

Annex A to Procedural Order No. 5 - Decision on Production of Documents, with Tribunal Decision

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID Case No. ARB/21/14

BETWEEN:

FIRST MAJESTIC SILVER CORP.

Claimant / Investor

- and -

GOVERNMENT OF UNITED MEXICAN STATES

Respondent / Contracting Party

CLAIMANT'S REQUEST FOR PRODUCTION

(REDFERN SCHEDULE)

Counsel for the Claimant:

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CLAIMANT’S REDFERN SCHEDULE

No .	Description of the Requested Documents or Category of Documents ¹	Relevance and Materiality of the Requested Documents or Category of Documents	Response / Objections (if any)	Claimant’s Responses to Objections	Tribunal Decision
Respondent’s Allegations Of Irregularities And Purported Tax Evasion					
1	<p>The Claimant requests all documentation in relation to the following statements</p> <div style="background-color: black; width: 100%; height: 100px; margin-bottom: 5px;"></div> <p>and whose issuance, in 2012, <u>generated damage to the detriment of the State and the public interest, i.e., the erosion of the Mexican tax base.</u></p> <p>See Respondent’s Counter-Memorial, dated November</p>	<p>The documentary evidence requested relate to allegations made by the Respondent. See Respondent’s Counter-Memorial, ¶¶ 1-2, 84-86, 94-95, 121-126.</p> <p>The requested documents are relevant and material as they will either help prove or disprove the allegations made by the Respondent concerning impropriety in the issuance of the Advanced Pricing Agreement (“APA”) in 2012.</p>	<p>La Demandada no objeta las solicitudes descritas en el numeral 1, incisos i, ii y iii.</p> <p>La Demandada objeta las solicitudes descritas en el numeral 1, incisos iv a xviii, por las siguientes razones:</p> <p>Primero, los documentos relacionados con</p>	<p>Claimant response to Respondent’s objection to 1(iv) to (xviii):</p> <p>i) Claimant’s reasons for the production request refer to the very words used in the Respondent’s Counter-Memorial, which indicate that the SAT carried out of <div style="background-color: black; width: 100%; height: 1em; display: inline-block;"></div> in connection with the APA.</p> <p>ii) the requested documents therefore exist. This fact has not been denied by Respondent.</p>	<p>Production Request 1.(i) (ii) (iii) Granted (PRG)</p>

¹ The term “documents” or “documentation” includes records, whether in paper form or electronic format and includes emails, letters, memoranda, notes, minutes of meetings reports, manuals, policy documents, and any other form of communication or recording of practices. See also the definition of “document” in IBA Rules of Evidence.

<p>25, 2022 (“Counter-Memorial”), ¶¶ 1-2.</p> <p>Such documentation should include:</p> <ul style="list-style-type: none"> i. Written policies of the SAT during the period 2010 to 2014, inclusive, concerning conflict of interest, ethical conduct, criminal conduct, and any other guidelines aimed at preventing improper conduct by SAT employees; ii. Written policies that were applicable during the period 2010 to 2014 establishing the grounds for commencing disciplinary proceedings, investigations, review of wrongful and criminal behavior, report preparation, and factors to be taken into account 	<p>The documents requested are relevant and material as the Respondent has alleged that the APA obtained by Primero Empresa Mining (“PEM”) in 2012 was based on illegal conduct (<i>i.e.</i>, according to the Respondent by “flagrant violation of various legal provisions”) and improper conduct of certain public officials in the Central Transfer Pricing Control Administration of the SAT.</p> <p>In essence, the position of the Respondent is that the APA was improperly obtained due to the involvement of [REDACTED].</p> <p>Allegedly, he procured the APA on the basis that his sibling, [REDACTED] was at that time the head of the Central Transfer Pricing Control Administration.</p>	<p>las solicitudes contienen información privilegiada y confidencial, al tratarse de investigaciones en contra de personas físicas y un ex un servidor público de la Demandada.</p> <p>Para evitar reproducciones innecesarias, la Demandada reproduce mutatis mutandis, la objeción general número 5.</p> <p>Segundo, la Demandante no ha establecido la relevancia e importancia de las solicitudes (Numeral 15.2 de la RP1 y Artículo 9(2)(a) de las Reglas de la IBA). Para evitar</p>	<p>iii) Respondent has not objected on the basis that it would put undue burden to produce the documents, as they relate to two specific individuals claimed to be involved in wrongdoing and, again, there is no question that the SAT investigated these individuals.</p> <p>iii) the documents are clearly relevant as they relate to assertions of wrongdoing by central figures (<i>i.e.</i>, the named individuals) in the claims by Respondent of the existence of irregularities (<i>see</i> Counter-Memorial, ¶ 2)</p> <p>iv) Respondent has already produced “cherry picked” information that it wishes to disclose, to advance its position, by referring to these documents in its Counter-Memorial (<i>see</i> ¶ 84 for reproduced email) obtained through the investigation.</p> <p>v) as for the claim of privilege and privacy rights of [REDACTED]</p>	
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<p>when determining appropriate disciplinary measures.</p> <p>iii. Written policies in place during the years 2010 to 2014 for addressing breaches of conflict of interest and other improper conduct by tax lawyers, advisors, and consultants who represent taxpayers.</p> <p>iv. Documents concerning the [REDACTED] including the date of the initiation of the [REDACTED], in particular the types of documents listed below;</p>	<p>The Respondent, through the SAT's internal affairs department sanctioned and temporarily barred [REDACTED] from public office, in response to what it alleged to be illegal conduct. The requested documents are relevant and material and are within the Respondent's possession.</p> <p>The requested documents are relevant and material to the claims made by the Respondent that the APA was obtained improperly and "in flagrant violation of various legal provisions."</p> <p>Each of the documents requested have been framed in a narrow and specific matter in relation to the Respondent's claims of irregularities and purported tax evasion.</p> <p>The allegations made are of a serious nature and reasonably would have to be in the Respondent's possession in order to make</p>	<p>repeticiones innecesarias, la Demandada adopta, mutatis mutandis, la explicación contenida en la objeción general No. 2 sobre la relevancia e importancia de sus objeciones.</p> <p>Tercera, las solicitudes carecen de especificidad (Numeral 15.2 de la RP1 y Artículo 3(3)(a) de las Reglas de la IBA). Por ejemplo: se solicitan los documentos (así sin más) sobre las investigaciones del [REDACTED] o "Documentos relacionados con" dichas investigaciones. La Demandada</p>	<p>[REDACTED] it is clear that Respondent has again selectively decided to ignore issues of privacy when providing information to the press on the SAT's investigations of both individuals. (Counter-Memorial, ¶¶ 121-126)</p> <p>v) To the extent that the assertions of wrongdoing are not only against both [REDACTED] but with the alleged complicity of PEM, fundamental rules of due process require disclosure of the relevant facts relied upon by the SAT to claim improper conduct on the part of PEM. PEM cannot fully defend itself without access to the information gathered during the investigations.</p> <p>Finally, the request has provided specificity by listing the category of documents that would exist in any thorough investigation (e.g., interim and final</p>	<p>Production Request Denied (PRD) NR, PR (iv to xviii)</p>
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<p>v. The terms of reference for the [REDACTED]</p> <p>vi. Documentation related to the [REDACTED] including notes taken by the SAT officials during the course of the investigation, minutes of meetings, memoranda, and both interim and final reports;</p> <p>vii. Any documentation that details [REDACTED] in the decision-making process for issuing the APA?</p> <p>viii. Documents concerning the [REDACTED]</p>	<p>the allegations it has made and are unavailable to the Claimant.</p> <p>Serious allegations such as those made by the Respondent have to be evidenced by contemporaneous documentation.</p>	<p>adopta, mutatis mutandis, la objeción general No. 1 sobre la falta de especificidad.</p>	<p>reports, terms of reference, etc.)</p> <p>The Tribunal should also note that Respondent has not provided specific reasons for why it refuses to produce documents requested in paragraphs (v) to (xviii) and onwards.</p>	
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	<p>ix. Notices provided to [REDACTED] at the commencement, during, and at the conclusion of their respective [REDACTED]</p> <p>x. Documents concerning [REDACTED] including any temporary measures imposed and the justification for these measures?</p> <p>xi. Documentation concerning why temporary disciplinary measures were chosen over other potential measures that the SAT could impose for employee misconduct.</p> <p>xii. [REDACTED]</p>				
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	<p>██████████ and the outcome of such proceedings;</p> <p>xiii. Documentation to establish that ██████████ acted contrary to Mexican law at any time during the process leading to the issuance of the APA;</p> <p>xiv. Documents that demonstrate any direct influence exercised by ██████████ on the outcome of the process leading to the issuance of the APA to PEM;</p> <p>xv. Documents that evidence any SAT ██████████ and the outcome;</p>				
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	<p>xvi. Documents that evidence any [REDACTED] for his work for PEM;</p> <p>xvii. Evidence of any [REDACTED] and the outcome; and</p> <p>xviii. Any and all other documentation to substantiate the allegation that the SAT issued the 2012 APA due to the alleged “flagrant violation of various legal provisions” by one or more persons, including identification of the particular provisions alleged to have been violated.</p>				
2	Documents from 2010 to 2015 detailing the SAT’s policies regarding the legal	The allegedly improper obtaining of the APA due to the relationship between	La Demandada no objeta la solicitud.		PRG

	and ethical responsibilities of SAT officials when interacting with employees or external consultants of taxpayer companies who are related to SAT officials.	<p>██████████ is a critical allegation in Respondent’s case. Respondent, through the SAT’s internal affairs department sanctioned and temporarily disbarred ██████████ from public office, in response to what it alleged to be illegal conduct. The requested documents are relevant and material and should reasonably be expected to be in the Respondent’s possession.</p> <p><i>See Counter-Memorial, ¶¶ 2, 84-86, 94-95, 121-126.</i></p>			
II Respondent’s Allegations That APA Was Improperly Issued					
3	<p>The Respondent claims that the APA was issued “in flagrant breach of various legal provisions” at the price of ██████████ per ounce of silver rather than at “market prices.” Furthermore, it argues that this was irregular.</p> <p>Please produce the following:</p>	<p>The process leading to the issuance of the APA is alleged by the Respondent to have been improperly undertaken due to the relationship between ██████████</p> <p>To obtain the APA, PEM submitted numerous</p>	<p>La Demandada objeta las solicitudes contenidas en el numeral 3, incisos i, ii y iii, por las siguientes razones:</p> <p>Primero, la Demandante no</p>	<p>Claimant objects to Respondent’s objections on the following basis:</p> <p>i) Requesting a “<i>listing</i> of documents” gathered by the SAT to perform its analysis in order to issue the 2012 APA is a very specific request; furthermore, this is not a request for listing of all</p>	<p>All Production Requests denied: NR, LS, PR</p>

