

PCA CASE N° 2016-39/AA641
ARBITRATION UNDER THE RULES OF ARBITRATION OF THE
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

GLENCORE FINANCE (BERMUDA) LTD

Claimant

-v-

PLURINATIONAL STATE OF BOLIVIA

Respondent

CLAIMANT'S REQUEST FOR THE
PRODUCTION OF DOCUMENTS ON
QUANTUM

23 AUGUST 2019

(INCLUDING BOLIVIA'S OBJECTIONS OF 6 SEPTEMBER 2019 AND CLAIMANT'S REPLIES OF 20 SEPTEMBER 2019)



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1. Pursuant to paragraph 5.1 of the Tribunal's Procedural Order No 1 of 31 May 2017 and the Annex of the Tribunal's Procedural Order No 7 of 29 July 2019, Claimant hereby submits its Requests for the Production of Documents (**Requests**).¹ These Requests are submitted in the form of a Redfern Schedule following the model attached to the Tribunal's Procedural Order No 2 of 31 January 2018 as Annex 2, and are consistent with the IBA Rules on the Taking of Evidence in International Arbitration (2010) (**IBA Rules**).²
2. The Requested Documents, as defined below, are relevant to the case and material to its outcome, for the reasons explained below.
3. The Requested Documents are not within Claimant's possession, custody, or control. Claimant reasonably assumes that the Requested Documents exist and are within the possession, custody, or control of Respondent, because the Requested Documents were created by or for Respondent, and/or provided to Respondent (and not to Claimant), and/or should be kept and maintained by Respondent in the ordinary course of business. To the extent that the Requested Documents did exist but are said to no longer exist and/or be in Respondent's possession, custody, or control, Respondent should identify such Documents and the circumstances in which they are said to have been lost and/or destroyed and/or to have left Respondent's possession, custody, or control. To the extent that the Requested Documents ought to have been generated by Respondent in the ordinary course of business, but were not so generated, Respondent should identify such Documents and the reasons why they were not so generated.
4. Documents in Respondent's possession, custody, or control include documents in the possession, custody, or control of Respondent, State organ, and/or State-owned entities, parent entities, holding companies, affiliates, subsidiaries, and any company or other entity or person controlling, under common control and/or controlled by, managed by or otherwise affiliated with such organs and companies, including their respective State organs, principals, officers, directors, employees, representatives, or agents during the time periods relevant to these Requests. For the avoidance of doubt, Documents in Respondent's possession, custody, or control include Documents in the possession, custody, or control of State organs and entities at the relevant time(s), and also Documents that may be in the possession, custody, or control of the entities that currently oversee, own in whole or in part, and/or beneficially own the Tin Smelter, the Antimony Smelter, the Tin Stock and the Colquiri Mine.
5. Claimant requests that responsive documents be numbered by Respondent and produced in an electronic form sufficient to identify each separate document, document families (*eg*, e-mails and their attachments) and the relationship between documents within a family (*eg*, multiple attachments to an e-mail). In addition, in the event that the native files of the Requested Documents exist (*eg*, files with Microsoft Excel or Microsoft Outlook format), Claimant requests that Respondent produce said files in their native format.

¹ All capitalized terms not defined herein have the meaning ascribed in the Glossary included in Claimant's Rejoinder on Jurisdictional Objections dated 22 January 2019.

² IBA Rules, Articles 3(2) and 3(3).

6. Claimant reserves the right to amend or supplement these Requests in light of the documents produced (or not produced) by Respondent. Claimant also reserves the right to amend or supplement these Requests should Respondent seek to raise any new allegations or produce any additional evidence.

Definitions

7. As used in these Requests:

“*26 de Febrero Cooperative*” means the Cooperativa Minera 26 de Febrero Ltda.

“*Bolivia*” or “*Respondent*” means the Plurinational State of Bolivia.

“*Claimant’s Experts*” means Compass Lexecon, Roscoe Postle Associates Inc and architect Ms Gina Russo.

“*Colquiri*” means Compañía Minera Colquiri SA.

“*Colquiri Lease*” means the lease agreement for the Colquiri Mine between the Ministry of Trade, Comibol, Colquiri and Comsur dated 27 April 2000.

“*Colquiri Mine*” means the tin and zinc mine in the town of Colquiri.

“*Comibol*” means the State-owned Corporación Minera de Bolivia.

“*Comsur*” means the Bolivian-based Compañía Minera del Sur SA.

“*Concentrator Plant*” means the concentrator plant of the Colquiri Mine.

“*Document*” means a writing or recording of any kind, whether recorded on paper, electronic means, audio or visual recordings, or any other mechanical or electronic means of storing or recording information under Bolivia’s possession, custody or control, including, but not limited to, e-mails, faxes, correspondence, memoranda, working drafts, loose and pad notes, presentations, internal files, guidelines, charts, advertising or reporting material, contemporaneous meeting notes, minutes and analyses, advice or recommendations, records of discussions or deliberations, draft decisions or assessments, orders or instructions, however retained, and whether or not prepared by Respondent. Documents recorded on “electronic means” include Documents that are readily accessible from computer systems and other electronic devices and media, Documents stored on servers and back-up systems, and electronic Documents that have been software deleted. Any reference to “Documents” includes drafts of those Documents.

“*EMC*” means the State-owned Empresa Minera Colquiri.

“*EMV*” means the State-owned Empresa Metalúrgica Vinto.

“*Expert Report of Compass Lexecon*” means the expert report prepared by Mr Manuel Abdala and Ms Carla Chavich of the firm Compass Lexecon dated 15 August 2017.

“Expert Report of Diego Mirones” means the expert report prepared by Mr Diego Mirones Venegas dated 17 December 2017.

“Expert Report of Econ One” means the expert report prepared by Mr Daniel Flores of the firm Econ One Research Inc dated 18 December 2017.

“Expert Report of RPA” means the expert report prepared by Messrs Graham Clow and Richard Lambert of the firm Roscoe Postle Associates Inc dated 15 August 2017.

“Expert Report of SRK” means the expert report prepared by Mr Neal Rigby of the firm SRK Consulting (U.S.) Inc dated 18 December 2017.

“Glencore Bermuda” or **“Claimant”** means Glencore Finance (Bermuda) Ltd.

“Government” means the government of Bolivia, including its political subdivisions, entities, departments, agencies and organs, as well as the Ministry of Mining, Comibol, EMC and EMV.

“Lazcano I” means the First Witness Statement of Eduardo Lazcano dated 15 August 2017.

“Ministry of Mining” means the Ministry of Mining and Metallurgy of Bolivia.

“Moreira I” means the First Witness Statement of David Alejandro Moreira dated 17 December 2017.

“Old Tailings Plant” means the plant to exploit the old tailings of the Colquiri Mine.

“Requested Documents” means the Documents requested by Claimant pursuant to these Requests.

“Sinchi Wayra” means Sinchi Wayra SA, formerly known as Comsur.

“SoC” means Claimant’s Statement of Claim, including the Claimant’s Response to the Respondent’s Request for Bifurcation dated 15 August 2017.

“SoD” means Respondent’s Preliminary Objections, Statement of Defence, and Reply on Bifurcation dated 18 December 2017.

“Tin Smelter” means the Vinto tin smelter—the largest tin smelter in Bolivia.

“Villavicencio I” means the First Witness Statement of Ramiro Villavicencio dated 18 December 2017.

“Vinto” means Complejo Metalúrgico Vinto SA.

