

**IN THE MATTER OF AN ARBITRATION UNDER THE
RULES OF THE INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

BETWEEN:

Infinito Gold Limited

CLAIMANT

AND:

Republic of Costa Rica

RESPONDENT

**CLAIMANT'S REQUEST FOR PRODUCTION OF DOCUMENTS
(MERITS PHASE)**

CLAIMANT'S GENERAL COMMENTS

1. This Request for Production of Documents is made in the form of a Redfern Schedule in accordance with section 16.1 and Annex B of Procedural Order No. 1.
2. The Request is also informed by Article 3.3 of the International Bar Association Rules on the Taking of Evidence in International Arbitration (the "IBA Rules"), which provides guidance to the Tribunal with respect to the appropriate scope of document disclosure in an international commercial arbitration.
3. Through this Request, the Claimant seeks the production by the Respondent of specific categories of documents that are in the possession, custody or control of the Respondent or of its counsel or advisors, are relevant to the dispute and are not protected by privilege.
4. The term "document" in this Request is as defined in the IBA Rules, and is intended to refer to documents within the possession, custody or control of the Respondent. The documents requested are not in the possession, custody or control of the Claimant as far as the Claimant is aware. Each request is limited to documents that have not been previously provided to the Claimant or Torys LLP.
5. The Claimant uses the following abbreviations and acronyms in the Redfern Schedule below:

BIT	Agreement between the Government of Canada and the Government of the Republic of Costa Rica for the Promotion and Protection of Investments
C-#	Claimant Exhibit
CMM	Claimant's Memorial on the Merits
CWS-Hernández	First Witness Statement of Juan Carlos Hernández
CWS-Rauguth	First Witness Statement of Erich Rauguth
DGM	Directorate of Geology and Mines
EIA	Environmental Impact Assessment
MINAE	Ministry of the Environment and Energy
MINAET	Ministry of the Environment, Energy and Telecommunications
R-#	Respondent Exhibit
RCM	Respondent's Counter-Memorial on the Merits
RER-Hart	First Expert Report of Timothy Hart
SETENA	National Technical Environmental Secretariat
SINAC	National System of Conservation Areas
TCA	Contentious Administrative Tribunal

6. The Claimant notes that the Respondent has requested a privilege log in connection with its document production requests. The Claimant requests that either both parties be under an equal obligation to produce a privilege log, or neither be obliged to produce a privilege log.

Annex A to Procedural Order No. 6

No.	Document(s) or Category of Documents Requested	Relevance and Materiality according to Requesting Party		Objections to Document Request	Reply to Objections to Document Request	Tribunal's Decision
		Ref. to Submissions	Comments			
1.	All documents from SETENA related to the Crucitas Project, including any documents related to review of the EIA or the issuance of resolutions: 272-2003-SETENA (C-0097), 831-2004-SETENA (C-0109), 119-2005-SETENA (C-0123), 2237-2005-SETENA (C-0130), 3638-2005-SETENA (C-0134), 2351-2006-SETENA (C-0159), 170-2008-SETENA (C-0170)	<p>C-0097, C-0109, C-0123, C-0130, C-0134, C-0159, C-0170</p> <p>CMM ¶¶ 51, 58, 91, 97, 100, 102, 111-115, 122-126, 133-135, 150, 174, 315, 333</p> <p>CWS-Hernández ¶¶ 56-57, 70, 72, 96, 118-120, 124, 131-140, 156, 168</p> <p>CWS-Rauguth, ¶¶ 81, 84, 87-88, 92-94, 100-105</p> <p>RCM ¶¶ 47-48, 57-61, 83-88</p>	<p>The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito obtained approval from SETENA of its EIA in 2005 and its revised EIA in 2007 in violation of the 2002 moratorium on open-pit gold mining. While the Respondent relies on recasting in hindsight the legality of the approvals by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of SETENA officials, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to SETENA or are documents exchanged between SETENA, other branches of the Government of Costa Rica, or other third parties. To the extent that any submissions from Infinito to</p>	<p>The Republic of Costa Rica (“Costa Rica”) objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules on the Taking of Evidence in International Arbitration (“IBA Rules”). The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing “all documents from SETENA related to the Crucitas project . . .” across an unlimited time range in respect of seven separate resolutions. Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons, it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In particular, the Claimant has failed to demonstrate how the</p>	<p>The Respondent repeats the same unparticularized and formulaic objection to a series of documentary requests without reference to the specific exhibits and portions of submissions cited by the Claimant or the explanation of relevance and materiality provided by the Claimant. The Claimant will not repeat its prior submissions or repeat the same unparticularized and formulaic reply to these requests. Instead, reference will be made to the reply to this request (Request 1) where applicable (Requests 2-10, 16, 17, 19, 21).</p> <p>The Respondent’s unparticularized and formulaic objections consist of four parts: (A) alleged insufficient narrowness and specificity; (B) alleged failure to demonstrate relevance and materiality to the claim that Costa Rica breached Infinito’s legitimate expectations; (C) alleged ambiguity as to whether the documents sought exist; and (D) alleged availability of the documents through domestic procedures for access to information. Each of these four objections is unavailing for the following reasons.</p>	DENIED , due to lack of sufficient narrowness or specificity.

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			<p>SETENA or exact copies of any documents sent by SETENA to Infinito are found responsive to this request they may be excluded. Internal records of any discussions with Infinito would of course be relevant and not in the possession of Infinito.</p>	<p>documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectation, given that the existence of such documents was unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>As Costa Rica explained in paragraph 417 of its Counter Memorial on Jurisdiction and the Merits, the administrative acts, including the 2008 Concession and the Change of Land Use, were swiftly halted by judicial injunctions that prevented the execution of the project. Thus, any expectations held by the Claimant based on those acts would have been short-lived and therefore could not have given rise to the Claimant's expectation that its investment in the Crucitas Mining Project would be immune from judicial review. What the Claimant and even SETENA and MINAE may have believed concerning the legality of the 2008 Concession, therefore, is not material or relevant to the outcome of</p>	<p>(A) The Claimant's request is sufficiently narrow and specific. The Claimant has cited specific permits granted by the relevant government agency after specific administrative processes (in relation to request #1, SETENA), which form the foundation of this request. For the sake of economy, the documents relating to the grant of each of these permits were requested through one request, rather than each through its own documentary production request (which would have been highly repetitive). The combination of a number of specific documentary requests does not render the combined request broad and indeterminate. The Respondent cannot avoid the fact that its own agents granted a series of specific permits to the Claimant (that are relevant to this arbitration for the reasons discussed) through specific administrative processes. The Respondent cannot rely on the multiple relevant acts of its own officials as reason for a large set of relevant documents existing.</p> <p>(B) The documents sought are relevant and material to the issues in dispute. The Claimant explained that these documents underlying the administrative processes that resulted in the grant of various permits and approvals to Infinito are relevant to its</p>	

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				<p>this case. What is material and relevant to the outcome of this proceeding is whether the 2008 Concession and related approvals were legal under Costa Rican law, an issue that the TCA and the Administrative Chamber of the Supreme Court considered and decisively ruled on. The expectations that the Claimant could have formed based on the internal analysis of SETENA, is therefore not relevant or material to the outcome of this case.</p> <p>Moreover, as explained in paragraph 132 of Dr León's expert report, under Costa Rican law, particularly under Administrative Law, only final acts or measures adopted by the State organ confer rights or duties. That is the case here, where the TCA and the Administrative Chamber analysed the legality of the 2008 Concession on the basis of the documents that were filed before those courts—all of which are in the record of this arbitration. The documents that were not presented before those courts are not relevant to assess the legality of the investment, as determined by the TCA and the Administrative Chamber of the Supreme Court.</p> <p>The Claimant speculates that there are "Internal records of any discussions with Infinito would of course be relevant and not in the possession of</p>	<p>claim that Costa Rica breached Infinito's legitimate expectation that the project would be allowed to proceed through the relevant administrative processes. The Respondent disputes the "legitimacy" of the expectations held by Infinito, as demonstrated by the Respondent's objection to this documentary request, which reiterates the Respondent's hindsight interpretation of the legality of the permits and approvals at issue. Even if documents requested of public officials/agencies were not seen by the Claimant, they are relevant to assessing the legitimacy of the expectations held by Infinito; documents underlying the grant of the various permits and approvals are relevant to understanding government officials' contemporaneous view of the legality of Infinito's permits and approvals. If the contemporaneous view of government officials was that the permits and Infinito's rights were valid, Infinito can hardly be expected to have questioned the validity of those permits in spite of the government's own representations, supporting the legitimacy of Infinito's expectations. These documents are relevant.</p> <p>As part of its objection, the Respondent also asks this Tribunal to accept the Respondent's own expert</p>	

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				<p>Infinito”, without providing any basis for that speculation. This request is paradigmatic of a fishing expedition.</p> <p>In any event, the requested documents would be publicly available under Costa Rican law, through the statutory procedure for the access to public information. Under Article 27 of the Political Constitution of Costa Rica and Law 9097 of 2013 (law that regulates the right of petition), every person, regardless of its nationality, can exercise the right of petition, individually or collectively before any public servant or public entity. In addition, Article 30 of the Political Constitution of Costa Rica grants the free access to public files and public entities, so that every person can gain access to information on matters of public interest, except for State secrets. The right of access to public information is a mechanism of control to be exercised by any person. It allows them to control the legality, opportunity, convenience, merit and in general, the effectiveness and efficiency of the Administration. The access to public information comprises, <i>inter alia</i>, (a) access to entities, offices and public buildings; (b) access to files and records, data base files (c) the right to know the contents of physical and electronic documents and files; (d) the right to obtain certifications or copies</p>	<p>evidence on the legality of the permits and approvals (which will be contested) in advance of Infinito having an opportunity to reply to that evidence and before any hearing on the merits. Such a finding would not be appropriate at this stage.</p> <p>(C) The Respondent raises ambiguity as to whether the documents requested exist. It is undisputed that government officials granted various permits and approvals to Industrias Infinito. Infinito now requests documents related to the administrative process underlying the grant of those permits and approvals. It is clear that such documents must exist; the suggestion that government agencies granting permits and approvals created no documents in relation to those administrative processes lacks any credibility. To the extent that documents provided to or by Industrias Infinito would be caught by the request, Infinito has already stated that those documents may be excluded.</p> <p>(D) The Respondent raises its domestic access to information regime in objection to producing documents, with no evidence of how or whether this regime functions, the cost involved, the time required, or the degree of responsiveness of the</p>	