<p>i. Please provide a <u>listing of documents</u> both internal and external (whether provided by PEM and its advisors or from other sources) that the SAT gathered in performing its analysis when issuing the APA in 2012. <u>This request is limited to the listing of documents prepared by the SAT (which are not in the possession of the Claimant);</u></p> <p>ii. Please provide all documents (<u>other than those provided to the SAT by PEM</u>), whether internally prepared or sourced by the SAT, that the SAT relied upon in issuing the APA;</p> <p>iii. Please provide documentation that sets out the internal analysis performed by</p>	<p>documents directly to the SAT for consideration. The SAT performed its analysis and then requested additional documentation. Thus, the documents requested (which are ones other than those originating from PEM), are relevant and material to the determination of the process that was followed, and the analysis undertaken, to support the issuance of the APA setting the transfer prices at [REDACTED] rather than another amount (<i>i.e.</i>, the so called “market prices”)</p> <p>The documents requested will also explain what the Respondent means by “market prices” in a situation where there exists a long-term commitment to supply. (<i>i.e.</i>, does the Respondent’s definition of “market prices” mean “spot prices”?)</p> <p>The documents requested seek to determine the analysis conducted by the SAT in the years 2011 to 2012 which led to the</p>	<p>ha establecido la especificidad necesaria a sus solicitudes (Numeral 15.2 de la RP1 y Artículo 3(3)(a) de las Reglas de la IBA), debido a que el alcance de la definición “documents” de esta Solicitud es excesiva. Solicitar un listado de documentos tanto internos como externos elaborados por el SAT es sumamente general y ambiguo, sin dejar a un lado la onerosidad y carga irrazonable que constituye buscar esta información sin parámetros más específicos.</p>	<p>documents but only a listing of documents relied upon to perform its analysis when approving the APA.</p> <p>If such a listing does exist, it should be produced. If it does not exist, then that should have been stated.</p> <p>The next request is for documentation setting out the internal analysis conducted by the SAT when approving the APA which established [REDACTED] transfer price applicable for the years 2010 and 2014.</p> <p>Claimant does not have in its possession the SAT internal analysis (as is being asserted by Respondent). Claimant only has the documents it submitted in support of its application for the APA.</p> <p>Respondent has not stated that it does not have the SAT’s analysis in its possession.</p>	
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<p>the SAT, including any amended analysis, all of which resulted in the APA issued in 2012 for silver priced at [REDACTED] rather than another price (<i>i.e.</i>, the so-called “market price”);</p> <p>iv. Provide documents setting out “market prices” as referenced by the Respondent in its Counter-Memorial and the methodology for arriving at “market prices” during the period of the validity of the APA (<i>i.e.</i>, 2010 to 2014, inclusive);</p> <p>v. Provide documentation analyzing “market prices” and its relationship, if any to “spot prices”, during the validity of the APA (<i>i.e.</i>, 2010 to 2014);</p>	<p>decision that accepted the fixed price set out in the “streaming agreement.” The SAT’s understanding of the “streaming agreement” and its analysis of this agreement is a fundamental issue in this arbitration.</p> <p>The documents requested seek to determine if the relationship (if any) between the predecessors to PEM and Wheaton, that in the view of the SAT at the time of the issuance of the APA, affected the setting of the long-term fixed price.</p> <p>The analysis undertaken by the SAT in 2015 (or prior years) that led to the initiation of the <i>Juicio de Lesividad</i> is critical to understanding why the SAT believes that the APA should be repudiated on a retroactive basis.</p> <p><i>See</i> Counter Memorial, ¶¶ 1-2, 65-66, 99-107, 175-181; <i>see also</i> Witness Statement of [REDACTED], ¶¶ 12-13;</p>	<p>La Demandada adopta, mutatis mutandis, la explicación contenida en la objeción general 1.</p> <p>Segundo, la Demandante no ha señalado las razones por las cuales no tiene custodia ni que están en su poder los documentos solicitados. Para la Demandada es importante destacar que el SAT, al igual que cualquier otra entidad de la Demandada, no puede actuar más allá de lo que está señalado en sus propios ordenamientos jurídicos aplicables. En este sentido, el Código Fiscal de</p>	<p>Indeed, this cannot be the case because the decision of the Federal Court on Administrative Matters decided in 2020 that the SAT analysis was flawed as it was not focused only on the sale of silver. Therefore, the analysis performed by the SAT prior to issuing the APA does exist.</p> <p>Similarly, based on the very nature of the documents requested in paragraphs iv to xi, it is clear that these documents would be exclusively in the possession of the SAT and not Claimant: Respondent’s analysis of differential between market price (as defined by Respondent) and the [REDACTED] APA fixed prices, SAT’s analysis of the stream agreement and its impact on transfer pricing analysis, SAT’s analysis of whether there existed at the relevant time any corporate relationship between Wheaton and Goldcorp, and factors that the SAT</p>	
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<p>vi. Provide documentation in the possession of the Respondent that analyzes the impact of the “streaming agreement” in the determination of the price for the APA;</p> <p>vii. Provide documentation that indicates that the SAT analyzed the impact of the “streaming agreement” in the establishment of the price for silver payable to PEM;</p> <p>viii. Provide documentation concerning whether the SAT was able to attribute any prior corporate relationship between Wheaton and Goldcorp as influencing the price set for the fixed and long-term selling prices for silver under</p>	<p>APA Request Letter, dated October 17, 2011, p. 1, C-0002, p. 1; Mexican APA Request – Supporting Transfer Pricing Economic Analyses, Ernst & Young, dated October 11, 2011, p. 3, C-0017.</p>	<p>la Federación, particularmente el Artículo 34-A, señalan los documentos que un solicitante de una Resolución MPT debe presentar ante el SAT, por lo que con estos documentos que el contribuyente presenta ante el SAT, la autoridad tributaria mexicana analiza y, de ser el caso, autoriza una resolución.</p> <p>De hecho, es importante resaltar que la propia Demandante, como parte de su justificación, señala que “To obtain the APA, PEM submitted numerous documents</p>	<p>concluded would support the [REDACTED] price as was decided.</p> <p>Respondent should be ordered to produce all these documents (as it has not claimed they do not exist).</p> <p>Additionally, they are relevant and material to the proceeding because it is Respondent’s claim in this arbitration that the SAT’s analysis undertaken in 2011 and 2012 supporting the APA and the [REDACTED] price was flawed.</p> <p>Claimant is of the view that the APA was properly issued. What Claimant takes issue with is the post-facto challenge by the SAT of its own APA and its claim that the APA can be revoked with retroactive effect.</p>	
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	<p>the internal and external streaming agreements;</p> <p>ix. Provide the analysis conducted between 2011 and 2012 by the SAT of the long-term selling price by PEM of silver at approximately [REDACTED], and the factors that supported the acceptability for the issuance of the APA in 2012;</p> <p>x. Documented analysis conducted in 2015 and following years, by the SAT, leading to the reversal of the decision made in 2012 (so as to reject the [REDACTED] as the appropriate APA price); and</p> <p>xi. SAT's documentation relied upon in 2015 leading to the initiation of the <i>Juicio</i></p>		<p>directly to the SAT for consideration”,</p> <p>Por lo anterior, la Demandante tiene control y posesión de los documentos que dan respuesta a esta solicitud. Para evitar repeticiones innecesarias, la Demandada adopta, mutatis mutandis, las objeciones generales 3 y 4.</p> <p>Los documentos que dan respuesta a la solicitud del numeral 3, incisos iv a xi están en poder, custodia o control de PEM y/o la Demandante. La Demandada adopta mutatis mutandis la</p>		
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	<i>de Lesividad</i> proceeding.		objeción general número 4.		
III. Respondent's Allegations That PEM Refused To Cooperate In A Verification					
4	Documents pertaining to the claim that PEM refused to cooperate with the SAT during the verification process for the APA. This includes documentation as defined for the purposes of this Schedule such as notices, correspondence, memoranda, notes, emails, reports, and other documents.	<p>The Respondent makes the claim that PEM allegedly refused to cooperate with the SAT in the verification process. Respondent has the responsibility for carrying out the verification process and should have documentation to support its claim.</p> <p>The documents requested, are relevant and material and are in Respondent's possession.</p> <p><i>See Counter-Memorial, ¶¶ 139-145, 219-223.</i></p>	<p>La Demandada objeta la solicitud presentada en el numeral 4, por las siguientes razones:</p> <p>La Demandada ha proporcionado los documentos necesarios para probar este hecho. Ver R-0048, pág. 6, en donde PEM, en respuesta a una comunicación del SAT, señaló lo siguiente:</p> <p>“PRIMERO. En el Oficio de Observaciones, esa H. Administración observó que mi representada, no debió haber vendido onzas de plata a su parte</p>	<p>Respondent has in its objection (and in its Counter-Memorial) made the claim that PEM refused to cooperate with the SAT during the verification process for the APA. Furthermore, it refers to Exhibit R-0048 as responsive. This is plainly false.</p> <p>Reference to R-0048, p.6, as Respondent claims is responsive, is misleading as it relates to PEM's response to a post-2015 income and business flat tax audit and not to a “process of verification for the APA”.</p> <p>That is, under the APA, PEM was allowed by the SAT to sell silver to its related party STB at a fixed price, for a determined period of time (2010-2014). The R-0048 document was issued in an audit related to PEM's compliance with its income</p>	PRD: NR