Redfern Schedule for Document Requests

No.	Documents or category of documents requested (requesting Party)	Relevance and materiality, incl. references to submission (requesting Party)		Reasoned objections to document production request (objecting Party)	Response to objections to document production request (requesting Party)	Decision (Tribunal)
		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
I. DOCUMENTS RELATING TO THE COLQUIRI MINE AND THE COLQUIRI LEASE						
1.	Complete copy of the annual operations reports (eg, <i>Memoria Anual</i> or <i>Anuario</i>) of EMC for the following years: (i) 2016, and (ii) 2018; as well as those of Comibol for the following years: (i) 2012, (ii) 2013, (iii) 2014, (iv) 2016, and (v) 2018.	SoC, ¶¶ 269-270 Lazcano I, ¶¶ 36-40 Expert Report of RPA, ¶¶ 86, 90-95 Expert Report of Compass Lexecon, ¶ 52 SoD, ¶¶ 645, 790-793 Moreira I, ¶¶ 66-67 Expert Report of SRK, ¶¶ 43-44 Expert Report of Econ One, ¶ 36	There is a dispute between the Parties as to whether the Colquiri Mine had sufficient resources and reserves to justify Claimant’s valuation of the Colquiri Mine based on its forecasted production until the termination of the Colquiri Lease in 2030 (SoC, ¶¶ 269-270; SoD, ¶¶ 645, 790-793). In its previous submissions, Bolivia introduced into the record EMC’s annual reports for 2014, 2015 and 2017 (R-338 , R-348 and R-233 , respectively), which contain information concerning reserves and resources of the Colquiri Mine for each of those years. These confirm that the Requested	<u>Request for EMC Reports for years 2016 and 2018</u> <i>In limine</i> , Claimant’s justification for this request suggests that Bolivia submitted EMC reports (R-338 , R-348 and R-233) to support its position regarding “ <i>the Colquiri Mine’s resources and reserves, and the life of the Mine</i> ”. Claimant’s suggestion is false. Neither Bolivia nor its experts relied on the EMC reports to estimate the Mine’s resources and/or reserves, or the Mine’s productive life.	Bolivia’s objections to Claimant’s Request 1 are without merit and should be denied for the following reasons: <u>Request for the annual operations reports of EMC for years 2016 and 2018</u> <i>In limine</i> , Claimant notes that –contrary to Bolivia’s contention– Claimant never suggested that	Request granted as reformulated by Claimant.

			<p>Documents contain information relevant to the case and material to its outcome, because they pertain to the accuracy of the Parties' claims and assumptions regarding the Colquiri Mine's resources and reserves, and the life of the Mine. However, Bolivia has only provided selected reports.</p> <p>Claimant notes that it has undertaken a reasonable search for the Requested Documents in public sources and was able to find only EMC's report for 2012-2013.</p>	<p>In any case, Bolivia objects to Claimant's request because Claimant has failed to establish how the Documents Requested would be relevant to its case and material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)).</p> <p><u>One</u>, Claimant submits in the arbitration that the Mine Lease's valuation date should be 29 May 2012 (Statement of Claim, ¶ 255). The Parties agree on the definition of FMV and, thus, that a willing buyer would only have had access to information available as of the valuation date to value the Mine Lease. As explained by Claimant's experts from Compass Lexecon, "[i]n assessing FMVs, <u>we use an ex-ante approach to valuation which means that [...] we use all information and expectations on the value of the assets as known as of their respective dates of [alleged] expropriation [...]</u>" (emphasis</p>	<p>Bolivia submitted EMC's 2014, 2015 and 2017 annual operations reports (R-338, R-348, R-233) as exhibits in this arbitration for any particular reason. As is clear from Claimant's justification for its Request 1, Claimant's position is merely that said reports (R-338, R-348, R-233) "<i>contain information concerning reserves and resources of the Colquiri Mine</i>" for each of 2014, 2015 and 2017. Furthermore, Bolivia's submission of EMC's annual operations reports for 2014, 2015 and 2017 in this</p>	
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				<p>added) (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32).</p> <p>Given that the Documents Requested pertain to a period after the Mine Lease’s valuation date proposed by Claimant, they cannot be relevant to Claimant’s case.</p> <p><u>Two</u>, EMC, under the State control, cannot be used as a proxy to determine what would Colquiri – under Glencore’s control – (or a willing buyer’s) had done had it continued to operate the Mine. EMC is a State-owned company (thus subject to different incentives and economics than a private company) which has an unlimited</p>	<p>arbitration (R-338, R-348, R-233) is in itself sufficient to establish the relevance and materiality of the Requested Documents.</p> <p>EMC’s reports for the years 2016 and 2018 are necessary to complete the record and provide the full context for the information provided in Bolivia’s Exhibits R-338, R-348 and R-233.</p> <p>In any event, Claimant has established that EMC’s annual</p>	

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				<p>time horizon to recover its investments (it is not limited by a lease contract expiry date) and is not required to pay royalties. Therefore, EMC's post June 2012 data (such as that contained in the Documents Requested) is based on very different assumptions and is therefore not relevant to Claimant's case.</p> <p><u>Three</u>, the lack of relevance of the Documents Requested is further confirmed by the fact that, although, as confirmed by Claimant, the EMC reports pertaining to years 2012 and 2013 are publicly available (Claimant "<i>was able to find only EMC's reports for 2012-</i></p>	<p>operations reports for years 2016 and 2018 are relevant to respond to Bolivia's own <i>ex post</i> arguments:</p> <p><i>First</i>, as Bolivia correctly states, the Parties agree that Colquiri should be valued on the basis of its FMV as at the date of valuation, and that a willing buyer would only have had access to information available as at the date of</p>	

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				<p>2013”), Claimant did not rely on any of these reports or referenced them in any of its prior submissions in this arbitration. For instance, Claimant did not use the information in these reports to assess the “<i>accuracy of [its] claims and assumptions regarding the Colquiri Mine’s resources and reserves</i>” (which is now, misleadingly, the basis used by Claimant to justify its request for other, post-valuation date EMC reports).</p> <p><u>Request for Comibol Reports for years 2012, 2013, 2014, 2016 and 2018</u></p> <p>Bolivia objects to Claimant’s request because Claimant has</p>	<p>valuation. Claimant maintains this position.</p> <p>However, Bolivia frequently refers to the Colquiri Mine’s performance after the valuation date in order to argue that such performance supports its allegations (<i>see</i> SoD, ¶¶ 794, 799, 807, 816, 820, 829, 836; Moreira I, ¶¶ 32, 35-38, 43, 53-54, 59, 66-67, 69, 72-75, 80, 94; Expert Report of SRK, ¶¶ 23, 25, 44,</p>	

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				<p>failed to establish how the Documents Requested would be relevant to its case and material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)).</p> <p><u>One</u>, Claimant has not even attempted to explain why Comibol’s annual operations reports would be relevant to its case or material to the outcome of this dispute. Indeed, Claimant does not mention these reports at all in the justification for its request.</p> <p>In any case, given that Comibol owns several mines in Bolivia, any Comibol report would contain information well beyond the scope of this dispute. This confirms the lack of</p>	<p>49, 54-55, 62, 76, 81, 95; Expert Report of Econ One, ¶¶ 40, 45).</p> <p>Bolivia should not be allowed to cherry pick which <i>ex post</i> data is available in this arbitration, and which is not.</p> <p><i>Second</i>, the Requested Documents are relevant to respond to Bolivia’s allegation that Claimant’s reliance on the “<i>use and replenish</i>” method is not appropriate to</p>	

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				<p>relevance of the Documents Requested and further shows that Claimant's request amounts to a fishing expedition.</p> <p><u>Two</u>, as explained above, Claimant submits that the Mine Lease should be valued as of 29 May 2012 and the Parties agree that a willing buyer would only have had access to information available as of the valuation date to value the Mine Lease (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32). Given that the Documents Requested pertain to a period after the valuation date, they are neither relevant to Claimant's case nor</p>	<p>estimate the Colquiri Mine's reserves and resources (SoD, ¶¶ 645, 790-793; Expert Report of SRK, ¶¶ 43-44; Expert Report of Econ One, ¶ 36).</p> <p>Specifically, the Requested Documents are relevant insofar as they provide information on the Colquiri Mine's resources and reserves in <i>each year</i> that the Colquiri Mine was under Bolivia's management,</p>	