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				thereof. (<i>See</i> Resolution No. 7265-1999 of the Constitutional Chamber of 17 September 1999, Decision No. 2008-013658 of the Constitutional Chamber of 5 September 2008, and Decision 2003-136 of the Constitutional Chamber of 23 January 2003). The Claimant can and should have followed that procedure to access the requested information. The Claimant is trying to sidestep the statutory procedure and gain an advantage and cut corners.	<p>government, in an attempt to avoid its obligations in this arbitration and to this Tribunal. On the basis of lack of evidence alone, this objection should be dismissed.</p> <p>Further, if Infinito does have a right to disclosure of the documents requested through the access to public information regime, as admitted by the Respondent, that mere procedural difference only supports Infinito's request for the documents sought in this arbitration.</p> <p>In any event, access to public information requests are not a substitute for documentary production in arbitration. The documents sought are in the "possession, custody or control" of the Respondent, not the Claimant. No employees or agents of the Claimant have unfettered access to the documents sought. The Respondent remains the arbiter of any disclosure through the access to public information regime, supplanting the Tribunal's role in this proceeding.</p>	
2.	All documents from DGM related to the Crucitas Project, including any documents related to the issuance of the following permits/resolutions:	C-0037, C-0046, C-0062, C-0064, C-0066, C-0068, C-0174, C-0268, C-0269	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito did not have a legally valid	Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to	The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.	DENIED , due to lack of sufficient narrowness or specificity.

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	4085-1996 (C-0037), 193-1998 (C-0046), 210-2001 (C-0062), 364-2001 (C-0064), 621-2001 (C-0066), 815-2001 (C-0068), 284-2008 (C-0174), 37-2012 (C-0268), 228-2012 (C-0269)	CMM ¶¶ 58, 87, 184, 197, 199, 266, 324 CWS-Hernández ¶¶ 72-74, 77-83, 94, 131, 158, 169-170, 220, 228-229, 232 RCM ¶¶ 89-90	<p>set of rights in the administrative process established in the Mining Code, including that Industrias Infinito's exploration permit and exploitation concessions allegedly expired and/or would not have been renewed or extended, and that Infinito's exploitation concession was granted by the government in breach of the 2002 moratorium. While the Respondent relies on recasting in hindsight the legality of the underlying rights held by Industrias Infinito by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of DGM officials, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to DGM or are documents exchanged between DGM, other branches of the Government of Costa Rica, or other third parties. To the extent that any submissions from Infinito to DGM or exact copies of any documents sent by DGM to</p>	<p>identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing "all documents from DGM related to the Crucitas project . . ." across an unlimited time range in respect of seven separate resolutions. Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons, it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In particular, the Claimant has failed to demonstrate how the documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, given</p>		

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			<p>Infinito are found responsive to this request they may be excluded. Internal records of any discussions with Infinito would of course be relevant and not in the possession of Infinito.</p>	<p>that the existence of such documents was unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>		
3.	<p>All documents from SINAC related to the Crucitas Project, including any documents related to the issuance of SINAC-AL-428-2008 (C-0187) and 244-2008 SCH ACAHN (C-0197).</p>	<p>C-0187, C-0197 CMM ¶¶ 150-153 CWS-Hernández ¶¶ 166-169, 174 RCM ¶¶ 91-92, 144-146</p>	<p>The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito did not have a legally valid change of land use permit granted by SINAC to allow for felling of certain trees. While the Respondent relies on recasting in hindsight the legality of that permit held by Industrias Infinito by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of SINAC officials, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not</p>	<p>Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing “all documents from SINAC related to the Crucitas project . . .”. Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons, it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the</p>	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p>	<p>DENIED, due to lack of sufficient narrowness or specificity.</p>

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			<p>in the possession, custody or control of the Claimant because they are documents internal to SINAC or are documents exchanged between SINAC, other branches of the Government of Costa Rica, or other third parties. To the extent that any submissions from Infinito to SINAC or exact copies of any documents sent by SINAC to Infinito are found responsive to this request they may be excluded. Internal records of any discussions with Infinito would of course be relevant and not in the possession of Infinito.</p>	<p>documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In particular, the Claimant has failed to demonstrate how the documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, given that the existence of such documents was unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>		
4.	All documents from MINAE/MINAET related to the Crucitas Project, including any documents related to the issuance of the following permits: R-185-93-MIRENEM (C-	C-0022, C-0069, C-0080, C-0106, C-0167, C-0176, C-0196, C-0271 CMM ¶¶ 44-45, 87-88, 97, 105, 139, 152, 188,	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito's exploitation concession was granted by MINAE in violation of the 2002 moratorium.	Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its	The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.	DENIED , due to lack of sufficient narrowness or specificity.

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	0022), R-578-2001-MINAE (C-0069), 30477-MINAE (C-0080), 569-2003-MINAE (C-0106), 613-2007-MINAE (C-0167), 217-2008-MINAE (C-0176), 34801-2008-MINAET (C-0196), 86-2012-MINAET (C-0271).	264, 208, 227, 265, 273, 279- 280, 309, 315, 333, 355, 360 CWS-Hernández ¶¶ 44-45, 83-85, 104, 153-162, 172-173 RCM ¶¶ 41, 43, 46, 89-90, 175- 178	<p>The Respondent relies on recasting in hindsight by the TCA and Administrative Chamber of the Supreme Court the legality of that permit, the long process leading to its initial granting, annulment, and restoration, as well as the administrative mechanism selected by government officials for its restoration. The process for issuing those approvals, and the contemporaneous understandings of MINAE officials, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to MINAE or are documents exchanged between MINAE and other branches of the Government of Costa Rica, or other third parties. To the extent that any submissions from Infinito to MINAE or exact copies of any documents sent by MINAE to Infinito are found responsive to this request they may be excluded. Internal records of any discussions with Infinito would of course be relevant and not in the possession</p>	<p>request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing “all documents from MINAE/MINAET related to the Crucitas project . . .” across an unlimited time range in respect of eight separate resolutions. Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons, it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In particular, the Claimant has failed to demonstrate how the documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, given that the existence of such documents</p>		

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			of Infinito.	<p>was unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>		
5.	<p>All documents from the Attorney General of Costa Rica, excluding any documents subject to legal privilege, related to the following decisions of the Constitutional Chamber of the Supreme Court, the TCA, and the Administrative Chamber of the Supreme Court.</p> <p>(a) Constitutional Chamber decision 2002-07888, dated August 20, 2002 (C-0085);</p> <p>(b) Constitutional Chamber decision 2004-09220, dated August 25, 2004 (C-0113);</p> <p>(c) Constitutional Chamber decision 2004-13144, dated November 26, 2004 (C-0116)</p> <p>(d) Constitutional Chamber decision 2007-007973, dated</p>	<p>C-0085, C-0113, C-0116, C-0164, C-0225, C-0239, C-0261, R-0028</p> <p>CMM ¶¶ 109-110, 112, 118-119, 135, 155-167, 173-194.</p> <p>CWS-Hernández ¶¶ 117, 124, 128-129, 144, 178-188, 202-219, 237-244</p> <p>RCM ¶¶ 49-50, 60-82, 100-103, 112-161, 166-174, 179-184</p>	<p>The documents requested are relevant and material to the issues in dispute. The Government of Costa Rica defended the validity of Infinito's permits at every level of court at issue in this Arbitration. The files associated with those legal proceedings are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to the Government/Attorney General or are documents exchanged with other branches of the Government of Costa Rica, or other third parties. To the extent that any documents are found responsive to this request they may be excluded.</p>	<p>Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing "all documents from the Attorney General of Costa Rica . . ." across an unlimited time range in respect of nine separate decisions. Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons, it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules). The Claimant's request is not even limited to the file kept by the Office of the Attorney General of Costa Rica in</p>	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p> <p>In addition, the Respondent asserts that the documents requested by Infinito are included in the court files from the proceedings mentioned and therefore are in the possession of Infinito. That is not true. Infinito does not have, and has never had, access to the complete court files and preparatory papers from the Attorney General of Costa Rica. Infinito explained what is and is not in its possession in the "comments" column and will not repeat those comments here.</p>	<p>DENIED, due to lack of sufficient narrowness or specificity.</p>

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	<p>June 7, 2007 (C-0164);</p> <p>(e) Constitutional Chamber decision 2010-006922, dated April 16, 2010 (C-0225);</p> <p>(f) Constitutional Chamber decision 2010-014009, dated August 24, 2010 (R-0028);</p> <p>(g) TCA decision 4399-2010, dated December 14, 2010 (C-0239); and</p> <p>(h) Administrative Chamber decision 1469-F-S1-2011, dated November 30, 2011 (C-0261).</p> <p>(i) Constitutional Chamber decision 2013-9211, dated June 19, 2013 (C-0283).</p>		<p>Internal records of any discussions with Infinito would of course be relevant and not in the possession of Infinito.</p>	<p>the proceeding initiated by Industrias Infinito before the TCA and the Administrative Chamber that led to the 2010 TCA Judgment and the 2011 Administrative Chamber Judgment. The Claimant cannot reasonably request that Costa Rica search the entire archive of the Office of the Attorney General of Costa Rica for “any documents ... related to” the listed decisions of the Constitutional Chamber of the Supreme Court, the TCA, and the Administrative Chamber of the Supreme Court.</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In particular, the Claimant has failed to demonstrate how the documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, given that the existence of such documents was unknown to the Claimant at that</p>		

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				<p>time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>Moreover, the documents requested by the Claimant are part of the files of the judicial proceedings related to the decisions identified by the Claimant. The Claimant has access to the documents requested, as a party to those proceedings.</p>		
6.	All documents from 2002 to 2010 from the Ministry of Health relating to permits or authorizations sought and obtained in relation to the Crucitas project.	RCM ¶¶ 91-92, 144-146	<p>The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that permits issued to Industrias Infinito after 2002 were invalid. While the Respondent relies on recasting in hindsight the legality of the permits held by Industrias Infinito by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of the Ministry of Health officials, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not</p>	<p>Costa Rica objects to this request under Articles 3.3(a)(ii) 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing documents within an 8-year date range in respect of an unlimited range of permits and authorisations, both sought and obtained, in relation to the Crucitas Mining Project. Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons, it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis of Article 9.2(a) of</p>	The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.	DENIED , due to lack of sufficient narrowness or specificity.