			<p>relacionada Silver Trading Barbados Limited (en adelante "STB") a precio fijo, toda vez que dicha operación no cumplió, según su dicho, con el principio de plena competencia; lo anterior a pesar de que mi representada cuenta con una resolución en materia de precios de transferencia (en adelante "Resolución de Acuerdo Anticipado de Precios de Transferencia") mediante la cual se confirmó que la metodología utilizada por mi representada para la determinación del precio de venta de plata a</p>	<p>and business flat tax obligations, in which PEM was asked by the SAT to reference the documentation that supported the fixed silver price used in its transactions with STB. PEM responded that the APA constituted the document that supported such fixed price, and that it had no obligation to provide additional evidence, since the transactions had already been analyzed by the SAT.</p> <p>Thus, the R-0048 is not a document pertaining to the compliance obligations related to the APA.</p> <p>The Request was for "documents pertaining to the claim that PEM refused to cooperate with the SAT during the verification process for the APA", an allegation made by Respondent, which it has not backed up by its willingness to produce documents.</p>	
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			<p>STB durante el ejercicio fiscal bajo revisión, cumple con lo dispuesto en el artículo 215 de la Ley del Impuesto sobre la Renta vigente en 2010 (en adelante "LISR").”</p> <p>Si la Demandante considera que México no ha probado su dicho, puede indicarlo así en su Réplica. La supuesta falta de pruebas para sostener un argumento de la contraparte no puede servir de base para una solicitud de documentos.</p> <p>En todo caso, es la Demandante quien tiene la carga de demostrar que</p>	<p>In summary, the document referenced by Respondent R-0048 does not indicate non-compliance to the APA, because it does not even relate to the APA but rather, PEM’s compliance with its income and business flat tax obligations, which, specifically regarding the silver sale operations carried out in fiscal years 2010-2014, are supported by the APA.</p> <p>The PEM officer quoted confirms adherence to the methodology set out in the APA (which the SAT is now unlawfully challenging on a retroactive basis).</p> <p>However, the APA was valid and continues to be valid and PEM properly relied on the APA during the years 2010 to 2014 in declaring its revenues on exports.</p> <p>Respondent is incorrect when it states that “es la Demandante quien tiene la carga de demostrar que PEM</p>	
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			<p>PEM no se rehusó a cooperar con el SAT en el proceso de verificación, además de que su solicitud no cumple con la especificidad requerida por las Reglas de la IBA, por lo que la solicitud se torna especulativa.</p> <p>La Demandada adopta <i>mutatis mutandis</i> las objeciones generales número 1, 2, 3 y 4.</p>	<p>no se rehusó a cooperar con el SAT en el proceso de verificación”. This is plainly wrong.</p> <p>Respondent has made the allegation of non-compliance with the APA. The evidentiary burden is therefore entirely on Respondent to bring forward evidence of non-compliance, before the evidentiary burden shifts so as to require Claimant to provide a factual rebuttal supported by evidence.</p>	
IV Juicio de Lesividad					
5	<p>i. Documents including copies of emails, notes, memoranda, analysis, and reports, which were prepared or relied upon by the SAT officials to reach the decision to initiate the <i>Juicio de Lesividad</i> proceeding</p>	<p>In 2015, the SAT initiated the <i>Juicio de Lesividad</i> proceeding that “seeks to annul an administrative act” on the grounds of detriment to the state and the public interest.</p> <p>This <i>Juicio de Lesividad</i> proceeding was initiated</p>	<p>Sobre la solicitud número 5, inciso i, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen</p>	<p>Respondent claims that no documents exist that were prepared or relied upon by the SAT officials to reach the decision to initiate the <i>Juicio de Lesividad</i> proceeding on August 4, 2015, through ruling letter numbered 900 04 02-2015-31276. If Respondent is unwilling or</p>	<p>PRD: NR, PR. LS</p> <p>Requests 5.ii.(b) and (d) granted</p>

<p>on August 4, 2015, through ruling letter numbered 900 04 02-2015-31276.</p> <p>ii. Documentation whether internal to SAT or between the SAT and the various Mexican government authorities, including the grounds for imposing various harmful measures during the period 2015 to 2017 against PEM, and directions issued by the SAT to the various government authorities to commence and cease these measures:</p> <p>a. The customs authorities withholding merchandise owned by PEM and delaying the export process;</p>	<p>against PEM in 2015 and seeks to annul on a retroactive basis the APA and the methodology established by the SAT for the determination of revenues for the years 2010 to 2014 from the sale of silver pursuant to a long term “streaming agreement.”</p> <p>The documents setting out the analysis and grounds for the initiation of the <i>Juicio de Lesividad</i> are therefore relevant, material and only in the possession of Respondent.</p> <p>The documents reasonably exist as of 2015 or earlier to initiate the process in that year.</p> <p><i>See</i> Counter-Memorial, ¶¶ 2, 631; <i>see also</i> Memorial, ¶¶ 90-105; Witness Statement of ██████████, ¶¶ 19, 23, 39-48; Witness Statement of ██████████, ¶¶ 7(e), 47-48, 90, 95-99.</p>	<p>documentos relacionados con esta solicitud.</p> <p>Respecto a la solicitud ii, la Demandada desea señalar que el SAT no ejerce ninguna influencia ni existe relación entre las medidas reclamadas y la Comisión Federal de Electricidad, la Comisión Nacional del Agua o sobre cualquier otra entidad del Gobierno de México. El actuar de dichas dependencias se rige bajo el principio de legalidad y del marco jurídico correspondiente dentro del ámbito de aplicación y competencias.</p>	<p>unable to produce these documents, Respondent is thereby admitting that the SAT initiated the Juicio de Lesividad proceeding arbitrarily.</p> <p>Claimant asks the Tribunal to take notice of Respondent’s position that there are no documents underlying ruling letter numbered 900 04 02-2015-31276 which initiated the <i>Juicio de Lesividad</i>.</p> <p>With respect to 5 (iii) and (iv), which concern documentation PRODECON provided to the SAT and reports issued by PRODECON to the SAT, the refusal to produce is based on confidentiality provisions of Mexican law. Refusal which relates to PEM and the impact on PEM of the measures taken by the SAT, cannot be confidential if it relates to PEM.</p> <p>Furthermore, restrictions to produce grounded in Mexican law is not binding</p>	
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	<p>b. The Federal Electricity Commission determining deficiencies in payment for energy consumption;</p> <p>c. The SAT decreeing suspension of PEM's registry of specific importers and exporters, as well as its sectorial importers registry; and</p> <p>d. The National Water Commission issuing in an official letter a request to inspect and demanding a vast amount of information.</p>		<p>Respecto a la solicitud 5, inciso ii, literal a, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.</p> <p>Respecto a la solicitud 5, inciso ii, literal b, la Demandada no objeta la solicitud.</p> <p>Respecto a la solicitud 5, inciso ii, literal c, los documentos solicitados son confidenciales, conforme a los artículos 116 de la LGTAIP; 113, fracción II de la</p>	<p>on this Tribunal which is to make its decisions based on international law and the relevant provisions of NAFTA. Please see Claimant's discussion on application of international law principles and claims made by Respondent concerning domestic law restricting production in Section A. Claimant's Position on Respondent's Repeated Reliance on Domestic Laws and Restrictions Against Disclosure.</p> <p>The dispute is before this Tribunal which is to be guided by issues of relevance, materiality, etc., and this Tribunal can order production even in the face of restrictive domestic law provisions.</p> <p>The documents from PRODECON will show that the SAT's actions and measures in the years 2015 to 2017 were illegal in the face of a valid APA.</p>	
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<p>iii. Documentation from the PRODECON provided to the SAT during the years 2015 to 2017, based on a complaint filed by PEM, which resulted in several exchanges of correspondence and reports including the termination of actions taken by various government authorities at the direction of SAT as against PEM.</p> <p>iv. Reports and recommendations issued by PRODECON to the SAT. concerning SAT's enforcement measures during the years 2015 to 2017.</p> <p>v. Internal documentation of PRODECON on the SAT measures in relation to the APA</p>		<p>LFTAIP, en relación con el artículo 69 del Código Fiscal de la Federación y el 2, fracción VII de la Ley Federal de los Derechos del Contribuyente, por lo que su difusión podría constituir responsabilidad administrativa y/o penal en contra de los servidores públicos del SAT, de conformidad con la Ley General de Responsabilidades Administrativas y el Código Penal Federal.</p> <p>La Demandada adopta, <i>mutatis mutandis</i>, la objeción general número 5.</p> <p>Respecto a la solicitud 5, inciso</p>	<p>PRODECON recommended to the SAT that the imposition of such measures should be terminated or reversed.</p> <p>Such critically relevant information cannot be kept secret, using privacy and confidentiality laws, intended to preserve rights of taxpayers such as PEM (and for their benefit).</p> <p>Such laws are not intended to provide a means for the SAT to keep evidence as “secret” when the taxpayer is seeking information concerning itself or when defending itself against an allegation made by the SAT.</p> <p>What is at issue is the SAT's illegalities in engaging in enforcement and collection while the APA remains valid, and so the SAT should not turn a right given to a taxpayer of confidentiality “on its head” by seeking to restrict this information from the taxpayer.</p>	
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	<p>and their legal validity or invalidity.</p> <p>vi. Documentation issued by PRODECON resulting in the PEM being reincorporated to the list of imports and exports and the freeing of the merchandise that had been seized, and its overall findings that the SAT measures had no legal basis.</p>		<p>ii, literal d, la Demandada no objeta la solicitud.</p> <p>Respecto a las solicitudes iii a vi, la Demandada señala que los documentos solicitados son confidenciales, conforme al derecho de protección de datos personales señalados en los Artículos 6, fracción II; 16 de la Constitución Política de los Estados Unidos Mexicanos, los cuales establecen que toda persona tiene derecho a la protección de sus datos personales, al acceso, rectificación y cancelación de estos, así como a manifestar su</p>		
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			<p>oposición a que sean divulgados.</p> <p>El Artículo 116 de la Ley General de Transparencia y Acceso a la Información Pública señala que la información confidencial contiene los datos personales.</p> <p>Los Artículos 3, fracciones II, IX, XI; 16; 17; 20; 22 de la Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados, establecen que los sujetos obligados (<i>i.e.</i> PRODECON) debe guardar confidencialidad de la información concerniente a la</p>		
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			<p>identificación de una persona.</p> <p>Por otro lado, el Artículo 12 de la Declaración Universal de los Derechos Humanos, establece que nadie podrá ser objeto de injerencias arbitrarias en su vida privada, por lo que toda persona tiene derecho a la proyección de la ley en contra de tales injerencias o ataques.</p> <p>No obstante, para que la PRODECON pueda transmitir los documentos que pueden dar respuesta a estas solicitudes, de conformidad con el Artículo 20 de</p>		
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			<p>la Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados, requiere contar con el consentimiento previo del titular para el tratamiento de los datos personales, o bien que se actualice alguna de las causales del Artículo 22 de dicha ley. En caso de no presentarse alguna de estas dos excepciones, su difusión podría constituir responsabilidad administrativa y/o penal en contra de los servidores públicos de la PRODECON, de conformidad con la Ley General de Responsabilidad</p>		
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			<p>Administrativa y el Código Penal Federal.</p> <p>La Demandada adopta, <i>mutatis mutandis</i>, la objeción general número 5.</p>		
6	<p>Documents of the SAT setting out how it will implement the decision of the Federal Court of Administrative Justice (“FCAJ”), including documentation explaining how the decision of the FCAJ permits the use of “market prices” as claimed by the Respondent.</p> <p>Documents of the SAT setting out how the decision of the FCAJ purportedly determined that it could reject the [REDACTED] price as confirmed by the APA.</p> <p>Documents of the SAT setting out how it will rectify the errors it committed as particularized by the FCAJ</p>	<p>There were two reasons for the High Chamber of the FCAJ to declare the APA to be null and void with retroactive effects: The first, which consisted of SAT’s analysis of profitability being based on the entirety of the operations of San Dimas Mine rather than whether the silver sale transactions complied with the arm’s length principle; and the second, consisting in the fact that the SAT did not request the translation of several documents submitted by PEM in a foreign language. (<i>i.e.</i> English)</p> <p>This is the full extent of the reasons provided by FCAJ to declare the APA to be null</p>	<p>Respecto a la solicitud 6, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.</p> <p>Lo anterior, debido a que la existencia de estos documentos depende del resultado de la sentencia que dirima de manera definitiva el</p>	<p>Claimant asks the Tribunal to take note of Respondent’s position that it does not have documents that explain how it will implement the decision of the Federal Court of Administrative Justice (“FCAJ”).</p> <p>As noted, the FCAJ decision questioned the SAT’s conclusions concerning fixed price of [REDACTED] because its analysis considered the profitability of the company rather than its sales of silver.</p> <p>The decision of the FCAJ does not authorize the use of “market prices” and in the absence of any analysis, the SAT cannot assert such use.</p>	<p>PRD: Request of documentation on future action is contradictory</p>