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				<p>material to the outcome of this dispute.</p> <p><u>Three</u>, as explained above, EMC cannot be used as a proxy to determine what would Colquiri – under Glencore’s control – (or a willing buyer) had done had it continued to operate the Mine. Therefore, the data in the Comibol reports pertaining to EMC’s operation of the Colquiri Mine cannot be relevant to Claimant’s case.</p> <p>In any case, Bolivia confirms that Comibol did not publish annual operations reports (e.g. Memoria Anual) for the years 2012, 2013, 2014, 2016 and 2018.</p>	<p>following its nationalization.</p> <p><i>Third</i>, Bolivia’s argument that Claimant did not rely on the EMC reports for the years 2012 and 2013 notwithstanding their availability in public sources is <i>non sequitur</i>.</p> <p>As explained above, Claimant had no reason to rely on <i>ex post</i> information and data until Bolivia introduced arguments relying on such <i>ex post</i></p>	

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					<p>information and data in this arbitration. Claimant's Reply on Quantum will be Claimant's first opportunity to respond to Bolivia's <i>ex post</i> arguments.</p> <p><u>Request for the annual operations reports of Comibol for years 2012, 2013, 2014, 2016 and 2018</u></p> <p>Claimant notes Bolivia's confirmation that Comibol did not publish annual</p>	

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					<p>operations reports for the years 2012, 2013, 2014, 2016 and 2018.</p> <p>***</p> <p>For the aforementioned reasons, Claimant respectfully requests that the Tribunal order Bolivia to produce complete copies of the annual operations reports (eg, <i>Memoria Anual</i> or <i>Anuario</i>) of EMC for the following years: (i)</p>	

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					2016, and (ii) 2018.	
2.	<p>Documents relating to the reserves and/or resources of the Colquiri Mine between 30 May 2012 and 14 October 2019, including but not limited to resource and reserve reports, estimations, audits and/or statements, as well as independent feasibility evaluations.</p> <p>For the sake of completeness, this category includes all Documents that correspond to the description provided above, regardless of whether or not their titles include the terms “reserves” (solely), “reserves and ore,” “ore reserves and mineral resources,” or any other variations.</p>	<p>SoC, ¶¶ 269-270</p> <p>Lazcano I, ¶¶ 36-40</p> <p>Expert Report of RPA, ¶¶ 86, 90-95</p> <p>Expert Report of Compass Lexecon, ¶ 52</p> <p>SoD, ¶¶ 645, 790-793</p> <p>Moreira I, ¶¶ 66-67</p> <p>Expert Report of SRK, ¶¶ 43-44</p> <p>Expert Report of Econ One, ¶ 36</p>	<p>There is a dispute between the Parties as to whether the Colquiri Mine had sufficient resources and reserves to justify Claimant’s valuation of the Colquiri Mine based on its forecasted production until the termination of the Colquiri Lease in 2030 (SoC, ¶¶ 269-270; SoD, ¶¶ 645, 790-793).</p> <p>The Requested Documents contain information relevant to the case and material to its outcome, because they pertain to the accuracy of the Parties’ claims and assumptions regarding the Colquiri Mine’s resources and reserves, and the life of the Mine.</p>	<p>Bolivia objects to Claimant’s request because Claimant has failed to establish how the Documents Requested would be relevant to its case and material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)).</p> <p><u>One</u>, Claimant submits in the arbitration that the Mine Lease’s valuation date should be 29 May 2012 (Statement of Claim, ¶ 255). The Parties agree on the definition of FMV and, thus, that a willing buyer would only have had access to information available as of the valuation date to value the Mine Lease. As explained by</p>	<p>Bolivia’s objections to Claimant’s Request 2 are without merit and should be denied for the following reasons:</p> <p><i>First</i>, as explained in relation to Request 1, above, Bolivia correctly states that the Parties agree that Colquiri should be valued on the basis of its FMV as at the date of valuation, and that a willing</p>	Request granted.

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				<p>Claimant’s experts from Compass Lexecon, “[i]n assessing FMVs, <u>we use an ex-ante approach to valuation which means that [...] we use all information and expectations on the value of the assets <u>as known as of their respective dates of [alleged] expropriation [...]]”</u> (emphasis added) (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32).</u></p> <p>Given that the Documents Requested pertain to a period after the Mine Lease’s valuation date, they cannot be relevant to Claimant’s case or material to the outcome of the dispute.</p>	<p>buyer would only have had access to information available as at the date of valuation. Claimant maintains this position.</p> <p>However, Bolivia frequently refers to the Colquiri Mine’s performance after the valuation date in order to argue that such performance supports its allegations (<i>see</i> SoD, ¶¶ 794, 799, 807, 816, 820, 829, 836; Moreira I, ¶¶</p>	

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				<p><u>Two</u>, the lack of relevance of the Documents Requested is further confirmed by the fact that, although, as confirmed by Claimant, the EMC reports pertaining to years 2012 and 2013 are publicly available and “<i>contain information concerning reserves and resources of the Colquiri Mine for each of those years</i>” (see Request 1 above), neither Claimant nor its experts have used this information to assess “<i>the Colquiri Mine’s resources and reserves, and the life of the Mine</i>”. Therefore, as with EMC reports for years 2012-2013, other post-valuation date information on the Colquiri Mine’s</p>	<p>32, 35-38, 43, 53-54, 59, 66-67, 69, 72-75, 80, 94; Expert Report of SRK, ¶¶ 23, 25, 44, 49, 54-55, 62, 76, 81, 95; Expert Report of Econ One, ¶¶ 40, 45).</p> <p>Bolivia should not be allowed to cherry pick which <i>ex post</i> data is available in this arbitration, and which is not.</p> <p>The Requested Documents are therefore relevant to provide a complete picture of the</p>	

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				resources and reserves is also irrelevant to Claimant's case.	<p>Colquiri Mine's performance after the date of valuation, which Bolivia has put in issue.</p> <p><i>Second</i>, as also explained in relation to Request 1, above, Bolivia's argument that Claimant did not rely on the EMC reports for the years 2012 and 2013 notwithstanding their availability in public sources is <i>non sequitur</i>.</p> <p>As explained above,</p>	

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					<p>Claimant had no reason to rely on <i>ex post</i> information and data until Bolivia introduced arguments relying on such <i>ex post</i> information and data in this arbitration. Claimant's Reply on Quantum will be Claimant's first opportunity to respond to Bolivia's <i>ex post</i> arguments.</p> <p style="text-align: center;">***</p> <p>For the aforementioned reasons,</p>	

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					Claimant respectfully requests that the Tribunal order Bolivia to produce the Documents requested in Request 2.	
3.	Documents relating to the technical descriptions of either or both the San José winze (R-37), including but not limited to Documents relating to their respective engineering, blueprints, designs, and the operating manuals for the installed machinery and equipment in each of them.	SoD, ¶ 799 Moreira I, ¶¶ 23, 29, 30, 42 Expert Report of SRK, ¶ 57 Expert Report of Econ One, ¶ 31	There is a dispute between the Parties as to whether Claimant’s expansion plans for the Colquiri Mine would have resulted in the production levels forecasted by Claimant. In particular, Respondent alleges that there were bottlenecks inside the Colquiri Mine – such as the capacities of the San José and Victoria winzes– that were not addressed in the expansion plan for the Colquiri Mine (SoD, ¶ 799; Moreira I, ¶¶ 23, 29, 30, 42). The Requested Documents are relevant to the case and	Bolivia objects to Claimant’s request for the following reasons: <i>First</i> , Claimant has failed to demonstrate that the Documents Requested are not in its possession, custody or control (IBA Rules, Art. 3(3)(c)(i)) yet they pertain to operations prior to 2012. <u>One</u> , Claimant justifies its request with reference to Bolivia’s assertion that “ <i>there were bottlenecks inside</i>	Bolivia’s objections to Claimant’s Request 3 are without merit and should be denied for the following reasons: <i>First</i> , Claimant notes that, to support its arguments regarding the alleged existence of bottlenecks affecting the	Request granted.

