'S JURISDICTION AND ARE ADMISSIBLE

2. The Tribunal has jurisdiction over this dispute, and Claimants' claims are admissible. Colombia raises five objections, none of which has merit. Two concern Claimants' claims arising from the liquidation of the Mines' Operative Contracts. Colombia argues that: (a) those claims are contractual in nature and therefore fall outside the Tribunal's jurisdiction and, relatedly, are rendered inadmissible by the contracts' forum selection clauses; and (b) they constitute an abuse of process because the same claims are being pursued domestically by the Subsidiaries against the National Mining Agency (**ANM**). The remaining three objections concern Prodeco and Glencore's claim arising from Judgment T-375. Colombia contends that the claim: (c) is barred by the Treaty's fork-in-the-road clause; (d) is premature because the judgment has not yet caused compensable harm; and (e) does not satisfy the requirements for ancillary claims. Each objection fails.

A. CLAIMANTS' CLAIMS ARE TREATY CLAIMS, AND THE CONTRACTUAL FORUM SELECTION CLAUSES ARE IRRELEVANT

3. Article 11 of the Treaty grants the Tribunal jurisdiction over claims concerning alleged breaches of the Treaty. That is precisely what Claimants bring. Claimants do not ask the Tribunal to decide any breach of the Operative Contracts. They claim that Colombia breached Articles 4(1) and 4(2) of the Treaty by treating their investments unfairly, inequitably and unreasonably.

4. Whether a claim is contractual or treaty-based depends on its “fundamental basis.” The relevant inquiry is not whether the dispute has some connection to a contract, but whether Colombia’s conduct is to be measured against contractual or Treaty standards. Here, Claimants contend that Colombia breached the Treaty through a course of conduct that included unjustifiably prolonging the liquidation, and compelling Claimants to maintain the Mines in operative condition during this prolonged period at substantial cost and for no legitimate purpose. Whether that conduct was unlawful depends on Treaty standards, not contractual standards. The claim’s “fundamental basis” is that of a treaty claim, not a contract claim.
5. Colombia’s attempt to characterize the dispute as purely contractual by asserting that the ANM acted as a contractual party rather than in the exercise of *puissance publique* misses the point. As a matter of law, Treaty liability does not disappear merely because the challenged conduct occurred in a contractual setting. In any event, Colombia’s characterization is untenable on the facts. The liquidation process was shaped by sovereign and regulatory decisions reflecting Colombia’s evolving mining policy and involved uncoordinated actions by multiple State actors, including the Presidency, multiple ministries and agencies, the legislature, and the courts. Colombia cannot insulate that conduct from Treaty scrutiny by labeling it contractual.
6. Because Claimants assert Treaty claims, the Operative Contracts’ forum selection clauses are irrelevant. An investor holding rights under both a contract and a treaty has a self-standing right to pursue the treaty remedy. The objection is weaker still with respect to Glencore, which is not a party to the Operative Contracts and cannot be bound by clauses to which it never consented.

B. THERE IS NO ABUSE OF PROCESS

7. Colombia’s abuse of process objection rests on the same false premise—that the liquidation claims are contractual—and fails with it. Abuse of process is an exceptional doctrine subject to a high standard. That standard is not met here.

Parallel domestic and international proceedings arising from related facts are common in investment arbitration and do not, without more, constitute abuse.

8. The domestic proceedings and this arbitration concern different parties, rights, causes of action, and sources of law. The domestic proceedings pursue contractual and statutory claims against the ANM under Colombian law. This arbitration concerns Colombia's Treaty violations and challenges a broader course of conduct attributable to multiple State organs. Claimants are therefore exercising distinct rights in distinct fora, not seeking to relitigate the same dispute.
9. Colombia's objection improperly repackages a fork-in-the-road theory that finds no support in either the Treaty or the facts. The domestic proceedings concern a different dispute and began only after this arbitration. If any road was chosen first, it was arbitration. Nor do speculative concerns about double recovery affect jurisdiction or admissibility. Any possible overlap in compensation is a matter for the Tribunal to address at the remedial stage. Claimants do not seek, and will not accept, double recovery and have committed to inform the Tribunal of any material developments in the domestic proceedings.