	<p>(i.e., failure to focus on sales of silver and requesting some documents in Spanish rather than as submitted in English).</p>	<p>and void with retroactive effects.</p> <p>Nowhere in the decision issued by the FCAJ is there a part that acknowledgment implicitly or explicitly that PEM acted in an improper way or that PEM's actions can be the basis for the revoking of the APA.</p> <p>In substance, the decision of the FCAJ was that the SAT incorrectly issued the APA because it resolved a different matter than the one originally presented by PEM.</p> <p>There was no wrongdoing found on the part of PEM when making its request for the APA and thereafter in connection with ongoing compliance.</p> <p>See Counter Memorial, ¶¶ 4, 123.</p>	<p>juicio de lesividad. Si bien, a la fecha, las partes en este arbitraje, conocen la existencia de la sentencia del 23 de septiembre de 2020 dictada por el Pleno del Tribunal Federal de Justicia Administrativa, esta sentencia no se encuentra firme, ya que fue controvertida por PEM a través del Juicio de Amparo 12/2021, cuya resolución se encuentra pendiente.</p>	<p>As noted by Respondent, the FCAJ decision is under appeal. However, it is relevant and material evidence for this Tribunal to know what will transpire if PEM's appeal is not successful.</p>	
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7	<p>Documents related to the Request by Supreme Member Yasmin Esquivel Mossa and the Minister of Finance for the Supreme Court of Mexico to hear the Amparo proceeding.</p> <p>Documents related to both Member Yasmin Esquivel and the Minister of Finance withdrawing the case three years later from being heard by the Mexican Supreme Court.</p>	<p>The Claimant’s <i>amparo</i> proceedings in the Mexican Court to assert its position concerning the validity of the APA has been the subject of many irregularities due to the actions of the SAT.</p> <p>First, the SAT has never before used the <i>Juicio de Lesividad</i> proceedings to challenge an APA it has issued to a taxpayer.</p> <p>Second, the process of using the “power of attraction” by a single Member of the Supreme Court is highly unusual.</p> <p>Third, it is very unusual to have the Mexican Supreme Court hear tax disputes. It has done so extremely rarely (less than one percent).</p> <p>Fourth, the withdrawal of the “power of attraction” by both Member Yasmin Esquivel Mossa and the Minister of Finance, after 3 years of the matter being moved from the Collegiate Court is</p>	<p>Respecto a la solicitud 7, la Demandada realizó una búsqueda de dichos documentos en sus archivos, y no ha encontrado documentos relacionados con esta solicitud.</p> <p>Los motivos de la solicitud de los ejercicios de la facultad de atracción como de los desistimientos, son facultades discrecionales que ejercen libremente tanto la Secretaría de Hacienda y Crédito Público como los Ministros de la Suprema Corte de Justicia de la Nación.</p>	<p>Claimant asks the Tribunal to order Respondent to produce the writs, as it is inconceivable that Supreme Member Yasmin Esquivel Mossa and the Minister of Finance would have been able to seek permission of the Supreme Court of Mexico to hear the Amparo proceeding based on the “power of attraction” and moreover, to later withdraw their requests, without any documentation.</p> <p>Respondent states that the exercise of the “power of attraction” is discretionary. However, even discretionary decisions require rationale and compliance with the relevant legal framework, and this has to be recorded.</p>	<p>PRD: NR <i>Amparo</i> case has been sent back to the competent court</p>
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		<p>unprecedented and also highly irregular.</p> <p>The documents requested are relevant and material to the claim of First Majestic and PEM that they have been treated in an arbitrary manner, without due process, in a highly discriminatory manner, through interference by government officials in the judicial process, and with inexplicable delays in the processing of the <i>Juicio de Lesividad</i>, all of which confirms violations of the Respondent's obligations under Article 1105 and 1110 of the NAFTA and other applicable provisions of NAFTA.</p> <p>These various steps taken by the SAT to initially move the proceeding away from the Collegiate Court to the Mexican Supreme Court and then back to the Collegiate Court will be documented and they are only within the possession of the Respondent.</p>			
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		<p>See Claimant’s Request for Provisional Measures, dated January 4, 2023 (“Request for Provisional Measures”), ¶¶ 122(h), 124; <i>see also</i> Respondent’s Response to Claimant’s Request for Provisional Measures, dated February 10, 2023, (“Response to Request for Provisional Measures”), ¶¶ 18-21.</p>			
V Mexico’s APA Program					
8	<p>Please provide documentation confirming how many APAs have been issued to affiliates of foreign mining companies operating in Mexico between the years 2010 to 2023, including the nationalities of the foreign shareholders on the date of issuance.</p>	<p>In 2015, the SAT initiated the <i>Juicio de Lesividad</i> proceeding that “seeks to annul an administrative act” on the grounds of detriment to the state and the public interest.</p> <p>This proceeding was initiated against PEM in 2015 and seeks to annul on a retroactive basis the APA and the methodology established by the SAT for the determination of revenues for the years 2010 to 2014 from the sale of silver pursuant to a long-term “streaming agreement.”</p>	<p>Respecto a la solicitud 8, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.</p>	<p>Notwithstanding the assertion by Respondent, it is inconceivable that this information does not exist in a documented form.</p> <p>Claimant believes that Mexico provides such information to the OECD regarding the number of APAs issued. Even if there is no official document that already contains the number of affiliates of foreign mining companies, this is information that Respondent can easily compile and produce to the Tribunal because the SAT’s databases</p>	<p>PRD: NR</p>

		<p>The documents are therefore relevant and material and in the possession of Respondent.</p> <p>This information necessarily exists as the Government of Mexico has issued several APAs between the years 2010 and 2023.</p> <p><i>See</i> Counter-Memorial, ¶¶ 2, 631; <i>see also</i> Memorial, ¶¶ 90-105; Witness Statement of ██████████, ¶¶ 19-20, 23, 39-48; Witness Statement of ██████████ ██████████, ¶¶ 7(e), 47-48, 90, 95-99.</p>		<p>contain information on all the APAs that have been granted.</p>	
9	<p>Please provide documentation concerning the number of APAs issued by the SAT to affiliate of foreign mining companies operating in Mexico between the years 2000 to 2023, where the APA arrangement was based in whole or in part on a “streaming agreement”.</p>	<p><i>See</i> immediately above.</p>	<p>Respecto a la solicitud 9, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.</p>	<p>Notwithstanding the assertion by Respondent, it is difficult to believe that this information does not exist.</p> <p>Publicly available information suggests that Wheaton Precious Minerals has a total of four stream agreements with Mexico-based mining companies. <i>See</i> Wheaton Precious Metals 2021/2022 Guidebook, dated</p>	<p>PRD: NR</p>

				September 9, 2021, p. 17 (p. 144 of exhibit), C-0017.	
				There are also other companies that undertake financing through stream agreements in addition to Wheaton Precious Metals. For example, Franco Nevada has at least one stream agreement in Mexico.	
10	Please provide documentation setting out number of mining companies that operate in Mexico between the years 2000 to 2023 that have had their APA challenged based on the <i>Juicio de Lesividad</i> process.	<i>See</i> immediately above.	La Demandada no objeta la solicitud.		PRD: NR
11	Please provide documentation to evidence the use of the <i>Juicio de Lesividad</i> process on a year-by-year basis since 2010 to 2023 against APAs issued by the SAT.	<i>See</i> immediately above.	Ver respuesta a la solicitud número 10.	<i>See</i> response to request number 9.	PRD: NR
VI	Mexico's Experiences With Streaming Agreements				
12	Wheaton Precious Metals Corp, previously known as Wheaton River Minerals Ltd., has besides entering into "streaming agreements" with PEM also done so with	The streaming agreement between Wheaton Precision Metals Corp. and PEM is fundamental to the analysis for the APA.	Respecto a la solicitud 12, la Demandada realizó una búsqueda de dichos	It is difficult to understand how such information does not exist, as claimed by Respondent.	PRD: NR, PR