			<p>material to its outcome, because they are relevant to assessing the production capacity of the Colquiri Mine.</p>	<p><i>the Colquiri Mine – such as the capacities of the San José and Victoria winzes</i>”. Claimant alleges that the Documents Requested will enable it to assess “<i>the production capacity of the Colquiri Mine</i>”.</p> <p>The bottlenecks referred to by Bolivia are those existing at the time of Glencore’s operations of the Mine (Statement of Defence, ¶ 799). The San José and Victoria winzes were already operating inside the Mine when Glencore operated it (before June 2012), as confirmed by Figure 7 of RPA’s Report. Claimant is thus requesting Documents that it already has (<i>e.g.</i>, “<i>technical descriptions</i>” of the winzes it operated; “<i>operating manuals for the installed machinery and equipment in each of [the winzes]</i>” it operated; etc.) and, in any event, that it does not need to assess the constraints of the winzes in light of its</p>	<p>San José and Victoria winzes in the Colquiri Mine, Bolivia relies on Exhibit R-37, which is a document that was prepared by Comibol in 2017 (SoD, ¶ 799; Moreira I, ¶¶ 23, 29, 30, 42).</p> <p>The Requested Documents are thus relevant to respond to Bolivia’s allegations based on the information and statements contained in R-37.</p> <p><i>Second</i>, considering that Exhibit R-37 was created by Comibol in 2017, approximately five years after the nationalization of the Colquiri Mine, it is evident that the Requested</p>	
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				<p>experience operating them.</p> <p><u>Two</u>, RPA has further confirmed having all the technical data about the winzes.</p> <p>RPA's report contains a very detailed description of the technical characteristics of the Victoria winze (<i>"[the] winze is two meters by five meters and is a timber-lined rectangular three-compartment configuration. [...] Ore is hoisted in two tonne bottom-dump skips [...] level intervals in the Victoria winze are 40 m, increasing to 65 m for the deep section of the mine [...] the ramps are generally constructed with dimensions of 3.5 m x</i></p>	<p>Documents are not in Claimant's possession, custody or control.</p> <p>There is no basis for Bolivia's position that, because "[t]he Documents Requested ... pertain to Bolivia's burden of proof, ... Claimant has no right to request their production." Bolivia's argument is disingenuous considering that Bolivia itself has requested</p>	

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				<p>3.5 m”) (RPA Report, ¶¶ 101-103).</p> <p>RPA’s report further states that, while operating the Mine, the Glencore Group made investments to deepen the San Jose winze (RPA Report, ¶¶ 120-121), thus confirming that Claimant has both technical data and knowledge of the San José and Victoria winzes.</p> <p><u>Three</u>, exhibit R-37, a letter dated December 2017 and referenced by Claimant, already includes all relevant technical information on the winzes. The document has two subsections, titled “<i>Características técnicas winche cuadro Victoria</i>” and</p>	<p>documents from Claimant that pertain to Claimant’s burden of proof.</p> <p>***</p> <p>For the aforementioned reasons, Claimant respectfully requests that the Tribunal order Bolivia to produce the Documents requested in Request 3.</p>	

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				<p><i>“Características técnicas winche cuadro San Jose”</i>. Each of these sub-sections details, among others, (i) the power of the winzes’ engines, (ii) the capacity and speed of the winzes, (iii) the depth they can reach, (iv) the brand, type and length of the cables in the winzes, etc. This information more than suffices for Claimant and its experts to assess the capacities and constraints of the Victoria and San José winzes it operated prior to 2012.</p> <p><i>Second</i>, neither Claimant nor its experts rely in any way on the San José and Victoria winzes for their valuation. Rather, as acknowledged by</p>		

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				<p>Claimant, it was Bolivia who referred to the constraints posed by the winzes and how they would prevent the Mine from reaching the production capacities forecasted by Claimant. The Documents Requested thus pertain to Bolivia's burden of proof, and Claimant has no right to request their production.</p> <p><i>Third</i>, even if Claimant's request pertained to Documents prepared after the reversion of the Mine Lease in June 2012 (which is not clear from Claimant's request, as it does not indicate a time period), the Documents Requested would still not be relevant to Claimant's case or</p>		

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)) because a willing buyer would only have had access to information available as of the valuation date to value the Mine Lease (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32).		
4.	Current technical flowsheet of the Concentrator Plant, including a description of its mass balance.	SoD, ¶¶ 759, 799 Lazcano I, ¶¶ 22-24 Moreira I, ¶¶ 32-38 Expert Report of SRK, ¶¶ 26, 39, 55-58	There is a dispute between the Parties as to whether Claimant’s expansion plans for the Colquiri Mine would have resulted in the production levels forecasted by Claimant. In particular, Respondent alleges that there were bottlenecks inside the Colquiri Mine –such as the alleged technical limitations of the Concentrator Plant– that were not addressed in the expansion plan of the Colquiri Mine (Lazcano I, ¶¶ 22-24;	Bolivia objects to Claimant’s request for the following reasons: <i>First</i> , Claimant has not established how the Documents Requested would be relevant to its case and material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)). Claimant submits in the arbitration that the Mine Lease’s valuation	Bolivia’s objections to Claimant’s Request 4 are without merit and should be denied for the following reasons: <i>First</i> , as explained in relation to Request 1, above, Bolivia correctly states	Request granted.

			<p>SoD, ¶¶ 759, 799; Moreira I, ¶¶ 32-38).</p> <p>The Requested Documents are relevant to the case and material to its outcome, because they are relevant to assessing the production capacity of the Colquiri Mine.</p>	<p>date should be 29 May 2012 (Statement of Claim, ¶ 255). The Parties agree on the definition of FMV and, thus, that a willing buyer would only have had access to information available as of the valuation date to value the Mine Lease. As explained by Claimant’s experts from Compass Lexecon, “[i]n assessing FMVs, <u>we use an ex-ante approach to valuation which means that [...] we use all information and expectations on the value of the assets as known as of their respective dates of [alleged] expropriation [...]</u>” (emphasis added) (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32).</p> <p>Given that the Documents Requested pertain to a period after the Mine Lease’s valuation date proposed by Claimant (“<u>current technical flowsheet of the Concentrator Plant [...]</u>”) (emphasis added), they cannot be relevant to Claimant’s</p>	<p>that the Parties agree that Colquiri should be valued on the basis of its FMV as at the date of valuation, and that a willing buyer would only have had access to information available as at the date of valuation. Claimant maintains this position.</p> <p>However, in its submissions, Bolivia and its experts refer to the Concentrator Plant’s performance after the date of valuation in order to argue that such performance supports its allegations (<i>see</i> SoD, ¶¶ 799, 807, 816, 820, 836; Moreira I, ¶¶ 32, 35-38; Expert Report</p>	
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				<p>case or material to the outcome of this dispute.</p> <p>Claimant confirms the lack of relevance of post-valuation date information when it seeks to justify its request based on Respondent’s statements about the “<i>bottlenecks inside the Colquiri Mine [...] – such as the alleged technical limitations of the Concentrator Plant</i>”. As already explained, the stated bottlenecks are those existing at the time Glencore was operating the Mine.</p> <p><i>Second</i>, Claimant has failed to establish that the Documents Requested are not in its</p>	<p>of SRK, ¶¶ 49, 55, 62; Expert Report of Econ One, ¶ 40).</p> <p>Bolivia should not be allowed to cherry pick which <i>ex post</i> data is available in this arbitration, and which is not.</p> <p>The Requested Documents are relevant to provide a complete picture of the Concentrator Plant’s performance after the date of valuation, which Bolivia has put in issue</p>	

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				<p>possession (IBA Rules, Art. 3(3)(c)(i)).</p> <p>As mentioned above, Claimant justifies its request with reference to Bolivia’s assertion that “<i>there were bottlenecks inside the Colquiri Mine – such as the alleged technical limitations of the Concentrator Plant</i>”. Claimant alleges that the Documents Requested will enable it to assess “<i>the production capacity of the Colquiri Mine</i>”.</p> <p>Given that Bolivia addressed the bottlenecks inside the Mine at the time Glencore was operating it, Claimant is requesting Documents that it already has and, in any case, that it does</p>	<p>in this arbitration.</p> <p><i>Second</i>, for the reasons explained above, the Requested Documents pertain to the technical characteristics of the Concentrator Plant <i>after</i> the Colquiri Mine was nationalized. Such Documents are not within Claimant’s custody, possession or control. There is no basis for Bolivia’s</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				not need to assess the limitations of the Concentrator Plant in light of its experience operating the Mine.	allegation to the contrary. *** For the aforementioned reasons, Claimant respectfully requests that the Tribunal order Bolivia to produce the Documents requested in Request 4.	