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			in the possession, custody or control of the Claimant because they are documents internal to the Ministry of Health or are documents exchanged between SINAC, other branches of the Government of Costa Rica, or other third parties. To the extent that any submissions from Infinito to the Ministry of Health or exact copies of any documents sent by the Ministry of Health to Infinito are found responsive to this request they may be excluded. Internal records of any discussions with Infinito would of course be relevant and not in the possession of Infinito.	<p>the IBA Rules. The Claimant has failed to demonstrate how the documents requested are relevant or material to its outcome, as required by the IBA Rules. In particular, it has not explained how these documents are relevant to its legitimate expectation claims. Moreover, the date range for the documents requested by the Claimant is entirely outside the Tribunal's jurisdiction.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>		
7.	All documents, including any government manuals, policies or guidance documents from the relevant period (1992-2001) giving direction to officials at the relevant government agencies (MINAE and DGM) regarding the process for reviewing and awarding, or renewing an exploration permit.	<p>CMM ¶¶ 57-59, 79-80</p> <p>CWS-Hernández ¶¶ 39-42, 68-73</p> <p>RCM ¶¶ 41, 54</p>	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito did not have a legally valid set of rights in the administrative process established in the Mining Code, including that Industrias Infinito's exploration permit allegedly expired and/or would not have been renewed or extended. While the Respondent relies on recasting in hindsight the legality of the underlying rights held by Industrias Infinito by the TCA and	<p>Costa Rica objects to this request.</p> <p>This request is extremely broad because it requests "all documents" (including "guidance documents") related to all administrative proceedings "regarding the process for reviewing and awarding, or renewing an exploration permit". The request fails to identify with precision a narrow and specific category of documents, contrary to the requirements of paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules. The request is not tied to the exploration permit for the Crucitas Mining Project and</p>	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p> <p>In addition, the request is not overly broad and does identify a narrow category of documents. The Government of Costa Rica should know with ease what instruction it has provided to its own administrative agencies regarding the processing of exploration permits. Such instruction is clearly relevant and material to the issues in this arbitration, including the legitimacy of the expectations held by</p>	DENIED , due to lack of sufficient narrowness or specificity, and because the relevance and materiality of the documents sought have not been sufficiently established.

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			<p>Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of MINAE/DGM officials, including any direction to those officials in carrying out their duties, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to MINAE or DGM.</p>	<p>imposes an unreasonable burden on Costa Rica to locate the requested documents, which is contrary to the procedural economy requirements of Article 9.2(g) of the IBA Rules.</p> <p>The Claimant's assertion that Costa Rica alleged "that Industrias Infinito did not have a legally valid set of rights in the administrative process established in the Mining Code" is a mischaracterisation of Costa Rica's arguments in paragraphs 41 and 54 of Costa Rica's Counter Memorial on Jurisdiction and the Merits dated 30 July 2018.</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required by Article 9.2(a) of the IBA Rules. In particular, the Claimant failed to demonstrate how the documents requested are relevant and material to its legitimate expectations claims.</p> <p>Specifically, the Claimant failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, if such documents were unknown to the Claimant at that time (and even now). Expectations, by definition, are formed</p>	<p>Infinito for the reasons stated in reply to Request 1.</p> <p>Contrary to the Respondent's objection, the Respondent does allege that Infinito's exploration permit expired, at paragraphs 41 and 54 of its Counter-Memorial. Documents providing instruction to administrative agencies on how exploration permits should be awarded and treated are relevant and material.</p>	

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				<p>only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>		
8.	All documents, including any government manuals, policies or guidance documents from the relevant period (1999-2008) giving direction to officials at the relevant government agencies (MINAE and DGM) regarding the process for reviewing and awarding, or renewing an exploitation concession.	<p>CMM ¶¶ 87-94, 137-141</p> <p>CWS-Hernández ¶¶ 43-55, 79-90, 151-164</p> <p>RCM ¶¶ 43, 46, 54, 89-90</p>	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito did not have a legally valid set of rights in the administrative process established in the Mining Code, including that Industrias Infinito's exploitation concessions allegedly expired and/or would not have been renewed or extended, and its exploitation concession was allegedly restored in violation of the 2002 moratorium. While the Respondent relies on recasting in hindsight the legality of the underlying rights held by Industrias Infinito by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of MINAE/DGM officials, including any direction to those officials in carrying out their duties, are relevant and material to	<p>Costa Rica objects to this request.</p> <p>This request is extremely broad because it requests "all documents" (including "guidance documents") related to all administrative proceedings "regarding the process for reviewing and awarding, or renewing an exploitation concession." The request fails to identify with precision a narrow and specific category of documents, contrary to the requirements of paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules. The request is not tied to the exploitation concession for the Crucitas Mining Project and imposes an unreasonable burden on Costa Rica, which is contrary to the procedural economy requirements of Article 9.2(g) of the IBA Rules.</p> <p>The Claimant's assertion that Costa Rica alleged "that Industrias Infinito did not have a legally valid set of rights in the administrative process established in the Mining Code" is a</p>	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p> <p>In addition, the request is not overly broad and does identify a narrow category of documents. The Government of Costa Rica should know with ease what instruction it has provided to its own administrative agencies regarding the processing of exploitation concessions. Such instruction is clearly relevant and material to the issues in this arbitration, including the legitimacy of the expectations held by Infinito for the reasons stated in reply to Request 1.</p> <p>The respondent evidently copied its objection from Request 7 and still addresses paragraphs 41 and 54 of its Counter-Memorial in response to this request. Paragraph 41 is not referenced here. Instead, paragraphs 43, 46, 54, and 89-90 of the Counter-</p>	DENIED , due to lack of sufficient narrowness or specificity, and because the relevance and materiality of the documents sought have not been sufficiently established.

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			<p>analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to MINAE or DGM</p>	<p>mischaracterisation of Costa Rica's arguments in paragraphs 41 and 54 of Costa Rica's Counter Memorial on Jurisdiction and the Merits.</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required by Article 9.2(a) of the IBA Rules. In particular, the Claimant failed to demonstrate how the documents requested are relevant and material to its legitimate expectations claims.</p> <p>Specifically, the Claimant failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, if such documents were unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>	<p>Memorial, which are referenced in this request, show the Respondent disputing the legal validity of Infinito's exploitation concession, the centre of this case.</p>	
9.	All documents, including any government manuals, policies or guidance documents from	CMM ¶¶ 111-115, 122-126	The documents requested are relevant and material to the issues in dispute. In particular, the	Costa Rica objects to this request on the grounds that it is extremely broad because it requests "all documents"	The Tribunal should accept this request for the reasons explained by Infinito in making this request and set	DENIED , due to lack of sufficient narrowness or specificity, and

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	the relevant period (1999-2008) giving direction to officials at the relevant government agencies (SETENA) regarding the process for reviewing and awarding, or renewing approval of an EIA.	CWS-Hernández ¶¶ 56-61, 91-102, 133-143 RCM ¶¶ 47-48, 83-88	Respondent alleges that Industrias Infinito obtained approval from SETENA of its EIA in 2005 and its revised EIA in 2007 in violation of the 2002 moratorium on open-pit gold mining. While the Respondent relies on recasting in hindsight the legality of the underlying rights held by Industrias Infinito by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of SETENA officials, including any direction to those officials in carrying out their duties, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito. The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to SETENA.	(including “guidance documents”) related to all administrative proceedings “regarding the process for reviewing and awarding, or renewing approval of an EIA.” Considering that an EIA (Estudio de Impacto Ambiental or Environmental Impact Assessment) is required for any project that possesses a certain degree of risk to the environment, the Claimant is effectively requesting that Costa Rica search through thousands of files that may contain any document falling within the broadly defined category of documents requested by the Claimant. The request fails to identify with precision a narrow and specific category of documents, contrary to the requirements of paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules. The request imposes an unreasonable burden on Costa Rica, which is contrary to the procedural economy requirements of Article 9.2(g) of the IBA Rules. In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required by Article 9.2(a) of the IBA Rules. In particular, the Claimant failed to demonstrate how the documents requested are relevant and material to	out by Infinito in reply to Request 1. In addition, the request is not overly broad and does identify a narrow category of documents. The Government of Costa Rica should know with ease what instruction it has provided to its own administrative agencies regarding the processing of an EIA. Such instruction is clearly relevant and material to the issues in this arbitration, including the legitimacy of the expectations held by Infinito for the reasons stated in reply to Request 1.	because the relevance and materiality of the documents sought have not been sufficiently established.