<p>owners of other Mexican mines:</p> <ul style="list-style-type: none"> i. <u>Penasquito</u> (previously owned by Goldcorp and now known as Newmont); ii. <u>Cozamin</u> (currently owned by Capstone Copper); and iii. <u>Los Filos</u> (currently owned by Equinox Gold). <p>Please provide documentation that the SAT has in its possession that will confirm Wheaton Precious has entered into “streaming agreements” with one or more mining companies operating in Mexico.</p>	<p>Respondent’s position on the validity of the APA negotiated and obtained in 2018, appears to raise issues concerning the alleged corporate relationship between Wheaton and Goldcorp, and also on the relationship between [REDACTED], the latter when acting for PEM.</p> <p>However, the streaming agreement form of long-term financing and sales agreement has been utilized by Goldcorp’s Penasquito mine (now more recently owned by Newmont), Capstone Gold, and Equinox Gold. None of these companies have had their streaming agreements challenged.</p> <p>The documentation requested are relevant and material as they will help confirm that the determination of transfer price has in all other cases been based on the prices</p>	<p>documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.</p> <p>No obstante, la Demandada desea señalar que de existir documentos que respondan la solicitud de la Demandante, estos serían confidenciales conforme a la Ley Federal de Acceso a la Información Pública, artículos 110 y 113; Ley General de Transparencia y Acceso a la Información Pública, artículos 113 y 116; así como al Artículo 69 del Código</p>	<p>While PEM was the first mining company in Mexico to enter into a stream agreement, it is clear that there are other mining companies that have entered into stream agreements.</p> <p>Furthermore, the request is for confirmation that Wheaton Precision Metals has entered into “stream agreements” and not for production of copies of the stream agreements.</p> <p>Generalized information concerning the existence of stream agreements in financing of mines in Mexico should be available under transparency and access to information legislation in Mexico.</p> <p>Furthermore, initiatives such as the Extractive Industries Transparency Initiative (implemented in many countries including Mexico) promote such disclosure.</p>	
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		<p>established under “streaming agreements” and not some concept of “market price” which the SAT has not clarified. They should also be in the Respondent’s possession.</p> <p><i>See</i> Wheaton Precious Metals 2021/2022 Guidebook, dated September 9, 2021, p. 17 (p. 144 of exhibit), C-0017; <i>see also</i> Figure VIII: Table of Other Mexican Streaming Agreements, accessed April 24, 2022, p. 1, RP-0014; Memorial, ¶¶ 53-55.</p>	<p>Fiscal de la Federación. Para mayor abundamiento sobre esta objeción, la Demandada adopta, <i>mutatis mutandis</i> la objeción general número 5.</p>	<p>Such information is not personal information or confidential information relating to taxes paid by individual companies.</p> <p>For example, see this press release of a streaming agreement between Wheaton Precious Metals and Capstone Mining Corp. for a mine in Zacatecas, Mexico in 2020: https://capstonecopper.com/news/capstone-announces-closing-of-150-million-silver-stream-agreement-with-wheaton-precious-metals-achieves-net-cash-position/</p> <p>Lastly, domestic law provisions are not binding on this international Tribunal and the Tribunal has the ability to make a decision requiring disclosure of the requested documents, even if domestic law requires restrictions. Please see Claimant’s discussion on application of international law principles and claims</p>	
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				made by Respondent concerning domestic law restricting production in Section A. Claimant's Position on Respondent's Repeated Reliance on Domestic Laws and Restrictions Against Disclosure.	
13	Please provide documentation (redacting as necessary to maintain confidentiality the texts of the APAs) concerning the APAs issued to any one of the Mexican entities owned by each of Goldcorp/Newmont, Capstone Gold (and its predecessor) and Equinox Gold.	<i>See</i> immediately above.	Ver respuesta a la solicitud número 12.	Respondent's objection based on domestic laws on confidentiality are not justified. Domestic law provisions are not binding on this international Tribunal and the Tribunal has the ability to make a decision requiring disclosure of the requested documents, even if domestic law requires restrictions. Please see Claimant's discussion on application of international law principles and claims made by Respondent concerning domestic law restricting production in Section A. Claimant's Position on Respondent's Repeated Reliance on Domestic Laws and Restrictions Against Disclosure.	PRD: NR, PR

				Information that is being sought can be produced subject to redactions.	
14	Provide any documentation concerning the initiation of <i>Juicio de Lesividad</i> against any of the foregoing based on setting selling prices pursuant to the “streaming agreements.”	See immediately above.	Ver respuesta a las solicitudes número 12 y 13.	The initiation of <i>Juicio de Lesividad</i> in the courts should be public information as has been the case for PEM. Information concerning any <i>Juicio de Lesividad</i> against any mining company, other than PEM, where prices are set pursuant to the streaming agreements should be public information.	PRD: NR, PR
15	Provide analysis performed by the SAT on the existence of the streaming agreement between PEM (and its affiliates) with Wheaton entered into in May 2010 when issuing the APA in 2012.	See immediately above.	La Demandante no ha señalado las razones por las cuales no tiene custodia ni que están en su poder los documentos solicitados. Para la Demandada es importante señalar que el SAT no puede actuar más allá de lo que está	The information requested is for the “analysis performed by the SAT” when issuing the APA. This information has to exist, and it pertains to the APA issued in 2012 by the SAT. The request is for information possessed by the SAT, and therefore PEM would have no access (and does not have access) to this	PRD: NR, PR

			<p>señalado en sus propios ordenamientos jurídicos aplicables. En este sentido, el Código Fiscal de la Federación, particularmente el Artículo 34-A, señala los documentos que un solicitante de una Resolución MPT debe presentar ante el SAT, por lo que son estos documentos que el contribuyente presenta ante el SAT, los que la autoridad tributaria mexicana analiza.</p> <p>Por lo anterior, la Demandante tiene control y posesión de los documentos que dan respuesta a esta solicitud.</p>	<p>information until it is disclosed.</p> <p>Furthermore, information that pertains to PEM should not be withheld from it. The request is not for third party information.</p>	
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			Para evitar repeticiones innecesarias, la Demandada adopta, <i>mutatis mutandis</i> , las objeciones generales 3 y 4.		
16	Any documentation in existence in 2010 to 2014, concerning treatment of the SAT of transfer pricing established on the basis of “stream agreements.”	<i>See</i> immediately above.	Respecto a la solicitud 16, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.	The requested information concerns the tax “treatment of the SAT” of stream agreements. It is a request for tax policy and the administrative guidelines concerning “stream agreements.” The response suggests that the SAT has no guidelines or policy with respect to how it will treat “stream agreements” for transfer pricing purposes.	PRD: NR, The Tribunal takes note that Respondent asserts that it has no such document
17	Any documentation in existence from the time of the initiation of the <i>Juicio de Lesividad</i> in 2015 or thereafter, 2010 to, concerning treatment by the SAT of transfer pricing established on the basis of “stream agreements”.	<i>See</i> immediately above.	Respecto a la solicitud 17, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no	The document request is specific as to the category of documents being requested, and the time frame. The initiation of the <i>Juicio de Lesividad</i> in 2015 would have required documents being produced to explain the	See 16

			<p>existen documentos relacionados con esta solicitud.</p> <p>Por otro lado, la Demandada desea señalar que, en caso de existir documentos que den respuesta a esta solicitud, la solicitud carece de especificidad (Numeral 15.2 de la RP1 y Artículo 3(3)(a) de las Reglas de la IBA). La Demandada adopta, mutatis mutandis, la objeción general No. 1 sobre la falta de especificidad.</p>	<p>basis for the initiation of the <i>Juicio de Lesividad</i> against PEM, and the evidence in support of the claims made at the very outset in the <i>Juicio de Lesividad</i> proceeding.</p>	
18	Any documentation concerning the years 2010 to 2014 that defines the term “market price” and the relationship between “market price” and “spot pricing.”	<i>See</i> immediately above.	La Demandada objeta la solicitud 18 debido a que las solicitudes carecen de especificidad (Numeral 15.2 de	<p>The request is very specific.</p> <p>The request for documentation from the SAT on how it defines “market price” and the relationship between “market prices” and</p>	PRD: LS

			<p>la RP1 y Artículo 3(3)(a) de las Reglas de la IBA).</p> <p>La Demandada adopta, mutatis mutandis, la objeción general No. 1 sobre la falta de especificidad.</p>	<p>“spot pricing” is critical information and relevant as well as material to the dispute. The tax deficiencies for the years 2010 to 2013 reference that the APA price of [REDACTED] did not reflect “market price.” However, it does not clarify how the “market price” was derived and whether it has any relationship to “spot pricing.”</p> <p>Respondent has to clarify what it means by “market price” based on its internal records.</p>	
VII PRODECON					
19	<p>All documents, including electronic communications, between PRODECON and the SAT for the 2015 and 2023 period in relation to:</p> <ul style="list-style-type: none"> i. the APA issued in 2012; ii. the SAT reassessments of PEM for the period 2010 to 2015; iii. the MAPs (<i>i.e.</i>, the Mutual Agreements 	<p>Claimant’s Memorial refers to its witnesses and experts that discuss the role played historically by PRODECON to limit the excesses of power exercised by the SAT so that it was not discriminatory, arbitrary, and excessive in its attempts to collect taxes without having regard in many cases to the applicable laws and policies.</p> <p>PRODECON has been referenced in the expert</p>	<p>La Demandada adopta, mutatis mutandis, la explicación contenida en las objeciones generales 1 y 2 sobre la falta de especificidad, relevancia y de importancia de la solicitud. De hecho, la Demandante trata de justificar su</p>	<p>The request for communications and other documents exchanged as between the SAT and PRODECON, in relation to identified subject matters is very specific (<i>i.e.</i>, the APA issued in 2012). Furthermore, the request is for a limited time period. The key period is between 2015 and 2017 when the SAT took several enforcement measures, which thereafter were reversed due to the involvement of</p>	PRD: NR