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5.	Documents containing and/or referring to any plans by EMC and/or Comibol to build a new concentrator plant and/or to recondition the existing Concentrator Plant for the processing of old tailings from the Colquiri Mine, including but not limited to any feasibility studies, minutes of meetings and resolutions of EMC's and Comibol's boards of directors relating to any such plans, internal and external consultants reports, business plans and any other forecasts and projects relating to any such plans.	<p>SoC, ¶ 52</p> <p>Lazcano I, ¶¶ 31-33</p> <p>Expert Report of Compass Lexecon, ¶¶ 26, 50, 56-57</p> <p>Expert Report of RPA, ¶¶ 28-41, 55-63, 129, 157</p> <p>C-61; C-91</p> <p>SoD, ¶¶ 625, 637, 653</p> <p>Moreira I, ¶¶ 56-59, 83, 90</p> <p>Expert Report of Econ One, ¶¶ 45-47</p> <p>Expert Report of SRK, ¶ 95</p>	<p>There is a dispute between the Parties as to the feasibility of Claimant's plan to build and operate the Old Tailings Plant (SoC, ¶ 52; SoD, ¶¶ 625, 637, 653).</p> <p>When announcing the conclusion of a contract to build a new concentrator plant for the Colquiri Mine on or around 15 April 2019, EMC's general manager confirmed that one of the plants in the Colquiri Mine would be used for the reprocessing of old tailings.³</p> <p>Thus, the Requested Documents are relevant to the case and material to its outcome, because they are relevant to assessing the feasibility of Claimant's plan</p>	<p><i>In limine</i>, Bolivia denies that the 4-paragraph online news article referenced by Claimant ("<i>Firman contrato para la construcción de la Planta Concentradora de Colquiri</i>") relates in any way to the reprocessing of tailings from the old tailings dam in the Colquiri Mine and, much less, that it suggests that EMC would carry out such reprocessing. As Bolivia has demonstrated, the Old Tailings Reprocessing Project "<i>ha[d] been evaluated several times over the last four decades (e.g., by Minproc in 1988 and</i></p>	<p>Bolivia's objections to Claimant's Request 5 are without merit and should be denied for the following reasons:</p> <p><i>First</i>, Claimant notes <i>in limine</i> that Bolivia grossly mischaracterizes the news article referenced in footnote 3. The news article expressly notes that, "[e]l gerente de la empresa Colquiri,</p>	<p>Request granted.</p>

³ "Firman contrato para la construcción de la Planta Concentradora de Colquiri," *Éxito Noticias*, 15 April 2019, available at <https://www.exitonoticias.com.bo/articulo/economia/firman-contrato-construccion-planta-concentradora-colquiri/20190415100110024278.html>.

			<p>to build and operate the Old Tailings Plant.</p>	<p><i>PAH in 2004) and, still, no one has invested on it [...]</i>” because the Project is not economically viable (Statement of Defence, ¶ 653).</p> <p>Bolivia objects to Claimant’s request for the following reasons:</p> <p><i>First</i>, Claimant fails to establish how the Documents Requested would be relevant to its case and material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)).</p> <p><u>One</u>, Claimant submits in the arbitration that the Mine Lease’s valuation date should be 29 May 2012 (Statement of Claim, ¶ 255). The Parties agree on the definition of FMV and, thus, that a willing buyer would only have had access to information available as of the valuation date to value the Mine Lease. As explained by Claimant’s experts from Compass Lexecon, “[i]n assessing FMVs, <u>we use an ex-ante approach to valuation</u></p>	<p><i>Sabino Arando, citado en un boletín institucional, remarcó la importancia del contrato, tomando en cuenta que, con esa planta [the new concentrator plant at the Colquiri Mine], serán dos: <u>una que trabajará con el dique de colas</u> y otra con la producción de la mina.”</i> It is clear from that statement that the plant that will “<i>work with the tailings dam</i>” will be used to reprocess the old tailings, whereas the other plant will be used for the Colquiri Mine’s production.</p> <p>In any event, several other news articles</p>	
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				<p><i>which means that [...] we use all information and expectations on the value of the assets <u>as known as of their respective dates of [alleged] expropriation [...]</u></i>) (emphasis added) (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32).</p> <p>Because the Documents Requested refer to EMC's and/or Comibol's <u>current</u> plans to build a new concentrator plant and/or to recondition the existing Concentrator Plant (as confirmed by</p>	<p>confirm that the recent contract for the construction of a new concentrator plant at the Colquiri Mine <i>does</i> relate to the reprocessing of tailings from the old tailings dam at the Colquiri Mine, and that EMC is planning to carry out such reprocessing.⁴</p> <p><i>Second</i>, as explained in</p>	

⁴ “Se firmó el contrato con la empresa Carlos Caballero SRL para la construcción de la planta concentradora de 2.000 toneladas por día en Colquiri”, COMIBOL Press Release, 12 April 2019, available at <http://www.comibol.gob.bo/index.php/24-noticias-inicio/2130-se-firmo-el-contrato-con-la-empresa-carlos-caballero-srl-para-la-construccion-de-la-planta-concentradora-de-2-000-toneladas-por-dia-en-colquiri>; “Bolivia seeks partner for Colquiri expansion,” International Tin Association, 12 May 2016, available at <https://www.internationaltin.org/bolivia-seeks-partner-for-colquiri-expansion/>; “Contract signed for new plant at Colquiri,” International Tin Association, 4 November 2016, available at <https://www.internationaltin.org/contract-signed-for-new-plant-at-colquiri/>.

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				<p>Claimant's reference to a news article dated 15 April 2019), these Documents cannot be relevant to Claimant's case or material to the outcome of this dispute.</p> <p><u>Two</u>, EMC cannot be used as a proxy to determine what would Colquiri – under Glencore's control – (or a willing buyer's) had done had it continued to operate the Mine. EMC is a State-owned company (thus subject to different incentives and economics than a private company) which has an unlimited time horizon to recover its investments (it is not limited by a lease contract expiry date) and is not required to</p>	<p>relation to Request 1, above, Bolivia correctly states that the Parties agree that Colquiri should be valued on the basis of its FMV as at the date of valuation, and that a willing buyer would only have had access to information available as at the date of valuation. Claimant maintains this position.</p> <p>However, Bolivia has argued in this arbitration that</p>	

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				<p>pay royalties. Therefore, any alleged plans by EMC post June 2012 (valuation date) in relation to the Mine cannot be relevant to Claimant’s case.</p> <p><u>Three</u>, Claimant requests Documents concerning EMC’s or Comibol’s alleged <u>current</u> plans “<i>to build a new concentrator plant and/or to recondition the existing Concentrator Plant for the processing of old tailings from the Colquiri Mine</i>” in an attempt to demonstrate the “<i>feasibility of Claimant’s plan to build and operate the Old Tailings Plant</i>” (emphasis added).</p>	<p>the project to build and operate the Old Tailings Plant “<i>has been evaluated several times over the last four decades (e.g., by Minproc in 1988 and PAH in 2004) and, still, no one has invested on it . . . because the Project is not economically viable</i>” (SoD, ¶ 653).</p> <p>The Requested Documents are thus relevant to respond to Bolivia’s allegations. EMC’s</p>	