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				<p>its legitimate expectations claims.</p> <p>The Claimant failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its legitimate expectations, if such documents were unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>			
10.	All documents, including any government manuals, policies or guidance documents from the relevant period (2000-2008) giving direction to officials at the relevant government agencies (MINAE and DGM) regarding the grounds on which an exploration permit or exploitation concession can be cancelled and annulled.	<p>CMM ¶¶ 57-59, 79-80, 87-94, 137-141</p> <p>CWS-Hernández ¶¶ 39-55, 68-73, 79-90, 151-164</p> <p>RCM ¶¶ 41, 43, 46, 54, 89-90</p>	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito did not have a legally valid set of rights in the administrative process established in the Mining Code, including that Industrias Infinito's exploration permit and exploitation concessions allegedly expired and/or would not have been renewed or extended, and its exploitation concession was allegedly restored in violation of the 2002 moratorium. While the Respondent relies on recasting in hindsight the legality of the	<p>Costa Rica objects to this request because it is extremely broad because it requests "all documents" (including "guidance documents") "regarding the grounds on which an exploration permit or exploitation concession can be cancelled or annulled". The request fails to identify with precision a narrow and specific category of documents, contrary to the requirements of paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules. The request imposes an unreasonable burden on Costa Rica, which is contrary to the procedural economy requirements of Article 9.2(g) of the IBA Rules.</p>	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p> <p>In addition, the request is not overly broad and does identify a narrow category of documents. The Government of Costa Rica should know with ease what instruction it has provided to its own administrative agencies regarding the grounds on which an exploration permit or an exploitation concession may be cancelled or annulled. Such instruction falls at the core, including the legitimacy of the expectations held by Infinito for the reasons stated</p>	DENIED , due to lack of sufficient narrowness or specificity.	

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			<p>underlying rights held by Industrias Infinito by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, and the contemporaneous understandings of MINAE/DGM officials, including any direction to those officials in carrying out their duties, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to MINAE or DGM</p>	<p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required by Article 9.2(a) of the IBA Rules. In particular, the Claimant failed to demonstrate how the documents requested are relevant and material to its legitimate expectations claims.</p> <p>The Claimant failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its legitimate expectations, if such documents were unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>	<p>in reply to Request 1. In particular, such documents would be highly relevant to the extent that the Administrative Chamber's November 2011 ruling contradicts or deviates from any prior instruction to administrative agencies.</p>	
11.	All documents from the Office of President Pacheco or his Minister of the Environment Carlos M. Rodriguez discussing or evaluating whether the moratorium enacted by Decree No. 2002-30477-MINAE, dated June 12, 2002 (C-0080) would	<p>C-0080</p> <p>CMM ¶¶ 103-110</p> <p>CWS-Hernández ¶¶ 103-117</p> <p>RCM ¶¶ 51-56,</p>	<p>The documents requested are relevant and material to the issues in dispute. In particular, Infinito relies on representations from the Pacheco administration that the 2002 moratorium would not affect Infinito's existing rights or be applied to the Crucitas Project.</p>	<p>Costa Rica agrees to conduct a reasonable search of the documents requested and produce non-privileged responsive documents to this request to the extent they are in its possession, custody or control but in the limited date range of 2002-2008 as covered by paragraphs 103-110 of Claimant's</p>	<p>Infinito acknowledges the Respondent's agreement to produce documents that are responsive to this request.</p> <p>However, the Respondent, having acknowledged that this category of documents is relevant and material to the issues in dispute, should be</p>	<p>The Tribunal notes that the Respondent has agreed to conduct a "reasonable search of the documents requested" and to produce certain non-privileged responsive</p>

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	apply to the Crucitas Project.	83-88	<p>Contemporaneous documents illustrating what these senior government officials understood the scope of the 2002 moratorium to be are relevant and material to analyzing the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to the Office of President Pacheco and/or Minister Rodriguez.</p>	Memorial on the Merits.	<p>ordered to locate and produce <i>all</i> non-privileged documents that are responsive to this request and which are in the Respondent's possession, custody or control (language which was omitted from Costa Rica's response). Infinito notes that in other instances where the Respondent has agreed to produce documents, see for instance the response to Request No. 20 below, the Respondent has not added the caveat that it will conduct only a "reasonable search". The Claimant requests that the Respondent be under the standard obligation under the IBA Rules to produce all documents within its possession, custody or control as any other valid documentary request.</p> <p>Further, the Claimant objects to the limitation of responsive documents to those covered by paragraphs 103-110 of its Memorial on the Merits. The Claimant provided many additional citations substantiating relevance. The Claimant requests production of all responsive documents whether or not they relate to this one particular citation.</p>	<p>documents. The Claimant reiterates its full request and objects to the limitations imposed by the Respondent.</p> <p>The Tribunal confirms that the Respondent must conduct a full search for the documents responsive to this request, but accepts the temporal limitation proposed by the Respondent, i.e. 2002 - 2008.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.</p>
12.	All documents from the Office of President Pacheco, Minister of the Environment Carlos M. Rodriguez, MINAE, SETENA ,	C-0080 CMM ¶¶ 108-115, 122-141	The documents requested are relevant and material to the issues in dispute. In particular, Infinito relies on representations from the	Costa Rica agrees to conduct a reasonable search of the requested documents and produce non-privileged responsive documents to this request to	Infinito acknowledges Cost Rica's agreement to produce documents that are responsive to this request, with the same caveats stated in reply to	The Tribunal notes that the Respondent has agreed to conduct a "reasonable search of

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	the DGM or the Office of the Attorney General, relating to the effect of the 2002 moratorium (Decree No. 2002-30477-MINAE, dated June 12, 2002, Exhibit C-0080) on the ongoing administrative processes before SETENA and DGM relating to the Crucitas Project.	CWS-Hernández ¶¶ 114-117, 133-145, 151-164 RCM ¶¶ 51-56, 83-88	Pacheco administration that the 2002 moratorium would not affect Infinito's existing rights or be applied to the Crucitas Project. Contemporaneous documents illustrating what these senior government officials and key ministries understood the scope of the 2002 moratorium to be are relevant and material to analyzing the breaches of the BIT as alleged by Infinito. The documents requested are not in the possession, custody or control of the Claimant because they are internal documents.	the extent they are in its possession, custody or control but in the limited date range of 2002-2008 as covered by paragraphs 108-115 and 122-141 of Claimant's Memorial on the Merits.	Request 11. In particular, the Claimant objects to the limitation of a "reasonable search" for the reasons set out in reply to Request 11. Further, the Claimant objects to the limitation of responsive documents to those covered by paragraphs 108-115 and 122-141 of its Memorial on the Merits. The Claimant provided many additional citations substantiating relevance. The Claimant requests production of all responsive documents whether or not they relate to this one particular citation.	the requested documents" and to produce certain non-privileged responsive documents. The Claimant reiterates its full request and objects to the limitations imposed by the Respondent. The Tribunal confirms that the Respondent must conduct a full search for the documents responsive to this request, but accepts the temporal limitation imposed by the Respondent, i.e. 2002-2008. With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.
13.	All documents, including any notes, minutes, or memoranda, from the office of President Pacheco, his Minister of the Environment Carlos M. Rodriguez, MINAE or DGM,	C-0085 CMM ¶¶ 108-110 CWS-Hernández	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent argues that this decision of the Constitutional Chamber could not have formed	Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In paragraph 338 of its Counter-	The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1. In particular, as discussed in part (B)	GRANTED. The Tribunal finds that the documents sought may be relevant to the dispute and are likely to exist. It also notes that

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	discussing or evaluating whether the Constitutional Chamber decision 2002-07888, file number 02-006696-0007-CO, dated August 20, 2002 (Exhibit C-0085) would apply to the Crucitas Project.	¶¶ 114-117 RCM ¶¶ 55-56	<p>the basis of Infinito's legitimate expectations because, though it addresses the transitional provisions in the 2002 moratorium, it was brought by the owner of another mine in the same situation. Understanding whether and how government officials at a contemporaneous time interpreted the application of this decision to the Crucitas Project is relevant and material to analyzing the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are internal documents.</p>	<p>Memorial on Jurisdiction, the Claimant relies on the judgment 2002-07888 itself as giving rise to a legitimate expectation. As explained above in respect of request 1, statements of officials in respect of the judgment (which were not shared with the Claimant) are not relevant to analyse the Claimant's expectations. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>The Claimant has also failed to establish why it believes that the requested documents exist, contrary to Article 3.3(a)(ii) of the IBA Rules.</p>	<p>to Infinito's reply to Request 1, contemporaneous internal government documents interpreting the impact of various court decisions and administrative actions are relevant to understanding the legitimacy of Infinito's expectations and the validity of Costa Rica's defences to those objections based on hindsight interpretation. Further, the Respondent disputes that this decision applied to the Crucitas Project. Contemporaneous understandings of relevant government actors are relevant to assessing the validity of that claim.</p> <p>It is highly likely that the documents requested exist, in light of the fact that the Constitutional Chamber decision at the foundation of this request addressed the impact of the 2002 moratorium on the country's only two mining projects. In light of the significance of that decision, it would also be relevant to understand if none of the most important government actors involved in regulating mining projects analyzed that decision.</p>	the Respondent has not objected on grounds of lack of narrowness or specificity, or unreasonable burden.
14.	All documents from the Offices of President Pacheco, his Minister of the Environment Carlos M. Rodriguez, President Arias, his Minister of the	CMM ¶¶ 111-115, 122-126 CWS-Hernández ¶¶ 96-102, 118-	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent alleges that Industrias Infinito obtained approval from	Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required	The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.	GRANTED. The Tribunal finds that the documents sought may be relevant to the dispute. It also notes