<p>Procedure) process requested by PEM, and the foreign affiliates of PEMs;</p> <p>iv. the enforcement measures taken by SAT against PEM; and</p> <p>v. the mediation efforts of PRODECON to resolve the dispute.</p>	<p>reports as having improved the administration and dispute resolution process in Mexico.</p> <p>PRODECON’s involvement in the SAT’s illegally implemented measures in 2015-16 helped in the backing away of the SAT from taking enforcement measures while the APA was valid and the <i>Juicio de Lesividad</i> process had been just then initiated.</p> <p>In the years 2019 onward, the head of PRODECON was terminated and since then there has been no replacement for that position.</p> <p>Respondent has deliberately reduced the power of PRODECON to the detriment of Primero and taxpayers generally. For example, in response to PEM filing a complaint against the SAT’s illegal acts in May 2015, PRODECON found that the SAT had no legal basis for its actions.</p>	<p>solicitud indicando que “la Demandada ha reducido deliberadamente el poder de PRODECON en detrimento de Primero y los contribuyentes en general”; sin embargo, la documentación solicitada no guarda relación con esa declaración que, además, carece de evidencia.</p> <p>La Demandada señala que los documentos solicitados en el numeral 19, incisos i, ii, iii y v son confidenciales, conforme al derecho de protección de datos personales establecidos en</p>	<p>PRODECON, on the basis that the APA was at that time (as it is now) still valid.</p> <p>Claims to protection due to privacy and other laws should not apply when the information sought concerns PEM and not other third parties.</p> <p>All personal data in issue belongs to PEM and concerns its treatment by the SAT, which is under challenge based on international law in this NAFTA proceeding. This information is therefore relevant and material to the resolution of the dispute.</p>	
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		<p>However, since then Respondent has severely limited the role of PRODECON in order to increase its illegal tax collection practices, in violation of taxpayer's rights. The requested documents are therefore relevant and material and in the possession of Respondent.</p> <p><i>See</i> Memorial, ¶¶ 86-89, 133-134.</p>	<p>los Artículos 6, fracción II; 16 de la Constitución Política de los Estados Unidos Mexicanos, los cuales establecen que toda persona tiene derecho a la protección de sus datos personales, al acceso, rectificación y cancelación de estos, así como a manifestar su oposición a que sean divulgados.</p> <p>El Artículo 116 de la Ley General de Transparencia y Acceso a la Información Pública señala que la información confidencial contiene los datos personales.</p> <p>Los Artículos 3, fracciones II, IX,</p>		
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			<p>XI; 16; 17; 20, y 22 de la Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados, establecen que los sujetos obligados (i.e. PRODECON) debe guardar confidencialidad de la información concerniente a la identificación de una persona.</p> <p>Por otro lado, el Artículo 12 de la Declaración Universal de los Derechos Humanos, establece que nadie podrá ser objeto de injerencias arbitrarias en su vida privada, por lo que toda persona tiene</p>		
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			<p>derecho a la proyección de la ley en contra de tales injerencias o ataques.</p> <p>No obstante, para que la PRODECON pueda transmitir los documentos que pueden dar respuesta a estas solicitudes, de conformidad con el Artículo 20 de la Ley General de Protección de Datos Personales en Posesión de Sujetos Obligados, requiere contar con el consentimiento previo del titular para el tratamiento de los datos personales, o bien que se actualice alguna de las causales del Artículo 22 de</p>		
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			<p>dicha ley. En caso de no acontecer alguna de estas dos excepciones, su difusión podría constituir responsabilidad administrativa y/o penal en contra de los servidores públicos de la PRODECON, de conformidad con la Ley General de Responsabilidad Administrativa y el Código Penal Federal.</p> <p>Por último, respecto a la solicitud identificada bajo el numeral 19, inciso iv, la Demandada no ha identificado ningún documento que pueda responder a esta solicitud. Cabe señalar que</p>		
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			la autoridad tributaria de México (SAT) no tiene facultades para imponer medidas coercitivas, conforme al artículo 28, primer párrafo, apartados A y B, en relación con el artículo 29 del Reglamento Interior del Servicio de Administración Tributaria.		
VIII First Majestic's Acquisition Of PEM					
20	<p>All documentation, as defined, explaining the SAT's delay in pursuing the <i>Juicio de Lesividad</i> proceeding from 2015 to 2018.</p> <p>Any documentation concerning the <i>Juicio de Lesividad</i> proceeding and communications from 2019 to 2021 between Ms. Raquel Buenrostro as the new head</p>	<p>Claimant refutes Respondent's claim that it failed to do the necessary due diligence prior to its acquisition of PEM. Respondent has failed to provide any evidence thus far in support of this claim. In fact, Claimant extensively lays out the due diligence conducted by First Majestic, including with regard to PEM's settlement negotiations with</p>	<p>La Demandada objeta la solicitud contenida en el numeral 20, párrafo 1, por lo siguiente:</p> <p><i>Primero.</i> La Demandante no ha establecido importancia de la documentación para el resultado del caso, como se</p>	<p>Claimant's response is as follows:</p> <p>First, the requested information concerns Respondent's claim that First Majestic did not undertake the necessary due diligence. However, no evidence has been provided for this assertion.</p> <p>Therefore, the relevance and materiality of this</p>	PRD: NR

<p>of SAT and senior SAT officials.</p> <p>All communications in the years 2019 to 2021, between each of the following with the other concerning PEM’s purported tax liabilities: President Lopez Obrador, Ms. Raquel Buenorostro, the Minister of Economy, and the Federal Public Prosecutor responsible for fiscal prosecutions.</p> <p>All documents between Margarita Ríos-Fajart, previous head of the SAT, and senior SAT officials concerning PEM’s tax reassessments for the years 2010 to 2012, the commencement of the <i>Juicio de Lesividad</i> proceeding and the SAT’s continuation of the proceeding against PEM.</p> <p>All documents between Margarita Ríos-Fajart, previous head of the SAT and PEM officers as well as [REDACTED] of First Majestic concerning</p>	<p>Respondent over alleged tax liabilities. The documents requested are therefore relevant and material and in the possession of Respondent.</p> <p><i>See</i> Counter Memorial, ¶¶ 108-109, 377-392; <i>see also</i> Witness Statement of [REDACTED] ¶¶ 70-76; Michael O’Boyle, Mexico Tax Prosecutor: Pay Up, Or We Are Taking Your company, Daily Tax Report, dated June 29, 2020 (“He said in April that 15 companies alone owed more than 50 billion pesos (\$2.2 billion), without disclosing names”), C-0003, pp. 28-29; Reuters, Exclusive: Mexico’s Tax Chief Eyes Criminal Charges as Path to Tougher Corporate Enforcement, dated June 9, 2020 (“The president... wants to increase revenue through more efficient collection and has threatened to expose 15 companies he says owe a total of \$2 billion.”), C-0003, pp. 196-198.</p>	<p>establece en los numerales 15.2 y 15.4.2 de la RP1 y el artículo 9(2)(a) de las Reglas de la IBA, pues la Demandante sólo ha indicado que busca refutar una afirmación de la Demandada, pero no señaló cómo la documentación que solicita sería importante para el resultado del caso.</p> <p>La Demandante no indica la relevancia de esta documentación para el caso, como se establece en los numerales 15.2 y 15.4.2 de la RP1 y el artículo 9(2)(a) de las Reglas de la IBA, pues si bien indica que con ella busca</p>	<p>documentary evidence is that it relates to one the defenses being used by Respondent to defeat Claimant’s NAFTA claims.</p> <p>The requested information will bear out whether Respondent has any evidence for its assertions, and therefore the documentation is “material” to the outcome.</p> <p>The requested documentation after 2018 (post PEM acquisition) would also confirm that the Mexican government through the SAT adopted the policy of engaging in extensive and broadly based threats against identified taxpayers. This level of intimidation occurred only after First Majestic had already acquired PEM and when the AMLO administration was in power.</p> <p>See newspaper articles repeating the same message from the government over an extended period in 2019 and</p>	
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<p>resolution of dispute between PEM and the SAT.</p>		<p>refutar una afirmación de la Demandada respecto al supuesto “<i>due diligence</i>” que debió realizar, debe considerarse que, en mayo de 2018, First Majestic adquirió Primero Mining Corp. y por tanto, de manera indirecta a Primero Empresa Minera (PEM), <i>Ver</i> Memorial de Demanda, ¶ 39, por lo que cualquier información posterior a esa fecha no podría ser de utilidad para refutar el supuesto “<i>due diligence</i>” que debió realizarse para la adquisición de PEM. La Demandante</p>	<p>thereafter: “The president... wants to increase revenue <i>through more efficient collection</i> and has <i>threatened to expose 15 companies he says owe a total of \$2 billion.</i>”). <i>See</i> Daina Beth Solomon, Exclusive: Mexico's tax chief eyes criminal charges as path to tougher corporate enforcement, Reuters, dated June 9, 2020, C-0025, p. 2.</p> <p>Finally, the requests are specific:</p> <ul style="list-style-type: none"> - Explanation for the SAT’s delay in pursuing the <i>Juicio de Lesividad</i> proceeding from 2015 to 2018 - SAT’s communications from 2019 to 2021 with Ms. Raquel Buenrostro as the new head of SAT - Communications in the years 2019 to 2021, between named government officials concerning PEM’s purported tax liabilities (which were then used 	
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			<p>solicita información de 2019 a 2021.</p> <p>La Demandada adopta, <i>mutatis mutandis</i>, las objeciones generales número 2 y 4.</p> <p><i>Segundo.</i> La solicitud de la Demandante carece de especificidad. Su solicitud es demasiado amplia al referirse a “todos los documentos” y “cualquier documentación”, en contravención a lo señalado en el numeral 15.2 de la RP1 y el artículo 3(3)(a) de las Reglas de la IBA, es decir, su solicitud no identifica con precisión cada</p>	<p>for speeches and interviews to the media):</p> <ul style="list-style-type: none"> - Correspondence between Margarita Ríos-Fajart, previous head of the SAT, and senior SAT officials concerning PEM’s tax reassessments for the years 2010 to 2012. 	
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			<p>documento ni describe una categoría reducida y específica de documentos. La Demandada adopta, <i>mutatis mutandis</i>, la objeción general número 1.</p> <p>Por otro lado, respecto a las solicitudes señaladas en los párrafos 2 a 4, de una búsqueda en los archivos de la Demandada, no se encontraron documentos que den respuesta a dichas solicitudes.</p>		
21	All documents prepared by the SAT in relation to efforts of PEM to resolve the APA-related dispute in advance of the acquisition by First Majestic of PEM in 2018.	Claimant extensively lays out in its evidence filed with the Tribunal the due diligence efforts conducted by First Majestic, including by having meetings with the SAT. Documents should	Respecto a la solicitud 21, la Demandada realizó una búsqueda de dichos documentos en	It would appear to be highly unlikely that there are no documents in the possession of the SAT concerning discussions with PEM (initiated by the latter) to settle the <i>Juicio de Lesividad</i> .	PRD: PR The Tribunal takes note that Respondent asserts that it