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				<p>This is a non sequitur. EMC's or Comibol's <u>current</u> plans, <i>i.e.</i> 7 years after the Mine Lease's reversion, cannot serve as a basis to justify the feasibility of "<i>Claimant's [alleged] plans</i>" as of the reversion date.</p> <p><i>Second</i>, Claimant has failed to establish that the Documents Requested are not in its possession (IBA Rules, Art. 3(3)(c)(i)).</p> <p>If, as explained above, Claimant is seeking to obtain Documents to assess the feasibility of its own (alleged) pre-reversion date plans to reprocess old tailings at the Mine, by definition and taking at face value their purported relevance, Claimant</p>	<p>characteristics as a State-owned company cannot change this conclusion, and there is no basis for Bolivia's suggestion to the contrary.</p> <p><i>Third</i>, the Requested Documents are not within Claimant's custody, possession or control.</p> <p>Contrary to Bolivia's contention, Claimant is clearly not seeking to obtain</p>	

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				<p>should already have the documents necessary to perform such assessment. Indeed, Documents “<i>relevant to assessing the feasibility of Claimant’s plan</i>” must have been prepared by Claimant or by someone else at Claimant’s request. Bolivia notes that there is, at least, one feasibility study prepared by Colquiri S.A. in 2004 in connection with the reprocessing of old tailings at the Colquiri Mine (RPA Report, ¶ 13; RPA-13).</p>	<p>Documents to assess the feasibility of its own plans to reprocess old tailings at the Colquiri Mine.</p> <p>Instead, Request 5 expressly refers to “<i>Documents containing and/or referring to any plans by EMC and/or Comibol to build a new concentrator plant and/or to recondition the existing Concentrator Plant for the processing of old tailings</i>”</p>	

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					<p><i>from the Colquiri Mine ...”, which cannot be in Claimant’s custody, possession or control.</i></p> <p>***</p> <p>For the aforementioned reasons, Claimant respectfully requests that the Tribunal order Bolivia to produce the Documents requested in Request 5.</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
II. DOCUMENTS RELATING TO VINTO AND THE TIN SMELTER						
6.	Documents showing the gross quantities and the quality of all tin concentrates produced in Bolivia between 2007 and 2017 that were used as the basis for the tin production statistics reported in Chart No. III.1 of the <i>Dossier Estadísticas del Sector Minero Metalúrgico 1980-2017</i> published by the Ministry of Mining. ⁵	SoC, ¶ 259 Expert Report of RPA, ¶ 194 Expert Report of Compass Lexecon, ¶ 79 SoD, ¶¶ 662, 862-863 Villavicencio I, ¶¶ 67-71 Expert Report of SRK, ¶ 98 R-57 to R-67, R-78	There is a dispute between the Parties as to whether Claimant’s Experts’ assumptions regarding the quality of tin concentrates that Vinto would have processed in the Tin Smelter in the but-for scenario are correct (SoC, ¶ 259; SoD, ¶¶ 662, 862-863; Villavicencio I, ¶¶ 68-70). The Requested Documents are relevant to the case and material to its outcome, because they pertain to the accuracy of Bolivia’s allegation that the quality of tin concentrates in Bolivia decreases over time (SoD, ¶¶ 662, 862-863; Villavicencio I, ¶¶ 68-70). Claimant notes that the Ministry of Mining has	Bolivia objects to Claimant’s request for the following reasons: <i>First</i> , Claimant’s request is not sufficiently “ <i>narrow and specific</i> ” (IBA Rules, Art. 3(3)(a)(ii)). <u>One</u> , Claimant misrepresents Bolivia’s position in this arbitration. Bolivia has never said that “ <i>the quality of tin concentrates in Bolivia decreases over time</i> ” (emphasis added). Rather, Bolivia has stated that the <u>grades</u> of the concentrates processed by the <u>Vinto Tin Smelter</u> have	Bolivia’s objections to Claimant’s Request 6 are without merit and should be denied for the following reasons: <i>First</i> , Claimant’s request is “ <i>narrow and specific</i> ”, as required by the IBA Rules. Bolivia denies that it has argued that the quantity of tin concentrates in Bolivia was	Request granted.

⁵ See Dossier Estadísticas del Sector Minero Metalúrgico 1980-2017, pp 55-56, available at <http://www.mineria.gob.bo/revista/pdf/20190111-12-1-14.pdf>.

			<p>published the <i>Dossier Estadísticas del Sector Minero Metalúrgico 1980-2017</i>,⁶ reporting the net quantities of tin produced in Bolivia between 1980 and 2017. This necessarily implies that the Requested Documents exist as they are the basis for the statistics reported by the Ministry of Mining in said dossier.</p> <p>Claimant further notes that it has undertaken a reasonable search for the Requested Documents in public sources and was not able to find them.</p>	<p>decreased over time (Statement of Defence, ¶ 862). This misunderstanding explains Claimant’s unduly broad request.</p> <p><u>Two</u>, there is no correlation whatsoever between the Documents Requested and the justification given by Claimant to support this request.</p> <p>Indeed, Claimant requests Documents concerning “[...] <i>all tin concentrates produced in [the territory of] Bolivia</i>”, but justifies such request with reference to the specific dispute between the Parties, which is limited to the tin concentrates that “<i>Vinto would have processed in the Tin Smelter in the but-for scenario</i>” (emphasis added). Given that Bolivia has approx. 70 tin producers working in around 600 different mines,⁷ Claimant’s request would require the production of thousands of Documents related to</p>	<p>insufficient to support Claimant’s production forecasts, or that the quality of tin concentrates in Bolivia decreases over time.</p> <p>However, in its Statement of Defense, Bolivia clearly stated that “<i>Claimant’s experts’ production forecasts are ... untethered from the reality of the tin market in Bolivia</i>” because, allegedly: (i) “[Claimant] ignores the fact that there is a lack of sufficient tin concentrates <u>in the Bolivian market</u>” (SoD, ¶ 858); and (ii) “<i>the Tin Smelter acquires concentrates</i></p>	
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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				<p>matters well beyond this dispute.</p> <p>Claimant's request thus amounts to a fishing expedition and producing the Documents Requested would be unreasonably burdensome (IBA Rules, Art. 9(2)(c)).</p> <p><i>Second</i>, Claimant fails to establish how the Documents Requested would be relevant to its case and material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)).</p> <p><u>One</u>, the Parties agree that the Vinto Tin Smelter should be valued as of 8 February</p>	<p><i>from different sources and with different grades, it is wrong to assume that grades will remain constant in time.</i>" (SoD, ¶ 863).</p> <p>Bolivia thus clearly argues that the <u>quantity</u> of tin concentrates in Bolivia is not sufficient to support Claimant's valuation, and that the <u>quality</u> of tin</p>	

⁶ See Dossier Estadísticas del Sector Minero Metalúrgico 1980-2017, pp 55-56, available at <http://www.mineria.gob.bo/revista/pdf/20190111-12-1-14.pdf>.

⁷ Opinión, "Minas de estaño únicas en el mundo están en Bolivia," press article (available at <http://www.opinion.com.bo/opinion/articulos/2013/0419/noticias.php?id=92295>).