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	Environment Roberto Dobles, MINAE or SETENA from 2002 to 2007 showing discussion with SETENA about the conduct of its review of the EIA for the Crucitas Project.	124, 133-143 RCM ¶¶ 47-48, 57-61, 83-88	SETENA of its EIA in 2005 and its revised EIA in 2007 in violation of the 2002 moratorium on open-pit gold mining. While the Respondent relies on recasting in hindsight the legality of the approvals by the TCA and Administrative Chamber of the Supreme Court, the process for issuing those approvals, the contemporaneous understandings of SETENA officials, discussion of that process from the President or Minister of the Environment, and discussion of SETENA's delay, are relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito. The documents requested are not in the possession, custody or control of the Claimant because they are internal government documents.	under Article 3.3(b) of the IBA Rules. In paragraph 338 of its Counter-Memorial on Jurisdiction, the Claimant relies on the judgment 2002-07888 itself as giving rise to a legitimate expectation. As explained above in respect of request 1, statements of officials in respect of the judgment (which were not shared with the Claimant) are not relevant to analyse the Claimant's expectations. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.	In particular, as discussed in part (B) to Infinito's reply to Request 1, contemporaneous internal government documents interpreting the impact of various court decisions and administrative actions are relevant to understanding the legitimacy of Infinito's expectations and the validity of Costa Rica's defences to those objections based on hindsight interpretation. Further, the Respondent disputes that SETENA acted in accordance with Costa Rican law in analyzing and approving the Claimant's EIA. Contemporaneous understandings of relevant government actors are relevant to assessing the validity of that claim.	that the Respondent has not objected on grounds of lack of narrowness or specificity, or unreasonable burden.
15.	Any record of President Pacheco's comments reported in the Al Dia article at C-0108: the Crucitas Project was "in compliance with the law and may proceed", "what's done	C-0108 CMM ¶ 114 CWS-Rauguth ¶ 99	The documents requested are relevant and material to the issues in dispute. The Claimant relies on these statements from President Pacheco as part of the foundation of expectations legitimately held	Costa Rica agrees to conduct a reasonable search of the requested documents and produce non-privileged responsive documents to this request to the extent they are in its possession, custody or control.	Infinito acknowledges Costa Rica's agreement to produce documents that are responsive to this request, with the same caveats stated in reply to Request 11. In particular, the Claimant objects to	The Tribunal notes that the Respondent has agreed to conduct a "reasonable search of the requested documents" and to

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	cannot be undone” and he was bound “to follow the promises that had been made by previous governments.”		<p>by Infinito that its rights and permits would be respected and the Crucitas Project would be permitted to proceed through the permitting process.</p> <p>The documents requested are not in the possession, custody or control of the Claimant beyond the newspaper article at exhibit C-0108.</p>		<p>the limitation of a “reasonable search” for the reasons set out in reply to Request 11.</p> <p>The category of documents requested is narrow, as it is limited to “[a]ny record of President Pacheco’s comments reported in the <i>Al Dia</i> article at C-0108.” Accordingly, it would not be contrary to considerations of procedural economy or proportionality to require Costa Rican to conduct a full search and to produce all non-privileged documents.</p>	<p>produce non-privileged responsive documents to the extent that they are in its possession, custody or control. The Claimant reiterates its full request and objects to the limitation or a “reasonable search”.</p> <p>The Tribunal GRANTS the Claimant’s request, i.e. the Respondent shall conduct a full search and produce all non-privileged documents.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.</p>
16.	All documents from the Office of President Pacheco (2002-2006), the Office of President Arias (2006-2010), MINAE, DGM, or the Attorney General of Costa Rica (2002-2010) analyzing the meaning of the phrase “sin perjuicio de lo que	<p>C-0116</p> <p>CMM ¶¶ 116-121</p> <p>CWS-Hernández ¶¶ 125-132</p>	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent disputes that this particular concluding clause in the Constitutional Chamber’s decision 2004-13414 left <i>Industrias Infinito’s</i> rights in the	Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p> <p>In addition, the request is not overly broad and does identify a narrow category of documents analyzing the meaning one phrase (11 words) from</p>	GRANTED. The Tribunal considers that the Claimant has identified a sufficiently narrow and specific category of documents, and that the documents may be relevant to the

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	determine el estudio de impacto ambiental” from the Constitutional Chamber’s decision 2004-13414, file number 02-002714-0007-CO, dated November 26, 2004 (Exhibit C-0116).	RCM ¶¶ 62-82	<p>administrative process undisturbed. The Respondent relies on recasting in hindsight by the TCA and Administrative Chamber of the Supreme Court the meaning of that clause. The contemporaneous understanding of that clause by government officials in processing further permits and approvals is relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to various branches of the Government of Costa Rica or exchanged with or other third parties.</p>	<p>Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing “all documents from the Office of President Pacheco . . .” Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In particular, the Claimant has failed to demonstrate how the documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, given that the existence of such documents was unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis</p>	<p>one judgment of a Costa Rican court: “sin perjuicio de lo que determine el estudio de impacto ambiental”.</p> <p>Costa Rica disputes that these words preserved any of Industrias Infinito’s underlying rights in its exploration permit or the administrative process set out under the Mining Code. Government officials’ contemporaneous understandings are highly relevant to assessing the validity of the Respondent’s allegation.</p>	dispute.

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				<p>of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>		
17.	<p>All documents from the Office of President Arias, Minister of the Environment Dobles, MINAE, DGM, or the Attorney General of Costa Rica from 2006-2010 analyzing the impact of the Constitutional Chamber's decisions 2004-13414, file number 02-002714-0007-CO, dated November 26, 2004 (Exhibit C-0116), and 2007-007973, file number 02-002714-0007-CO, dated June 7, 2007 (C-0164), including: (a) whether the government was required to respect Industrias Infinito's acquired rights; (b) whether it was open to the government to refuse to grant, restore or cure Industrias Infinito's exploitation concession; and (c) what legal mechanism could be used to grant, restore or cure Industrias Infinito's exploitation concession.</p>	<p>C-0116, C-0164</p> <p>CMM ¶¶ 116-121, 135-136</p> <p>CWS-Hernández ¶¶ 125-132, 144-145</p>	<p>The documents requested are relevant and material to the issues in dispute. In particular, the Respondent disputes that the Constitutional Chamber's decisions 2004-13414 and 2007-007973 left Industrias Infinito's rights in the administrative process undisturbed. The Respondent relies on recasting in hindsight by the TCA and Administrative Chamber of the Supreme Court the meaning of that clause. The contemporaneous understanding of that clause by government officials in processing further permits and approvals is relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to various branches of the</p>	<p>Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing "all documents from the Office of President Arias, Minister of the Environment." Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the</p>	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p> <p>In addition, the request is not overly broad and does identify a narrow category of documents analyzing the impact of two Constitutional Chamber decisions at the centre of this case, which the Respondent alleges did not preserve Infinito's rights in its exploration permit or the administrative process set out under the Mining Code. The subject matter, time period, and relevant government offices are finite. Government officials' contemporaneous understandings are highly relevant to assessing the validity of the Respondent's allegation.</p>	<p>GRANTED. The Tribunal considers that the Claimant has identified a sufficiently narrow and specific category of documents, and that the documents may be relevant to the dispute.</p>

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			Government of Costa Rica or exchanged with or other third parties.	<p>IBA Rules. In particular, the Claimant has failed to demonstrate how the documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, given that the existence of such documents was unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica in the objection to document production request number 1.</p>		
18.	All documents (including preparatory papers) from the Offices of President Arias and Minister of the Environment Dobles relating to the Decree No. 34801-MINAET, dated October 13, 2008 (C-0196).	C-0196 CMM ¶¶ 152, 227, 265, 273, 280, 315, 333 CWS-Hernández ¶¶ 172-173	The documents requested are relevant and material to the issues in dispute. The Claimant relies on this Executive Decree declaring the Crucitas Project to be in the public convenience and national interest, including its assessments of various benefits that the Crucitas Project would bring, as part of the foundation of	Costa Rica agrees to produce “preparatory papers” to the extent they exist, are not privileged and are in its possession, custody or control. Costa Rica agrees to produce those documents without prejudice to its objections to the other requests, particularly in relation to the Claimant’s alleged expectations and the lack of materiality and relevance of documents that were	<p>Infinito acknowledges Cost Rica’s agreement to produce documents that are responsive to this request, with the same caveats stated in reply to Request 11.</p> <p>Further, Costa Rica, having acknowledged that this category of documents is relevant and material to the issues in dispute, should be ordered to locate and produce <i>all</i> non-</p>	The Tribunal notes that the Respondent has agreed to produce “preparatory papers” to the extent they exist, are not privileged and are in its possession, custody or control. The Claimant reiterates its full request and objects

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			<p>expectations legitimately held by Infinito that its rights and permits would be respected and the Crucitas Project would be permitted to proceed through the permitting process.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are internal government documents.</p>	unknown to Claimants. <i>See</i> Article 9.2(a) of the IBA Rules.	<p>privileged documents that are responsive to this request and which are in Costa Rica's possession, custody or control. Costa Rica has provided no basis for limiting its production of documents responsive to this request to "preparatory papers," and it should not be permitted to do so.</p> <p>The category of documents requested is narrow, as it is limited to "Offices of President Arias and Minister of the Environment Dobles relating to the Decree No. 34801-MINAET, dated October 13, 2008 (C-0196." Accordingly, it would not be contrary to considerations of procedural economy or proportionality to require Costa Rican to conduct a full search and to produce all non-privileged documents.</p>	<p>to the limitations imposed by the Respondent.</p> <p>To the extent that the Claimant's request exceeds the Respondent's agreement to produce, it is DENIED, due to lack of sufficient narrowness or specificity.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.</p>
19.	All documents from MINAET (including preparatory papers) relating to MINAET resolution R-217-2008, dated April 21, 2008 (C-0176), including any documents discussing the administrative mechanism that would be used to grant, restore or cure the exploitation concession.	<p>C-0176</p> <p>CMM ¶¶ 45, 139-140, 315, 355, 360</p> <p>CWS-Hernández ¶¶ 153-162</p> <p>RCM ¶¶ 126-128</p>	The documents requested are relevant and material to the issues in dispute. In particular, the Respondent disputes that the exploitation concession restored to Infinito in 2008 (R-217-2008) was done in compliance with Costa Rican Law. The Respondent relies on recasting in hindsight by the TCA and Administrative Chamber of the Supreme Court the legality of that permit in light of the 2002	Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The request is extremely broad, encompassing all documents from	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1.</p> <p>In addition, the request is not overly broad and does identify a narrow category of documents analyzing the how one specific MINAET decision was arrived at, which the Respondent alleges resulted in Industrias Infinito having an invalid exploitation</p>	GRANTED , but limited to preparatory papers related to the resolution at issue, and to any documents discussing the administrative mechanism that would be used to grant, restore or cure the exploitation concession.