		<p>therefore exist with regard to PEM's settlement negotiations with the SAT over alleged tax liabilities. The documents requested are therefore relevant and material and in the possession of Respondent. Claimant refutes Respondent's claim that it failed to do the necessary due diligence prior to its acquisition of PEM.</p> <p>See Counter Memorial, ¶¶ 108-109, 377-392; see also Witness Statement of [REDACTED], ¶¶ 70-76.</p>	<p>sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.</p>	<p>According to the evidence provided by Claimant in its Claimant's Memorial, there were several meetings held by PEM with the SAT to seek a resolution of the <i>Juicio de Lesividad</i> proceeding.</p>	<p>has no such document</p>
IX Arbitrary Denial Of MAP Requests					
22	<p>All documents, to and from Mexico's competent tax authority to the relevant tax authorities of [REDACTED] concerning requests made by each of the authorities to Mexico for the resolution of transfer pricing, and deductibility of management expenses and interest payments.</p>	<p>The rejection of the Claimant's 3 separate MAPs requests was based on the assertion that the issues involved related exclusively to domestic taxation which is patently false in the case of transferring pricing and other expenses such as management fees and interest paid to companies outside Mexico. All of Claimant's MAPs requests were rejected on the same</p>	<p>La Demandada adopta, <i>mutatis mutandis</i>, la explicación contenida en las objeciones generales 1 y 2 sobre la falta de especificidad, de relevancia y de importancia de la solicitud.</p>	<p>The request is specific. It asks for exchanges of correspondence based on MAP requests made by [REDACTED] to Mexico.</p> <p>The relevance and materiality of this information is that Mexico has refused to engage in a MAP based resolution of the transfer pricing dispute, and therefore blocked resolution of the</p>	<p>Tribunal grants request of production of documents and correspondence evidencing any [REDACTED] tax authorities correspondence with SAT or other Mexican Tax Authorities</p>

<p>All documentation setting out analysis undertaken by Mexico’s Competent Tax authorities including any other offices within the SAT to support the position of the SAT, that the issues in dispute were not subject to the MAPs process in respect of each of the following: transfer pricing, and deductibility of management expenses and interest payments.</p> <p>All documents concerning the timing and reasons for the rejection of the MAPs requests from all three competent tax authorities, and the consequential rejection of the injunction imposed by Mexico’s administrative courts against the SAT, from engaging in any tax collection proceedings including the imposing of liens, charges and other restrictions on the assets of PEM.</p> <p>All documents in the possession of the SAT setting</p>	<p>day. Thus, the documents requested, are relevant and material and are in Respondent’s possession.</p> <p><i>See Counter Memorial, ¶¶ 266-306.</i></p>	<p>La Demandada objeta la solicitud contenida en los párrafos 1 y del numeral 22 de la Demandante respecto a “[t]odos los documentos de y para la autoridad fiscal competente de México provenientes de las autoridades fiscales pertinentes de [REDACTED] con respecto a las solicitudes hechas por cada una de las autoridades a México por la resolución de precios de transferencia y la deducibilidad de los gastos de administración y el pago de intereses”, sobre la base del</p>	<p>dispute based on the applicable avoidance of double taxation treaties.</p> <p>Claims to “secrecy” are not to be respected when the Mexican government has chosen by acts and omissions to violate international law and applicable provisions of NAFTA Chapter 11.</p> <p>With respect to Claimant’s request set out in paragraph 3 of this Request, it concerns documentation for the refusal of the SAT to engage in the MAPs procedures for resolving a transfer pricing dispute concerning silver exported from Mexico, and deductibility of management expenses and interest payments to PEM’s affiliates.</p> <p>The SAT has rejected the MAP requests in relation to the APA, claiming it is an issue that is to be resolved domestically, but has not provided its basis for rejecting MAP requests for management expenses and</p>	<p>and the latter’s responses, prompted by Claimant’s or related companies’ requests of activation of MAP to those authorities (as evidenced in respect of [REDACTED] by C-0002, p.4089)</p> <p>All other requests are denied</p>
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	<p>out the internal deliberations and communications concerning the dismissal of the Competent Authorities' requests made by [REDACTED] including compliance with Rule 2.1.32 of the Miscellaneous Tax Resolution for the years 2019 and 2020 when the MAPs requests were filed.</p> <p>All documents concerning the reporting or failure to report by Mexico of the rejection of the MAPs requests made by PEM and its foreign affiliates to the OECD.</p>		<p>numerales 15.4.2 de la RP1 y el artículo 9(2)(b) de las Reglas de la IBA, por un impedimento legal sobre confidencialidad.</p> <p>La autoridad tributaria de México no puede proporcionar la documentación que se solicita, en virtud de que la misma debe mantenerse como "secreta" de conformidad con lo establecido en los artículos 24(2), 27(2), y 26(2), de los Convenios para evitar la doble imposición y prevenir la evasión fiscal en materia de Impuesto sobre la Renta, celebrados por México con</p>	<p>interest expenses which are also subject to MAPs requests. Failure to produce documents would suggest that the refusal to engage in the MAPs process was inconsistent with Mexico's international treaty obligations.</p> <p>With respect to the request in paragraph 5 of this Request, the requirements of international law supersede any secrecy obligations. There exists a claim under Chapter 11 of NAFTA to be resolved, and this Tribunal is not bound by domestic law. Here, in particular, the requirement of "secrecy" appears bogus when the information pertains to First Majestic and PEM.</p>	
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			<p>[REDACTED]</p> <p>respectivamente.</p> <p>La Demandada también adopta, <i>mutatis mutandis</i>, la objeción general número 5.</p> <p>Sobre su solicitud contenida en el párrafo 3 del numeral 22, la Demandada no ha identificado ningún documento que pueda responder a esta solicitud.</p> <p>Sobre su solicitud contenida en el párrafo 4 del numeral 22, para evitar repeticiones innecesarias, la Demandada objeta esta solicitud por las mismas razones</p>		
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			<p>señaladas en la objeción a la solicitud del párrafo 1 <i>supra</i>.</p> <p>Respecto al “cumplimiento con la Regla de la Resolución Miscelánea Fiscal de los años 2019 y 2020 cuando las solicitudes MAP fueron presentadas”, la Demandada ha emprendido una búsqueda razonable y encontró documentos que responderían esta solicitud, por lo que la Demandada no tiene objeción en presentar estos documentos.</p> <p>Sobre su solicitud del párrafo 5 del numeral 22, la Demandada ha</p>		
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			emprendido una búsqueda razonable y encontró documentos que responderían esta solicitud, por lo que la Demandada no tiene objeción en presentar estos documentos.		
X Pre-Acquisition Discussions with SAT					
23	All communications between Primero and the SAT from 2015 to 2018 to understand and resolve the grounds for the <i>Juicio de Lesividad</i>	Claimant refutes Respondent’s claim that it failed to do the necessary due diligence prior to its acquisition of PEM. Respondent has extensive documentation concerning First Majestic and PEM’s settlement efforts with the SAT including with the head of the SAT. In fact, Claimant extensively lays out the due diligence conducted by First Majestic, including with regard to PEM’s settlement negotiations with Respondent over alleged tax liabilities.	Respecto a la solicitud 23, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud. Por otro lado, la Demandada desea señalar que, una vez iniciado el juicio de	It would appear to be inconceivable that there are no documents concerning discussions between First Majestic, PEM and the SAT in the years 2017 and 2018 to resolve the dispute when it is clear on the evidence, that several meetings were held. First Majestic should be entitled to obtain documents that explain the grounds for the <i>Juicio de Lesividad</i> and the refusal of Respondent to resolve the dispute.	PRD: NR

		<p>The documents requested are therefore relevant and material and in the possession of Respondent.</p> <p><i>See Counter Memorial, ¶¶ 108-109, 377-392; see also Witness Statement of [REDACTED], ¶¶ 70-76.</i></p>	<p>lesividad, la ley mexicana no cuenta con un procedimiento de conciliación entre las partes, por lo que la resolución del juicio de lesividad recae en el TFJA y no en las partes.</p>		
XI Measures Taken By Respondent Against PEM And First Majestic Starting in 2020					
24	<p>Documents within the possession of the SAT concerning the April 2020 investigation at the offices of PEM, and the authority for such an investigation, and the basis for the urgency to undertake such an investigation during the COVID-19 lock-down period mandated for mining companies by the Mexican Government.</p>	<p>Claimant has established that the SAT engaged in illegal collection (in the face of a court issued injunction) during the COVID-19 period. The SAT officials arrived on April 3, 2020, at PEM's Durango Offices to secure alleged debts. The SAT subsequently launched an investigation to identify which of PEM's assets could be seized or forfeited, [REDACTED]</p> <p>Thus, the documents used by SAT to justify the on-site investigation, are relevant</p>	<p>La Demandada no objeta esta solicitud.</p>		<p>PRG</p>

		<p>and material and are in Respondent's possession.</p> <p><i>See</i> Memorial, ¶¶ 137-139, 424-425; <i>see also</i> [REDACTED] Witness Statement, dated April 25, 2022, ¶¶ 132(c)-(d), RP-0000; Tax Collection Orders, Payment Requirements and Seizure Orders, dated April 3, 2020, p. 2, C-0002, p. 4952.</p>			
25	<p>Documents related to the Respondent's blocking of PEM's bank accounts in April 2020. These documents should explain basis for the measures taken against PEM's bank accounts in the face of a judicial injunction</p> <p>Documents relating to the offer of a guarantee by PEM to secure potential tax liabilities and to "un-block" its bank accounts, and the negotiations between the SAT and PEM over the guarantee, the offer made by PEM, and its rejection by the SAT including the grounds for the rejection.</p>	<p>The SAT blocked PEM's access to bank accounts critical to its business operations. Respondent ordered and executed the freezing of Claimant's bank accounts. Therefore, the documents requested, are relevant and material and are in Respondent's possession.</p> <p><i>See</i> Counter-Memorial, ¶ 256; <i>see also</i> Memorial, ¶ 142; [REDACTED] Witness Statement, ¶ 132(d).</p>	La Demandada no objeta esta solicitud.		PRG