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				<p>2007 (Statement of Claim, ¶ 255; Statement of Defence, ¶ 655). They also agree on the definition of FMV and, thus, that a willing buyer would only have had access to information available as of the valuation date to value the Vinto Tin Smelter. As explained by Compass Lexecon, “[i]n assessing FMVs, <u>we use an ex-ante approach to valuation which means that [...] we use all information and expectations on the value of the assets as known as of their respective dates of [alleged] expropriation [...]</u>” (emphasis added) (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32).</p>	<p>concentrates (as reflected by their grades) in Bolivia decreases over time (<i>see also</i> Villavicencio I, ¶¶ 68-70).</p> <p>Bolivia thus cannot now pretend that Claimant’s request for Documents pertaining to these allegations – and specifically those that were used as the basis for the tin production statistics in Chart No. III.1 of the <i>Dossier Estadísticas del Sector</i></p>	

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				<p>Given that the Documents Requested pertain to a period after the Vinto Tin Smelter’s valuation date, they cannot be relevant to Claimant’s case.</p> <p><u>Two</u>, while the justification given by Claimant only relates to the quality of concentrates (“<i>[t]here is a dispute [...] regarding the quality of tin concentrates that Vinto would have processed</i>” (emphasis added)), its request also includes documents “<i>showing the gross quantities [...] of all tin concentrates</i>” produced in Bolivia (emphasis added). Claimant has not even alleged the relevance and the materiality of</p>	<p><i>Minero Metalúrgico 1980-2017</i> published by the Ministry of Mining – is “<i>unduly broad</i>” or constitutes a fishing expedition.</p> <p>Claimant is simply requesting Documents that are necessary for Claimant and its experts to respond to Bolivia’s own allegations.</p> <p><i>Second</i>, Bolivia correctly states that the Parties agree that the Tin Smelter</p>	

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				<p>documents pertaining to quantities.</p> <p><i>Third</i>, even if Bolivia had stated (which it has not) that “<i>the quality of tin concentrates in Bolivia decreases over time</i>” (emphasis added), establishing this would be Bolivia’s burden of proof. Claimant has no right to request the production of documents concerning Bolivia’s burden of proof.</p>	<p>should be valued as at 8 February 2007, and that a willing buyer would only have had access to information available as at the date of valuation for the Tin Smelter. Claimant maintains this position.</p> <p>However, Bolivia frequently refers to the Tin Smelter’s performance after the date of valuation in order to argue that such performance</p>	

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					<p>supports its allegations (<i>see</i> SoD, ¶¶ 856, 858, 862, 872; Villavicencio I, ¶¶ 42, 48-59, 65-66, 69-70, 87; Expert Report of SRK, ¶¶ 98, 101).</p> <p>Bolivia should not be allowed to cherry pick which <i>ex post</i> data is available in this arbitration, and which is not.</p> <p>Furthermore, as explained above, Bolivia cannot argue that the Requested Documents relate “to</p>	

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					<p><i>matters well beyond this dispute” when Bolivia itself put the issues of both the quantity and the quality of tin concentrates in Bolivia in dispute in this arbitration (SoD, ¶¶ 662, 862-863; Villavicencio I, ¶¶ 68-70).</i></p> <p>There is no support for Bolivia’s position that “<i>Claimant has no right to request the production of documents concerning Bolivia’s</i></p>	

					<p><i>burden of proof.”</i> Bolivia’s argument is disingenuous considering that Bolivia itself has requested documents from Claimant that pertain to Claimant’s burden of proof.</p> <p style="text-align: center;">***</p> <p>For the aforementioned reasons, Claimant respectfully requests that the Tribunal order Bolivia to produce the Documents requested in Request 6.</p>	
7.	Documents created between 8 February 2007 and 14 October 2019 that evidence EMV’s criteria and considerations when purchasing tin concentrates for processing at the Tin Smelter, including but not limited to resolutions and minutes of meetings of the	SoC, ¶ 259 Expert Report of RPA, ¶ 194 Expert Report of Compass Lexecon, ¶ 79 SoD, ¶¶ 662, 862-863	There is a dispute between the Parties as to whether Claimant’s Experts’ assumptions regarding the quality of tin concentrates that Vinto would have processed in the Tin Smelter in the but-for scenario are correct (SoC, ¶ 259; SoD, ¶¶ 662, 862-863; Villavicencio I, ¶¶ 67-71).	Bolivia objects to Claimant’s request for the following reasons: <i>First</i> , Claimant’s request is not sufficiently “ <i>narrow and specific</i> ” (IBA Rules, Art. 3(3)(a)(ii)).	Bolivia’s objections to Claimant’s Request 7 are without merit and should be denied for the following reasons:	Request granted as reformulated by Claimant.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
	board of directors, internal emails, public and private tenders and bids, and quotes requested and/or received from EMV's suppliers of tin concentrates.	Villavicencio I, ¶¶ 67-71 Expert Report of SRK, ¶ 98 R-57 to R-67, R-78	The Requested Documents are relevant to the case and material to its outcome, because they pertain to EMV's decision-making process when determining the quality of concentrates to be purchased for processing at the Tin Smelter.	Claimant requests Documents that " <i>evidence EMV's criteria and considerations when purchasing tin concentrates [...]</i> " (emphasis added). The terms " <i>criteria and considerations</i> " are not only undefined, but vague and extremely broad (e.g., EMV's " <i>considerations when purchasing tin concentrates</i> " basically means <u>anything</u> that was taken into consideration by anyone at EMV when purchasing tin concentrates). To be able to identify the Documents Requested, Bolivia would have to review each and every Document prepared by	<i>First</i> , Claimant's request is " <i>narrow and specific</i> ", as required by the IBA Rules. Notwithstanding and without prejudice to the above, Claimant reformulates its Request 7 as follows: " <i>Documents created between 8 February 2007 [one day prior to the expropriation] and 14 October 2019 [the date for the Parties' production of</i>	

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				<p>EMV in the regular course of business, as potentially any of these Documents could reflect “<i>the criteria and considerations</i>” of EMV when purchasing tin concentrates.</p> <p>Furthermore, given that Claimant’s request also includes “<i>quotes requested and/or received from EMV’s suppliers of tin concentrates</i>” (even if these were not accepted by EMV), Bolivia’s search would also have to include Documents that did not result in a tin concentrates purchase transaction.</p> <p>Claimant’s request clearly amounts to a fishing expedition and producing the Documents Requested</p>	<p>documents pursuant to Procedural Order No. 7] <i>that evidence EMV’s criteria and considerations regarding the price and quality of tin concentrates purchased for processing at the Tin Smelter, including but not limited to resolutions and minutes of meetings of the board of directors, internal emails, public and private tenders and bids, and</i></p>	

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				<p>would be unreasonably burdensome (IBA Rules, Art. 9(2)(c)).</p> <p><i>Second</i>, Claimant fails to establish how the Documents Requested would be relevant to its case and material to the outcome (IBA Rules, Arts. 3(3)(b) and 9(2)(a)).</p> <p><u>One</u>, the Parties agree that the Vinto Tin Smelter should be valued as of 8 February 2007 (Statement of Claim, ¶ 255; Statement of Defence, ¶ 655). They also agree on the definition of FMV and, thus, that a willing buyer would only have had access to information available as of the valuation date to value the Vinto Tin Smelter. As explained</p>	<p><i>quotes requested and/or received from EMV's suppliers of tin concentrates."</i></p> <p><i>Second</i>, Bolivia correctly states that the Parties agree that the Tin Smelter should be valued as at 8 February 2007, and that a willing buyer would only have had access to information available as at the date of valuation to value the Tin Smelter. Claimant</p>	

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				<p>by Compass Lexecon, “[i]n assessing FMVs, <u>we use an ex-ante approach to valuation which means that [...]</u> we use all information and expectations on the value of the assets <u>as known as of their respective dates of [alleged] expropriation [...]</u>” (emphasis added) (Compass Lexecon Report, ¶ 32; Quadrant Report, ¶ 32).</p> <p>Given that the Documents Requested pertain to a period after the Vinto Tin Smelter’s valuation date (“Documents created between 8 February 2007 and 14 October 2019 [...]”), they cannot be relevant to Claimant’s case or</p>	<p>maintains this position.</p> <p>However, Bolivia frequently refers to the Tin Smelter’s performance after the valuation date in order to argue that such performance supports its allegations (<i>see</i> SoD, ¶¶ 856, 858, 862, 872; Villavicencio I, ¶ 42, 48-59, 65-66, 69-70, 87; Expert Report of SRK, ¶¶ 98, 101).</p> <p>Bolivia should not be allowed to cherry pick which <i>ex post</i></p>	