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			<p>moratorium and the administrative law mechanism used to award the concession (allegedly a new concession, not restoring the 2002 concession). The contemporaneous understanding of MINAET officials in selecting the administrative law mechanism to restore Industrias Infinito's exploitation concession, and their view of Industrias Infinito's underlying rights, is relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to MINAET.</p>	<p>MINAET (including preparatory papers) . . ." Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i>, Article 9.2(c) of the IBA Rules). For the same reasons it is contrary to the principle of procedural economy (<i>see</i>, Article 9.2 (g) of the IBA Rules).</p> <p>In addition, Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate that the documents it seeks are relevant to this proceeding or material to its outcome, as required under Article 3.3(b) of the IBA Rules. In particular, the Claimant has failed to demonstrate how the documents requested are relevant and material to its legitimate expectation claims. Consequently, the Tribunal should reject this request pursuant to Article 9.2(a) of the IBA Rules.</p> <p>Specifically, the Claimant has failed to demonstrate how the documents it requests (assuming they exist) could be material and relevant in analysing its allegedly legitimate expectations, given that the existence of such documents was unknown to the Claimant at that time (and even now). Expectations, by definition, are formed only on the basis of what is actually known.</p> <p>The Tribunal should reject this document production request for the same reasons explained by Costa Rica</p>	<p>concession. The subject matter, time period, and relevant government offices are finite. Government officials' contemporaneous understandings are highly relevant to assessing the validity of the Respondent's allegation.</p>	<p>The Tribunal considers that the documents may be relevant to the dispute, and as narrowed down by the Tribunal the search should not cause unreasonable burden on the Respondent.</p>

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				in the objection to document production request number 1.		
20.	The original Spanish version of the July 27, 2010 letter from President Chinchilla, an English translation of which is attached as Exhibit C-0233.	C-0233 CMM ¶¶ 171, 288 CWS-Hernández ¶¶ 199	The document requested is relevant and material to the issues in dispute. This document demonstrates President Chinchilla's understanding that Industrias Infinito's existing rights had to be respected. The Respondent alleges that those permits and approvals were not legally held by Industrias Infinito. The preparatory papers underlying this document are relevant and material to analyzing the opinion of key government officials on the legality of Industrias Infinito's permits and approvals and therefore the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito. Infinito only has in its possession the English translation of this document.	Costa Rica agrees to produce responsive documents to this request to the extent they are not privileged and are in its possession, custody or control. Costa Rica does so without prejudice to its objections to the other requests, particularly in relation to the Claimant's alleged expectations and the lack of materiality and relevance of documents that were unknown to Claimants. <i>See</i> Article 9.2(a) of the IBA Rules.	Infinito acknowledges Cost Rica's agreement to produce documents that are responsive to this request. However, since Costa Rica has acknowledged that this category of documents is relevant and material to the issues in dispute, the Tribunal should order Costa Rica to produce <i>all</i> non-privileged documents that are responsive to this request and which are in Costa Rica's possession, custody or control, in accordance with the IBA Rules, as discussed in reply to Request 11.	The Tribunal notes that the Respondent has agreed to produce documents responsive to this request to the extent that they are not privileged and are in its possession, custody or control. The Claimant reiterates its request for the production of all non-privileged documents responsive to this request. The Tribunal confirms that all documents responsive to this request should be produced. That said, the Tribunal understands that this request seeks a single document, a translation of which exists in the record. The Tribunal expects the Respondent to produce at the very least the original version from which the translation submitted as C-0233

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						<p>was made.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.</p>
21.	All documents from the Office of President Chinchilla relating to the July 27, 2010 letter at Exhibit C-0233, including preparatory papers and analyses and considerations underlying that letter.	<p>C-0233</p> <p>CMM ¶¶ 171, 288</p> <p>CWS-Hernández ¶¶ 199</p>	<p>The documents requested are relevant and material to the issues in dispute. This document demonstrates President Chinchilla's understanding that Industrias Infinito's existing rights had to be respected. The Respondent alleges that those permits and approvals were not legally held by Industrias Infinito. The preparatory papers underlying this document are relevant and material to analyzing the opinion of key government officials on the legality of Industrias Infinito's permits and approvals and therefore the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because</p>	<p>Costa Rica objects to this request on the grounds that the Claimant has failed to demonstrate how the documents requested are relevant to the case or material to its outcome, as established by Article 9.2(a) of the IBA Rules. Although the Claimant asserts that the documents requested are relevant and material on analyzing Infinito's legitimate expectations, the reference that the Claimant provides (paragraphs 171 and 288 of its Memorial on the Merits) is a reference to the expropriation section. In any event, the Claimant has failed to demonstrate how the documents requested are relevant and material to Claimant's claim of legitimate expectations. As explained in objection 1 above, the issue is whether the 2008 Concession and related approvals were legal under Costa Rican law, an issue that the TCA and the Administrative Chamber of the Supreme Court considered and</p>	<p>The Tribunal should accept this request for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 1, in particular section (B) regarding the relevance of government documents to assessing the legitimacy of expectations.</p> <p>Contrary to the Respondent's inaccurate assertion, paragraph 171 of the Claimant's Memorial on the Merits is in the facts section and discusses document C-0233 as part of the foundation of Infinito's expectations that its rights would be respective. The following paragraph, 172, states, "Infinito interpreted this letter as a positive step, and took comfort that President Chinchilla did not appear to be inclined to annul the exploitation concession and other project approvals..." This document is clearly relevant to Infinito's</p>	<p>DENIED. The Tribunal considers that whether Industrias Infinito's permits and approvals were legally held is a legal matter that does not depend on the assessment by President Chinchilla or her office.</p>

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			they are documents internal to the Office of President Chinchilla.	decisively ruled on. The expectations that the Claimant could have formed based documents from the Office of President Chinchilla relating to the July 27, 2010 letter—even if Claimant had known them, which it did not—are therefore not relevant or material to the outcome of this case.	legitimate expectations case, and the documents underlying it are relevant to assessing the legitimacy of those expectations for the reasons discussed.	
22.	All documents from MINAET (including preparatory papers) relating to MINAE resolution R-86-2012, dated January 9, 2012 (C-0268), including any documents discussing the drafting of the words “libérese el área del Padrón Minero.”	C-0268 CMM ¶¶ 195-199, 266, 324-325 CWS-Hernández ¶¶ 229 RCM ¶¶ 175-178	The documents requested are relevant and material to the issues in dispute. The Claimant relies on the clause “libérese el área del Padrón Minero” as having taken further rights from Industrias Infinito beyond what was ordered by the Administrative Chamber of the Supreme Court, including its underlying rights in the administrative process. The Respondent denies that any such rights existed. Contemporaneous documents from MINAET officials related to this resolution (and that particular clause) are relevant to understanding its intended meaning. The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to MINAET.	Costa Rica agrees to produce non-privileged documents that are responsive to this request to the extent they are in its possession, custody or control. Costa Rica notes that the correct resolution to which the Claimant is referring to is Resolution No. 0037 of 9 January 2012 (Exhibit C-0268), and not Resolution 86-2012.	The Tribunal should accept this request in full for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 20.	The Tribunal understands that the Respondent has agreed to produce this request in full, i.e. all non-privileged documents in its possession, custody or control. With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.

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23.	All documents from the period 2010 to 2014 from the Offices of President Arias, President Chinchilla, MINAET, DGM or the Attorney General of Costa Rica discussing or analyzing how or whether the 2010-2011 moratoria (Decree No. 35982, dated April 29, 2010 (R-0032), Decree No. 36019, dated May 8, 2010 (C-0229), and Legislative Amendment to Mining Code, No. 8904, dated December 1, 2010 (C-0238)) would apply to the Crucitas Project.	R-0032, C-0229, C-0238 CMM ¶¶ 200 CWS-Hernández ¶¶ 197-201 RCM ¶¶ 104-106, 163-165	<p>The documents requested are relevant and material to the issues in dispute. The Claimant alleges that as a result of Industrias Infinito's rights acquired through the administrative process, and legitimate expectations engendered by officials of the Government of Costa Rica, that the Government was under an obligation to exempt the Crucitas Project from the application of these moratoria passed almost two decades after initial work on the project began. Any consideration by government officials of these obligations would therefore be relevant to analyzing the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to various branches of the Government of Costa Rica.</p>	<p>Costa Rica agrees to produce non-privileged responsive documents only in relation to the Legislative Moratorium (Law No. 8904 of 1 December 2010, amending Mining Code).</p> <p>Costa Rica objects to the requests in relation to the Arias Moratorium Decree (Decree No. 35982 of 29 April 2010) and the Chinchilla Moratorium Decree (Decree No. 36019 of 8 May 2010) on the basis of Article 9(a) of the IBA Rules. The Claimant has failed to demonstrate how the documents sought are relevant to the case or material to its outcome (<i>see</i>, Article 9(a) of the IBA Rules). The Claimant does not challenge either the Arias Moratorium Decree or the Chinchilla Moratorium. In any event, these measures are outside the Tribunal's jurisdiction. In justifying its request, the Claimant asserts that the Government was "under an obligation to exempt the Crucitas Project from the application of these moratoria passed almost two decades after initial work on the project began", but none of the paragraphs of Memorial cited by the Claimant contain this assertion. Moreover, the statement that "[a]ny consideration by government officials of these obligations would therefore be relevant to analyzing the breaches of the BIT as alleged by Infinito" is vague</p>	<p>Infinito acknowledges the Respondent's agreement to produce documents that are responsive to this request in respect of the Legislative Moratorium. However, the Respondent, having acknowledged that this category of documents is relevant and material to the issues in dispute, should be ordered to locate and produce <i>all</i> non-privileged documents that are responsive to this request and which are in Costa Rica's possession, custody or control (including in respect of the Legislative Moratorium).</p> <p>Contrary to the Respondent's allegation, all three moratoria are squarely in issue. The Respondent relies on the two 2010 moratorium decrees, which were supplanted by the 2011 Legislative Moratorium, as a defence to Infinito's allegations. Infinito has consistently stated that any such moratorium is only relevant as of the date of the Administrative Chamber, November 30, 2011, when Infinito's permits and approvals were irreversibly annulled, and any moratorium first prevented Infinito from applying for new permits and approvals. The Respondent cannot put two administrative enactments into issue in this proceeding and then claim they are irrelevant for the</p>	<p>The Tribunal notes that the Respondent has agreed to produce non-privileged responsive documents only in relation to the Legislative Moratorium (Law No. 8904 of 1 December 2010, amending Mining Code). The Claimant asks that all non-privileged documents that are responsive to this request and which are in the Respondent's possession, custody or control should be produced, including those related to the 2010-2011 Moratoria.</p> <p>The Tribunal GRANTS the Claimant's request. It considers that the Claimant's request identifies two sufficiently narrow and specific categories of documents, and that the documents may be relevant to the dispute.</p> <p>With respect to documents withheld or</p>