C. PRODECO AND GLENCORE'S JUDGMENT T-375 CLAIM IS NOT PRECLUDED BY THE TREATY'S FORK-IN-THE-ROAD CLAUSE

10. Colombia contends that Prodeco's unsuccessful request to partially annul Judgment T-375 (the *Local Annulment Request*) precludes the submission of the claim related to Judgment T-375 to arbitration, per Treaty Article 11(4). Yet properly interpreted, that provision applies only where the same investor has already referred the same Treaty dispute to a national court. Prodeco's Local Annulment Request did not allege a Treaty breach or seek a Treaty remedy. It raised Colombian law issues within an existing constitutional proceeding in which Prodeco was a defendant and sought partial annulment of Judgment T-375. It was not a separate proceeding submitting Claimants' present dispute for adjudication. Glencore did not file the request at all. Article 11(4) is therefore not engaged.

11. Colombia's objection also fails under either of the doctrinal tests invoked in fork-in-the-road jurisprudence. The approach adopted in *Pantechniki* arose under materially different treaty language and cannot override this Treaty's text. Even if applied, the objection would still fail because the Local Annulment Request and this arbitration derive from different legal sources and pursue different relief. The former arose under Colombian law and sought the partial annulment of Judgment T-375; the latter arises under the Treaty and seeks an indemnity for injuries caused by that judgment. The prevailing triple identity test likewise is not met because the parties, causes of action, and objects differ.

D. THE JUDGMENT T-375 CLAIM FALLS WITHIN THE TRIBUNAL'S JURISDICTION AND IS RIPE FOR ADJUDICATION

12. Colombia's prematurity objection confuses uncertainty about the extent of the injury with uncertainty regarding the existence of the injury itself. Article 11 does not require Claimants, as a jurisdictional condition, to prove that all loss has been incurred, fully quantified, or paid. Whether a claimant has established compensable loss goes to the merits and quantum of its claim, not to the Tribunal's authority to hear it.
13. In any event, Judgment T-375 has already caused cognizable harm. It finally and irrevocably obliges Prodeco to provide ethno-reparations to the Yukpa community. The pending proceedings before the Administrative Court of Valledupar concern implementation and quantification of that obligation, not its existence. A binding legal obligation can cause loss even prior to an outlay of funds and while its precise extent remains uncertain. The claim therefore challenges a final measure producing present legal effects, not a hypothetical future contingency.
14. For the same reason, the claim is ripe. The Treaty contains no requirement that Claimants await completion of domestic implementation proceedings or exhaust challenges to future implementing measures. Colombia's proposed rule would also conflict with Treaty Article 11(5), whose five-year limitation period runs from

knowledge of the events giving rise to the dispute. Judgment T-375 cannot simultaneously start the limitations clock and be treated as incapable of supporting a claim until later proceedings conclude. Claimants were entitled to challenge Judgment T-375 without waiting for subsequent implementation proceedings to run their course.

E. THE JUDGMENT T-375 CLAIM IS A PERMISSIBLE ANCILLARY CLAIM

15. Article 46 of the ICSID Convention and Rule 48 of the ICSID Arbitration Rules require an ancillary claim to arise directly out of the subject-matter of the dispute, fall within the parties' consent and ICSID's jurisdiction, and be timely presented. Colombia disputes only the direct connection requirement, which is satisfied here. The original claims concern the effective liquidation of the investment and resolution of the Mines' outstanding obligations. Judgment T-375 imposes an additional substantial liability. Complete resolution of the dispute therefore requires the Tribunal to address both sets of claims together.
16. Admitting the ancillary claim also promotes efficiency and causes Colombia no prejudice. Claimants filed it before the Tribunal was constituted and before Colombia filed any pleading. Declaring the claim inadmissible now would only force a second ICSID proceeding, with more cost and delay.

II. REQUEST FOR RELIEF

17. For these reasons, Claimants respectfully request that the Tribunal dismiss Colombia's objections in their entirety, declare that it has jurisdiction over Claimants' claims, confirm that those claims are admissible, and proceed to determine their merits.