

PCA Case No. 2013-15

**IN THE MATTER OF AN ARBITRATION UNDER THE AGREEMENT BETWEEN THE
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN
IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA FOR THE
PROMOTION AND PROTECTION OF INVESTMENTS, DATED MAY 24, 1988**

- and -

THE UNCITRAL ARBITRATION RULES (AS REVISED IN 2010)

- between -

SOUTH AMERICAN SILVER LIMITED (BERMUDA)

(the “Claimant”)

- and -

THE PLURINATIONAL STATE OF BOLIVIA

(the “Respondent”, and together with the Claimant, the “Parties”)

PROCEDURAL ORDER NO. 20

Tribunal

Dr. Eduardo Zuleta Jaramillo (Presiding Arbitrator)
Prof. Francisco Orrego Vicuña
Mr. Osvaldo César Guglielmino

June 1, 2016

I. Procedural History and Position of the Parties

1. By letter of May 23, 2016, the Plurinational State of Bolivia (“**Bolivia**” or the “**Respondent**”) requested the Tribunal to exclude from the record the following documentary evidence and allegations submitted by South American Silver Limited (“**SAS**” or the “**Claimant**”) with its Rejoinder Memorial to Respondent’s Objections to Jurisdiction and Admissibility (the “**Rejoinder on Jurisdiction**”):
 - (i) Exhibits C-303 to C-306, C-314, C-332, C-333 and C-335; and
 - (ii) Sections II(C)(1) and II(D)(3), and paragraphs 36 and 37 of the Rejoinder on Jurisdiction.
2. According to Bolivia, these documentary evidence and allegations exceed the scope established in Procedural Order No. 15 and, therefore, must be excluded from the record to preserve Bolivia’s due process.
3. By letter of May 26, 2016, the Claimant opposed Bolivia’s request regarding Exhibits C-303 to C-306, Exhibit C-314, paragraphs 36 and 37 and sections II(C)(1) and II(D)(3) of the Rejoinder on Jurisdiction.
4. On the other hand, SAS expressed its consent to have Exhibits C-332, C-333 and C-335 removed from the record. However, it stated that it reserves its right to subsequently seek that said documents be admitted in this arbitration pursuant to the terms of paragraph 6.4 of Procedural Order No. 1.

II. Tribunal’s Analysis and Decision

5. The Tribunal reviewed the request submitted by Bolivia by letter of May 23 and SAS’ response dated May 26, as well as the documents and allegations to which the Parties referred to in their communications.
6. The Tribunal notes that the Claimant accepted that Exhibits C-332, C-333 and C-335 submitted with its Rejoinder on Jurisdiction be excluded from the record. Consequently, the Tribunal will proceed to exclude these documents from the record of this arbitration.
7. With respect to Exhibit C-314 and sections II(C)(1) and II(E)(3)¹ of the Rejoinder on Jurisdiction, the Tribunal observes that they are documents and allegations relating to the Tribunal’s jurisdiction and, in particular, to what Bolivia has denominated as the “clean hands” jurisdictional objection.
8. With respect to Exhibits C-303 to C-306, albeit they are not cited in the Rejoinder on Jurisdiction, they appear enclosed to Ralph Fitch’s witness statement, which is submitted to rebut Witness X, whose declaration also refers to the issue Bolivia has presented as “clean hands” and which was submitted only with Respondent’s Rejoinder.
9. Paragraphs 36 and 37 refer to the testimonies of Andrés Chajmi and Witness X, who testify on aspects relating to what Bolivia has presented as the clean hands objection, including the events

¹ In their respective communications dated May 23 and 26, 2016, the Parties make reference to Section II(D)(3) of the Rejoinder on Jurisdiction. The Tribunal notes that the Rejoinder on Jurisdiction does not contain a Section II(D)(3). However, based on the Parties’ communications, the Tribunal understands that Bolivia’s request refers to Section II(E)(3) of the Rejoinder on Jurisdiction, titled “*Messrs. Cardenas and Fernandez’ Kidnap occurred due to Bolivia’s failure to protect the Project and its own citizens*”.

of the meeting of May 18, 2012. The testimonies of Andrés Chajmi and Witness X were only incorporated with Respondent's Rejoinder.

10. The jurisdiction of the Tribunal is precisely the issue that the Rejoinder on Jurisdiction must address; hence, the Tribunal finds no reason for these documents and allegations to be excluded from the record.
11. In view of the foregoing, the Tribunal decides:
 - a. To exclude from the record Exhibits C-332, C-333 and C-335 submitted by the Claimant with its Rejoinder on Jurisdiction; and
 - b. To reject Bolivia's request regarding Exhibits C-303 to C-306, Exhibit C-314, paragraphs 36 and 37 and sections II(C)(1) and II(E)(3) of the Rejoinder on Jurisdiction.

Place of the Arbitration: The Hague, the Netherlands



Dr. Eduardo Zuleta Jaramillo
(Presiding Arbitrator)

On behalf of the Tribunal