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				and speculative. The request is a fishing expedition and should therefore be rejected.	purpose of documentary production.	redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.
24.	All documents from the period 2010 to 2014 from the Office of President Chinchilla, MINAET, DGM or the Attorney General of Costa Rica discussing or analyzing whether any exception should be granted to the Crucitas Project from the application of the 2010-2011 moratoria (Decree No. 35982, dated April 29, 2010 (R-0032), Decree No. 36019, dated May 8, 2010 (C-0229), and Legislative Amendment to Mining Code, No. 8904, dated December 1, 2010 (C-0238)) or whether those moratoria should be repealed.	R-0032, C-0229, C-0238 CMM ¶¶ 200 CWS-Hernández ¶¶ 197-201 RCM ¶¶ 104-106, 163-165	The documents requested are relevant and material to the issues in dispute. The Claimant alleges that as a result of Industrias Infinito's rights acquired through the administrative process, and legitimate expectations engendered by officials of the Government of Costa Rica, that the Government was under an obligation to exempt the Crucitas Project from the application of these moratoria passed almost two decades after initial work on the project began. Any consideration by government officials of these obligations would therefore be relevant to analyzing the breaches of the BIT as alleged by Infinito. The documents requested are not in the possession, custody or control of the Claimant because they are documents internal to various branches of the Government of Costa Rica.	Costa Rica agrees to produce non-privileged responsive documents only in relation to the Legislative Moratorium (Law No. 8904 of 1 December 2010, amending Mining Code). Costa Rica objects to the requests in relation to the Arias Moratorium Decree (Decree No. 35982 of 29 April 2010) and the Chinchilla Moratorium Decree (Decree No. 36019 of 8 May 2010) on the basis of Article 9(a) of the IBA Rules. The Claimant has failed to demonstrate how the documents sought are relevant to the case or material to its outcome (<i>see</i> , Article 9(a) of the IBA Rules). The Claimant does not challenge either the Arias Moratorium Decree or the Chinchilla Moratorium. In any event, these measures are outside the Tribunal's jurisdiction. In justifying its request, the Claimant asserts that the Government was "under an obligation to exempt the Crucitas Project from the application of these moratoria passed almost two decades after initial work on the project began", but none of the	The Tribunal should accept this request in full for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 23.	The Tribunal notes that the Respondent has agreed to produce non-privileged responsive documents only in relation to the Legislative Moratorium (Law No. 8904 of 1 December 2010, amending Mining Code). The Claimant asks that all non-privileged documents that are responsive to this request and which are in the Respondent's possession, custody or control should be produced, including those related to the 2010-2011 Moratoria. The Tribunal GRANTS the Claimant's request. It considers that the Claimant's request identifies two sufficiently narrow and

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				<p>paragraphs of Memorial cited by the Claimant contain this assertion. Moreover, the statement that “[a]ny consideration by government officials of these obligations would therefore be relevant to analyzing the breaches of the BIT as alleged by Infinito” is vague and speculative. The request is a fishing expedition and should therefore be rejected.</p>		<p>specific categories of documents, and that the documents may be relevant to the dispute.</p> <p>With respect to documents withheld or redacted on grounds of privilege or confidentiality, the Respondent shall produce a privilege log as set out in PO6.</p>
25.	<p>All documents including notes, minutes or memoranda documenting meetings between officials of DGM and Infinito or Industrias Infinito, including meetings with Erich Rauguth in 1999-2000 discussing Costa Rica’s legal and regulatory framework governing mining projects.</p>	<p>CWS-Rauguth ¶ 46</p> <p>See also references in request 2.</p>	<p>The documents requested are relevant and material to the issues in dispute. The Claimant relies on these meetings, including those discussed in the First Witness Statement of Erich Rauguth, as evidence of legitimate expectations engendered by senior officials of the Government of Costa Rica that the Crucitas Project would proceed through the administrative process set out under the Mining Code. Any government documentation of those meetings/discussions is therefore relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not</p>	<p>Costa Rica agrees to produce responsive documents to this request to the extent they are in its possession, custody or control. Nevertheless, Costa Rica objects to this request on the grounds that it is overly broad because it requests “all documents including notes, minutes or memoranda documenting meetings between officials of DGM and Infinito. . . ”. This request also fails to identify with precision a narrow and specific category of documents, as required by paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a) (ii) of the IBA Rules. This document request also imposes an unreasonable burden on Costa Rica which is contrary to the procedural economy established in Article 9.2(g) of the IBA Rules. As Costa Rica explained in paragraph 417</p>	<p>The Tribunal should accept this request in full for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 20.</p>	<p>The Tribunal understands that the Respondent has agreed to produce this request in full, i.e. all non-privileged documents in its possession, custody or control.</p>

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			in the possession, custody or control of the Claimant, as they are internal government documents or documents shared between government agencies.	of its Counter Memorial on Jurisdiction and the Merits, the administrative acts, including the EIA and the 2008 Concession, were swiftly halted by judicial injunctions that prevented the execution of the project. Thus, any expectations held by the Claimant based on those acts would have been short-lived and therefore could not have given rise to the Claimant's expectation that its investment in the Crucitas Mining Project would be immune from judicial review.		
26.	All documents including notes, minutes or memoranda documenting meetings between officials of SETENA and Infinito or Industrias Infinito.	See references in request 1.	<p>The documents requested are relevant and material to the issues in dispute. The Claimant relies on these meetings as evidence of legitimate expectations engendered by senior officials of the Government of Costa Rica that the Crucitas Project would proceed through the administrative process. Any government documentation of those meetings/discussions is therefore relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant, as they are internal government documents or</p>	Costa Rica objects to this request pursuant to paragraph 16.1 of Procedural Order No. 1 and Articles 3.3(a)(ii), 9.2(c) and (g) of the IBA Rules. The Claimant has failed to identify a sufficiently narrow and specific category of documents in its request (<i>see</i> paragraph 16.1 of Procedural Order No. 1 and Article 3.3(a)(ii) of the IBA Rules). The Claimant has failed to indicate how those meetings are relevant and material to the outcome of the case, as established in Article 9.2(a) of the IBA Rules. The request is overly broad, encompassing "notes, minutes or memoranda documenting meetings." Thus, the request imposes an unreasonable burden on Costa Rica (<i>see</i> , Article 9.2(c) of the IBA Rules). For the same reasons it is contrary to	<p>The request is not overbroad. Infinito's request defines a narrow and specific category of documents that are reasonably believed to exist. There is no reason to suggest that notes, minutes or memoranda documenting meetings is a broad category of documents.</p> <p>Costa Rica asserts with no explanation or evidence that compliance with the request "imposes an unreasonable burden".</p> <p>The Respondent has not addressed the Claimant's argument regarding relevance with any particularity, so the Claimant will not expand further.</p>	DENIED , due to lack of sufficient narrowness or specificity.

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			documents shared between government agencies.	the principle of procedural economy (<i>see</i> , Article 9.2 (g) of the IBA Rules).		
27.	All documents including notes, minutes or memoranda documenting meetings between Erich Rauguth and a technical advisory panel in 2000-2001 consisting of business leaders and government representatives.	CWS-Rauguth ¶¶ 66	<p>The documents requested are relevant and material to the issues in dispute. The Claimant relies on these meetings, including those discussed in the First Witness Statement of Erich Rauguth, as evidence of legitimate expectations engendered by senior officials of the Government of Costa Rica that the Crucitas Project would proceed through the administrative process. Any government documentation of those meetings/discussions is therefore relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant, as they are internal government documents or documents shared between government agencies.</p>	<p>Costa Rica objects to this request on the grounds that it is overly broad as it asks for “[a]ll documents including notes, minutes or memoranda documenting meetings” without even identifying a specific governmental agency. The request fails to identify with precision a narrow and specific category of documents, contrary to the requirements of paragraph 16.1 of Procedural Order No. 1, and Article 3.3.(a)(ii) of the IBA Rules.</p> <p>In addition, Costa Rica objects to this request because as it explained in paragraph 417 of its Counter Memorial on Jurisdiction and the Merits, the Claimant could not have formed a legitimate expectation that any approval or concession issued in the context of the “administrative process” would be exempt from judicial review by the Costa Rica courts.</p>	<p>This request is not overbroad. Infinito’s request defines a narrow and specific category of documents that are reasonably believed to exist. There is no reason to suggest that notes, minutes or memoranda documenting meetings is a broad category of documents.</p> <p>The Respondent’s argument regarding legitimate expectations should be rejected for the reasons set out in part (B) to Infinito’s reply to Request 1. In addition, the Respondent’s objection asks this Tribunal to pre-emptively accept its contested argument on the merits, while ignoring the Claimant’s position and evidence. This is not appropriate; whether or not Infinito had certain legitimate expectations is a matter that will be decided by the Tribunal on the merits of this dispute.</p>	DENIED. The Claimant fails to identify the source of the category of documents it seeks (specifically, the governmental agencies that might have been involved in the technical advisory panel). As a result, the request would impose an unreasonable burden on the Respondent, who would need to search the offices of every governmental agency potentially involved. In addition, the relevance of the documents has not been sufficiently established.
28.	Any all documents including notes, minutes or memoranda documenting meetings between Erich Rauguth, Juan Carlos Hernandez and/or other representatives of Industrias	CWS-Hernández ¶¶ 106 CWS-Rauguth ¶ 99	The documents requested are relevant and material to the issues in dispute. The Claimant relies on these meetings, including those discussed in the First Witness Statement of Erich Rauguth and	Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate how the documents requested are relevant and material to the Claimant’s legitimate expectation claims. Consequently, this request	The documents requested are relevant. The Respondent asks the Tribunal to pre-emptively accept its argument on the merits in order to find that the documents requested are not relevant. This is not appropriate; whether or not	GRANTED. The Tribunal considers that the documents may be relevant to the dispute, and notes that the Respondent does not