26	<p>Any documents indicating SAT's analysis concerning the solvency or financial position of the San Dimas mine under PEM's ownership, the secured and unsecured creditors, and the impact of possible bankruptcy/closure including analysis of priority of other secured and unsecured creditors (including employees) if PEM were to become insolvent or bankrupt by the revocation of the APA.</p>	<p>Claimant's damages expert explains that if the Respondent were to seize or expropriate the San Dimas mine, it would not be able to fulfill the SAT's alleged claims of taxes owing, as it is a subordinated creditor in priority behind First Majestic's other secured creditors including the Bank of Nova Scotia and Wheaton. Respondent has nonetheless shown its intention to seize the San Dimas mine to satisfy what it considers to be a tax liability which is in excess of [REDACTED]. The documents are therefore relevant and material and in the possession of Respondent.</p> <p><i>See Expert Report of Secretariat, ¶¶ 36, 132-135</i></p>	<p>La Demandada no objeta esta solicitud.</p>		<p>PRG</p>
XII	Respondent's Assertions Made In The Request For Provisional Measures Proceedings				

27	<p>Documents, including internal government deliberations, on the asserted policy of making transparent taxes allegedly owed by individual companies.</p> <p>Documentation concerning reconciling legal obligation to keep taxpayer information confidential and on the other hand permitting high-level government officials to speak publicly on tax controversies.</p> <p>In particular, any documentation concerning Respondent’s publicity in relation to the dispute with First Majestic and PEM, and several other foreign companies, concerning taxes owing:</p> <ol style="list-style-type: none"> i. internal briefing documents prepared for President Lopez Obrador, SAT head and then Minister Raquel Buenrostro, Public Prosecutor Carlos Romero so as to brief the media (see examples of articles 	<p>Respondent has engaged in publicly addressing the allegation that the Claimant is acting fraudulently and has evaded taxes. Respondent justifies these measures on the basis that the President of Mexico has a policy of being “more transparent in the press conferences given by the President daily to keep the Mexican people informed.”</p> <p>The requested documents are therefore relevant and material and in the possession of Respondent. They will establish whether the intended purpose is for transparency or other improper purposes.</p> <p>Claimant’s position is that to the extent that media statements have been made, these would be based on “press briefings” prepared in advance.</p> <p>One would expect that statements made by the President and the Head of the</p>	Respecto a la solicitud 27, la Demandada realizó una búsqueda de dichos documentos en sus archivos, sin embargo, no existen documentos relacionados con esta solicitud.	<p>It is clear that a number of senior government officials, including the President, have provided the press information concerning certain taxpayer disputes and amounts in dispute.</p> <p>Respondent has not explained how that information can be communicated from the SAT officials to these extremely senior government officials, without written internal briefings.</p>	Request Denied. The Provisional Measure (PM) phase has been concluded. How Mexican authorities manage internally the relation between information to the public of tax matters and privacy of tax payers is immaterial for the outcome of this dispute. Public statements by Mexican authorities which Claimant has criticized are on the record, and have been examined in the Decision on PM.
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	<p>where each of them has made statements concerning taxes allegedly being owed by PEM);</p> <p>ii. briefing documents in connection with questions from the press to government authorities in relation to Mexican government's position on alleged [REDACTED]</p> <p>iii. briefing documents concerning statements made to the media by Mexican government officials including the President, in relation to tax disputes with Walmart Mexico, Coca-Cola bottler Femsa, IBM, for taxes owned in the several hundreds of dollars; and</p> <p>iv. briefing documents concerning the statement by</p>	<p>SAT would be based on briefings from SAT officials. These briefing documents should therefore exist.</p> <p>Claimant disputes the accuracy of these statements and the briefing notes will confirm that the administration of President Lopez Obrador and the Head of the SAT employed the tactic of extensively using the press (including leaking information to the Press) to leverage settlements often using criminal or threat of criminal charges so as to force settlements.</p> <p>It is highly inappropriate for heads of state and Ministers of the state to consistently use the media to comment on alleged taxes owing of particular foreign companies.</p> <p>The information requested will demonstrate that the Government of Mexico had "weaponized criminal and tax laws" and claimed certain foreign companies</p>			
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	<p>President Lopez Obrador in September 2022 that “dozens of companies owed a total of around 100 billion pesos (\$4.99 billion) in taxes.”</p>	<p>owed exorbitant amounts of taxes when this was not the case.</p> <p><i>See Counter-Memorial, ¶¶ 343-347, 354; see also Memorial, ¶¶ 331-343; Request for Provisional Measures, ¶ 122; Reuters, SAT seeks to charge Canadian miner \$11 billion in taxes, La Jornada, dated February 2, 2021, p. 1, C-0003, p. 3; First Majestic Silver faces \$534M Mexican tax claim, S&P Global, dated February 2, 2021, p. 1, C-0003, p. 32; Reuters, Mexican tax chief Raquel Buenrostro named as next economy minister, dated October 7, 2022, pp. 1-2, C-0040.</i></p>			
XIII	PEM is Precluded From Seeking a Stay of the Amparo Proceeding				
28	<p>Documents relied upon by the Respondent in order to take the position and make representations to the Tribunal that PEM was in a position to on its own volition stay the <i>Amparo</i> proceeding currently before the Federal Collegiate Court.</p>	<p>During the hearings on the Request for Provisional Measures, the Respondent made the claim that it was not necessary for the Tribunal to order a stay. Rather, PEM could unilaterally request the stay from the Federal Collegiate</p>	<p>La Demandada no objeta esta solicitud.</p>		<p>PRG</p>

<p>“<u>Very briefly, PEM may ask for the Stay of Amparo 12/2021. PEM brought this amparo as a Complainant. And as such, under Mexican legislation, it may ask for the Stay of the amparo specifically under the Articles of the amparo law and Article 365 and 368 of the Federal Procedural Code, and this is included in this Arbitration as R 66, 63, and R 64. R 63 and R 64. That’s my answer.” (See Transcripts, Hearing on Claimant’s Request for Provisional Measures (“Transcripts”), p. 98)</u></p>	<p>Court. The Claimant’s position has throughout been that it had no such ability (<i>i.e.</i>, to request a stay of the <i>amparo</i>).</p> <p>The Claimant’s position is that the Respondent’s analysis as presented at the oral hearing was misleading as it did not reference the applicable provision of the <u>Amparo Law</u>.</p> <p>The <u>Amparo Law</u> provides only two situations in which the amparo proceeding can be suspended:</p> <ol style="list-style-type: none"> 1. <u>Article 16</u> applies when the claimant or a third-party passes away. The suspension would happen if the <i>amparo</i> concerns personal rights of the claimant or of the third party and lasts until the 			
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		<p>executor of the will intervenes.²</p> <p>2. <u>Article 102</u> only provides for the suspension of “indirect <i>amparo</i> proceedings.” PEM’s case is a “direct <i>amparo</i> proceeding.”³</p> <p>The request for documents made to the Respondent is relevant and material.</p> <p>It is relevant as the documentation request will determine if the Respondent did or did not fully take into account the relevant provisions of the Amparo Law when making its representations to the Tribunal.</p>			
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² Article 16. In case of death of the claimant or the third interested party, as long as the matter set forth in the *protection* does not affect strictly personal rights, the legal representative of the diseased shall continue the trial until the legal representative of the estate. [...] (Unofficial translation).

³ Article 102. In case of decisions issued within the process of an indirect *protection*, which, due to their far reaching and grave nature can cause non-repairable damages to any of the parties, through the filing of a complaint the District Judge of Collegiate Court can suspend the procedure, after the exception of a suspension incident, as long as in its own judgment, he considers that the resolution issued in the complaint can influence the decision, or when if the main decision is issued, it can violate the rights that the claimant can request to be protected in the hearing. (Unofficial translation)

		<p>The request for the document is material as the inaccurate representations of the Respondent may have affected the decision of the Tribunal made on May 26, 2023, and the ongoing arbitration proceedings.</p> <p><i>See</i> Response to Request for Provisional Measures, ¶¶ 37-38, 78, 161, 186; <i>see also</i> Transcripts, pp. 60-61.</p>			
XIV Respondent’s Misleading Assertions Concerning Refusal Of Claimant To Provide A Guarantee					
29	<p>Documents relied upon by the Respondent in order to take the position and make representations to the Tribunal at the Request for Provisional Measures hearing that PEM did not provide a guarantee to avoid the blocking of the bank accounts.</p> <p>Counsel for the Respondent made the following representations to the Tribunal:</p> <p><u>“What PEM has not done and what the Claimant has not</u></p>	<p>The Claimant provided the following response at the hearing:</p> <p><u>One issue that I might just touch on because it goes along with this is that PEM did offer a guarantee to the SAT, which is contrary to what my friend understands, and those guarantees were not accepted. So, the seizures happened because the SAT chose not to accept the guarantees.”</u> <i>See</i> Transcripts, p. 111.</p> <p>The complete response is as follows:</p>	La Demandada no objeta esta solicitud.		PRG

<p><u>done is to explain to the Tribunal that PEM had the obligation to guarantee the tax liabilities. But it did not do so despite the fact that SAT even granted it an extension of time so that it could do it.</u> In Question 13, the Tribunal asked the Parties to let it know if the provisional suspensions of the tax liabilities were granted subject to certain conditions. <u>The answer is yes, that is correct, PEM had to guarantee the tax liabilities in accordance with Mexican law.” See Transcripts, pp. 70-71.</u></p>	<p>Due to the fact that PEM had filed MAPS requests, and the fact that it did not accept the legality of the reassessments, it did not provide a guarantee.</p> <p>There was also an injunction in place issued by the administrative courts.</p> <p><u>PEM did thereafter offer a guarantee to cover the tax deficiencies, in order to avoid the attachment of assets. This would have allowed PEM to use its bank accounts. However, through resolutions contained in ruling letters 400-24-00-02-00-2021-003061, 400-24-00-02-00-2021-003062, y 400-24-00-02-00-2021-003063, the SAT arbitrarily rejected the guarantees.</u></p> <p><u>On page 4 of all three ruling letters, the SAT acknowledges that the requirements it is asking for are not contained in the law,</u></p>			
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