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				<p>material to the outcome of this dispute.</p> <p><u>Two</u>, “<i>EMV’s criteria and considerations when purchasing tin concentrates [from 8 February 2007 onwards]</i>” (emphasis added) are entirely irrelevant because, irrespective of what these “<i>criteria and considerations</i>” may be, there is no guarantee that a willing buyer would have followed those same “<i>criteria and considerations</i>” when purchasing tin concentrates in the future.</p> <p><u>Three</u>, Claimant justifies this request by alluding to the Parties’ dispute “<i>regarding the quality of tin</i>”</p>	<p>data is available in this arbitration, and which is not.</p> <p>Specifically, in connection with Request 7, Bolivia argues that the grades of tin concentrates processed at the Tin Smelter after the date of valuation decreased over time, suggesting that this trend would have been taken into account by a willing buyer on the date of valuation (SoD, ¶¶ 662, 862-863;</p>	

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				<p><i>concentrates that Vinto would have processed in the Tin Smelter in the but-for scenario”, and states that the Documents Requested would be relevant and material “because they pertain to EMV’s decision-making process when determining the quality of concentrates to be purchased for processing at the Tin Smelter.” This justification fails on its own terms. Claimant does not explain why EMV’s “decision-making process” would be of any relevance to the quality of the tin concentrates that EMV purchases. The lack of clarity of Claimant’s justification further confirms that, as</i></p>	<p>Villavicencio I, ¶¶ 68-70).</p> <p>The Requested Documents will help elucidate the reasons for this trend, and in particular, establish whether considerations other than the alleged unavailability of high grade tin concentrates in Bolivia drove EMV’s purchase of lower grade tin concentrates after the date of valuation, such that the Tin Smelter’s performance</p>	

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				<p>indicated above, this request amounts to a fishing expedition.</p> <p><i>Third</i>, Claimant’s request is contrary to Art. 3(3)(c)(i) of the IBA Rules as it includes public documents (“<i>public [...] tenders and bids</i>”) – which, by definition, are accessible to Claimant.</p>	<p>under EMV’s management after the date of valuation is not representative of Vinto’s FMV as at the date of valuation.</p> <p>The Requested Documents are therefore relevant to respond Bolivia’s allegations.</p> <p><i>Third</i>, Claimant is not in custody, possession or control of the Requested Documents.</p> <p>Bolivia argues that Claimant is in</p>	

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					<p>possession, custody and control of the requested public tenders and public bids.</p> <p>Claimant confirms that it has conducted a reasonable search for the requested public tenders and public bids in public sources, and that it was unable to locate those documents.</p> <p style="text-align: center;">***</p> <p>For the aforementioned reasons, Claimant respectfully</p>	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
					requests that the Tribunal order Bolivia to produce Documents created between 8 February 2007 and 14 October 2019 that evidence EMV's criteria and considerations regarding the price and quality of tin concentrates purchased for processing at the Tin Smelter, including but not limited to resolutions and minutes of meetings of the board of	

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
					directors, internal emails, public and private tenders and bids, and quotes requested and/or received from EMV's suppliers of tin concentrates.	
III. DOCUMENTS RELATING TO THE ANTIMONY SMELTER⁸						
8.	Note PGE/DESP/SPDRLE No 1046/17 of 10 November 2017.	Expert Report of Diego Mirones, ¶¶ 34, 49 and footnotes 15, 21 DM-04, DM-05	Respondent submits two reports produced by the Oruro Municipality in November and December 2017 in support of the cadastral value that the Respondent assigns to the Antimony Smelter (DM-	Claimant has failed to establish how the Document Requested would be relevant to its case or material to the outcome (IBA Rules, Art. 3(3)(b) and	Claimant takes note of Respondent's agreement to produce the	No action by Tribunal required.

⁸ Claimant notes that Bolivia has agreed to produce or conduct a reasonable search for the Requested Documents relating to the Antimony Smelter. This being the case, while Claimant rejects Bolivia's arguments as to the relevance and materiality of the Requested Documents in Section III of this Redfern Schedule, it does not find it necessary to argue the point further and refers to its reasoned justification for the corresponding Requests.

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			<p>04, DM-05). These reports were produced in response to the request made to the Municipality by the Respondent in Note PGE/DESP/SPDRLE No 1046/17 dated 10 November 2017.</p> <p>The Requested Documents are therefore relevant and material to understanding the full context of the information provided by the Oruro Municipality in the reports with exhibit numbers DM-04 and DM-05.</p>	<p>9(2)(a)). Indeed, Claimant’s justification contains no explanation whatsoever as to how the Document Requested will assist Claimant in proving its case or how it may impact the outcome of this dispute.</p> <p>Without prejudice to the foregoing, and in the spirit of cooperation, Bolivia agrees to produce the Document Requested.</p>	Requested Document.	
9.	Technical sheet (<i>hoja técnica</i>) drafted by Architect Mónica Condori Valdez, referenced in the report submitted by Respondent as Exhibit DM-05.	Expert Report of Diego Mirones, ¶ 34 and footnote 15 DM-05	Respondent submits a report produced by the Oruro Municipality in December 2017 in support of the cadastral value that the Respondent assigns to the Antimony Smelter (DM-05). This report indicates that it was produced as a complement to a previous report produced by the	Claimant has failed to establish how the Document Requested would be relevant to its case or material to the outcome (IBA Rules, Art. 3(3)(b) and 9(2)(a)). Indeed, Claimant’s justification contains no explanation whatsoever as to how	Claimant takes note of Respondent’s agreement to produce the Requested Document.	No action by Tribunal required.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
			<p>Municipality, on the basis of a “Technical Sheet” or “<i>hoja técnica</i>” produced by Ms Condori Valdez.</p> <p>The Requested Document is therefore relevant and material to understanding the full context of the information provided by the Oruro Municipality in the report with exhibit number DM-05.</p>	<p>the Document Requested will assist Claimant in proving its case or how it may impact the outcome of this dispute.</p> <p>Without prejudice to the foregoing, and in the spirit of cooperation, Bolivia agrees to produce the Document Requested.</p>		
10.	Method for the valuation of real estate, 2004, by Consultora Barrientos.	Expert Report of Diego Mirones, ¶¶ 40, 89 and footnotes 19, 35 DM-15 (referred to as “Annex 16”)	Respondent submits an undated report entitled “ <i>Marco Teórico</i> ,” presumably produced by its valuation expert Mr Diego Mirones Venegas, in support of the cadastral value that the Respondent assigns to the Antimony Smelter (DM-15). The “ <i>Marco Teórico</i> ” includes up to 34 footnotes citing the Requested	<p>Claimant has failed to establish how the Document Requested would be relevant to its case (IBA Rules, Art. 3(3)(b) and 9(2)(a)). Its justification says nothing as to how the Document Requested will assist Claimant in proving its case.</p> <p>Without prejudice to the foregoing, and in the spirit of</p>	Claimant takes note of Respondent’s agreement to produce the Requested Document.	No action by Tribunal required.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
			Document authored by Consultora Barrientos. The Requested Document is therefore relevant and material to assessing the content and credibility of the Expert Report of Diego Mirones.	cooperation, Bolivia agrees to produce the Document Requested.		
11.	Legible copy of exhibit DM-10 .	Expert Report of Diego Mirones, ¶ 12 and footnote 2 DM-10 (referred to as “Annex 11”)	Respondent produced an illegible copy of the exhibit numbered DM-10 .	Bolivia will conduct a reasonable search with a view to producing the Document Requested.	Claimant takes note of Respondent’s agreement to conduct a reasonable search with a view to producing the Requested Document.	No action by Tribunal required.
12.	Legible copy of exhibit DM-14 .	Expert Report of Diego Mirones, ¶ 12 and footnote 3 DM-14 (referred to as “Annex 15”)	Respondent produced an illegible copy of the exhibit numbered DM-14 .	Bolivia has reviewed exhibit DM-14 and notes that only the second page of the document is difficult to read.	Claimant takes note of Respondent’s agreement to conduct a reasonable search with a	No action by Tribunal required.

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		References to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
				Thus, Bolivia will conduct a reasonable search with a view to producing a legible copy of this document.	view to producing the Requested Document.	