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	Infinito or Infinito with the Minister of the Environment and Energy or MINAE in 2002-2004.	See also references in request 4.	<p>the First Witness Statement of Juan Carlos Hernandez, as evidence of legitimate expectations engendered by senior officials of the Government of Costa Rica that the Crucitas Project would proceed through the administrative process set out under the Mining Code. Any government documentation of those meetings/discussions is therefore relevant and material to analyzing the expectations legitimately held by Infinito and the breaches of the BIT as alleged by Infinito.</p> <p>The documents requested are not in the possession, custody or control of the Claimant, as they are internal government documents or documents shared between government agencies.</p>	<p>should be rejected pursuant to Article 9.2(a) of the IBA Rules. As explained above and in Counter Memorial on Jurisdiction and the Merits (paragraph 417), the Claimant could not have formed a legitimate expectation that any approval or concession issued in the context of the “administrative process” would be exempt from judicial review by the Costa Rica courts. The only justification provided by the Claimant for this request is an unidentified statement from the Minister of Environment referred to in Mr Rauguth’s statement (paragraph 99). Moreover, this paragraph is not relied upon in Claimant’s Memorial on the Merits when describing alleged legitimate expectation in Memorial (see paragraphs 304-323 of Claimant’s Memorial) and so the request is not relevant or material to the Claimant’s alleged legitimate expectations.</p>	<p>Infinito had certain legitimate expectations is a matter that will be decided by the Tribunal on the merits of this dispute.</p> <p>The Claimant relies on these meetings as part of the foundation of its legitimate expectations. The Witness Statements of Juan Carlos Hernández and Erich Rauguth discuss these meetings as part of Infinito’s expectations held and it is not for the Respondent to predetermine what the Claimant may argue.</p>	object on the grounds of narrowness, specificity, or unreasonable burden.
29.	All documents from SETENA, SINAC or MINAET relating to or analyzing illegal mining and/or use of cyanide in the Curtis, San Carlos area, damage to the environment from illegal mining, illegal felling of endangered species including yellow almond trees, or any action taken by police or government agency to stop	CM ¶¶ 85-96, 92, 150-52, 184.	The documents requested are relevant and material to the issues in dispute. The Respondent has alleged without evidence that Industrias Infinito undertook certain project development activities harming the local environment. Other more serious ills that have arisen in the project area in the absence of the Crucitas Project are relevant to assessing	Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate how the documents requested are relevant and material to the Claimant’s legitimate expectation claims. Consequently, this request should be rejected pursuant to Article 9.2(a) of the IBA Rules. The references to the submissions cited by the Claimant relate to facts that are not in dispute between the Parties and do not	This request is relevant the issues in dispute, including in direct response to allegations raised by Respondent. The Respondent alleges that Industrias Infinito undertook or planned to undertake certain activities that harmed the local environment and then refuse to produce documents demonstrating the deteriorated state that it has allowed or permitted for the local environment after the end of the	DENIED. The Tribunal finds that the requested documents are unlikely to be relevant to the dispute or material to its outcome. While the Respondent does indeed allege that Industrias Infinito caused environmental damage, it makes no claim in

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	these acts, from November 2011 to the present.		<p>the Respondent's allegations.</p> <p>The documents requested are not in the possession, custody or control of the Claimant, as they are internal government documents or documents shared between government agencies.</p>	form the basis of any of the Claimant's claims and arguments.	Crucitas Project. In order for Infinito to respond in full to the Respondent's allegations and put those allegations into proper conducts, it requires the documents requested.	this respect in this proceeding. The current state of the area where the Crucitas Project is located is thus irrelevant to the dispute at hand, and so is any damage caused by third parties. The Tribunal notes that it remains the Respondent's burden to prove the environmental damage that it alleges was caused by Industrias Infinito.
30.	All documents from SETENA, SINAC, MINAET or the Attorney General's Office from November 2011 to the present relating to or analyzing the existing environmental impact of the Crucitas project and/or the cost of returning the site to its pre-construction condition.	CM ¶¶ 85-96, 92, 150-52, 184.	<p>The documents requested are relevant and material to the issues in dispute. The Respondent has alleged without evidence that Industrias Infinito undertook certain project development activities harming the local environment. The Government's own understanding of whether such harm has in fact occurred, and if so the cost of returning the site to its pre-construction condition, are relevant to assessing the Respondent's allegations.</p> <p>The documents requested are not in the possession, custody or control of the Claimant, as they are</p>	Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate how the documents requested are relevant and material to the Claimant's legitimate expectation claims. Consequently, this request should be rejected pursuant to Article 9.2(a) of the IBA Rules. The references to the submissions cited by the Claimant relate to facts that are not in dispute between the Parties or the basis of any of the Claimant's claims and arguments. The order of environmental remediation was made by the TCA in the 2010 TCA Judgment. The "Government's own understanding of whether such [environmental] harm has in fact occurred" is therefore irrelevant.	<p>The Tribunal should accept this request in full for the reasons explained by Infinito in making this request and set out by Infinito in reply to Request 29.</p> <p>The Respondent incorrectly suggests that the references to the submissions relate to facts that are not in dispute between the Parties. Those issues are clearly disputed for the reasons set out in reply to Request 29.</p>	DENIED. The Tribunal finds that the requested documents are unlikely to be relevant to the dispute or material to its outcome. While the Respondent does indeed allege that Industrias Infinito caused environmental damage, it makes no claim in this respect in this proceeding. The current state of the area where the Crucitas Project is located is thus irrelevant to the dispute at hand, and so is any

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			internal government documents or documents shared between government agencies.	The Claimant continues to identify as one same entity — <i>quod non</i> — the three different branches of the Costa Rican State (Executive, Legislative and Judicial branches).		damage caused by third parties. The Tribunal notes that it remains the Respondent's burden to prove the environmental damage that it alleges was caused by Industrias Infinito.
31.	All documents from the Ministry of Finance detailing or analyzing tax revenue that would have been paid by Industrias Infinito in connection with the Crucitas Project.	RCM ¶¶ 626 RER-Hart ¶¶ 92-94	<p>The documents requested are relevant and material to the issues in dispute. The Respondent's expert Timothy Hart has given evidence that the Claimant's experts, Howard Rosen and Chris Milburn, have not properly accounted for various taxation issues under Costa Rican law. Any contemporaneous analyses of taxes that would have been paid by Industrias Infinito in connection with the Crucitas Project is relevant and material to the assessment of damages.</p> <p>The documents requested are not in the possession, custody or control of the Claimant, as they are internal government documents or documents shared between government agencies.</p>	Costa Rica objects to this request on the basis that the Claimant has failed to demonstrate how the documents requested are relevant and material to the Claimant's legitimate expectation claims. Consequently, this request should be rejected pursuant to Article 9.2(a) of the IBA Rules. As Costa Rica explained in its Counter Memorial on Jurisdiction and the Merits (paragraph 621), the Crucitas Mining Project did not arrive to the point of construction or being an operating mine. As a result, the Crucitas Mining Project did not get to a point where the Ministry of Finance was actually receiving any meaningful tax revenue (or any tax revenue at all) in connection with the mine. The Ministry of Finance does not assess tax in respect of <i>prospective</i> economic activity and revenue. Rather, the Ministry of Finance assesses tax on the basis of actual economic activity and revenue. Therefore the documents requested lack relevance and	In its objection, the Respondent asks the Tribunal to pre-emptively accept its contested argument on the merits as the basis for its objection. Contrary to the Respondent's allegation, the Crucitas Project was fully permitted and had begun construction in 2008. The Claimant maintains this request on the basis of the project's advanced stage and the fact that it is the Respondent's own expert that put these taxation questions into issue. The Respondent must therefore produce any related documents.	<p>DENIED. The Tribunal finds that the documents are not relevant to the dispute. The Respondent's expert, Mr. Hart, alleges that:</p> <p>"FTI failed to apply the Costa Rica dividend tax [at 15%] on the Infinito repatriated dividends they calculated from the Crucitas Project. In my DCF model, I applied the 15% Costa Rica dividend tax to projected Crucitas aftertax cash flows (dividends) available to shareholders. This dividend tax correction reduces FTI's valuation by over \$50 million, or 17%. (RER-Hart, ¶¶ 92-</p>

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				materiality.		94). Whether Costa Rican dividend tax is applicable to Infinito's repatriated dividends is a legal question, and does not depend on projections made by the Ministry of Finance.