

Clarifications of the Case

Aluminios de Choluca, S.A. v. United States of America

Errata Correction:

Notice of Arbitration, p. 6, para. 18, footnote 20: the date of the Briefing Note is April 14, 2015 (instead of 2010).

Notice of Arbitration, p. 9, para. 34, the correct designation of the government official is “then-Head of Department of Municipal Affairs and Housing, Tom Sawyer...”

Response, p. 5, para. 14: “issued by the Department of Natural Resources” (instead of “National Resource”)

Response, p. 5, para. 18: “In July 2013, GBQW was granted...” (instead of “In June”)

Response, p. 8, para. 35: at the end of the paragraph, add “, as revised in 2010.”

Questions:

1. Which treaty is GBQW relying on to claim a breach of Article 1103 NAFTA?

GBQW relies on all BITs signed and ratified by the United States of America.

2. Are any external documents that exist in real life, such as the laws and regulations of the state of Georgia, or any U.S. federal regulations, applicable to this case?

No.

3. What is the percentage that Aluminios de Choluca, S.A. as a Hanoi Group Company has in GBQW?

It hold 100% of the shares.

4. When was the property of Aluminios de Choluca, S.A. transferred to the Hanoi Group of Companies?

This was in November 2015.

5. Which other companies, whether domestic or foreign, have completed all requirements to obtain approval for extractive industrial projects similar to GBQW? How long has it taken them to obtain such permissions?

The list of companies that have been granted quarry rights over the last five years in a 50 mile-radius of GBQW’s quarry site are the following (no application was rejected):

<i>Name of company</i>	<i>Nationality of the investor</i>	<i>Type of mineral to be mined</i>	<i>Duration of application process</i>
Hung Cho, Inc.	China	Bauxite	2 years
Yellow Peach, Inc.	USA (Georgia)	Bauxite	3 months
Aluminios Unidos, S.A.	Colombia	Bauxite	2.7 years
Golden Pursuit, Ltd.	United Kingdom	Gold and copper	2.4 years
Ferrum Collossalum, S.p.A.	Italy	Iron ore	1.7 years
Metalltechnik Grossenheide, GmbH	Germany	Iron ore	3.4 years

6. In what instances has the Department of Environment issued Water Pumping Permits to other national and international applicants for pumping tests in quarry applications?

The Department of Environment issued Water Pumping Permits in the case of the other three bauxite miners, Hung Cho, Inc., Yellow Peach, Inc., and Aluminios Unidos, S.A.

7. Once the DNR deemed Galactic's ARA application as complete, a 45 day comment period began (*Notice of Arbitration*, p. 7, para 23). What was expected to happen when this period lapsed?

It was expected that the administration would take into consideration the comments received, eventually propose modifications to the project, and then give its final and definite approval.

8. The Defendant claims that to develop and operate a quarry on the Site, Galactic required "re-designation of the Site under the local Official Plan" (*Response*, p. 4, para 14). Which authority required this and for what reasons?

The City of Somerset, for the designation of the site as an active quarry.

9. On what legal basis did Galactic's counsel write to the DMAH, arguing that Georgia had to issue a DRI in respect of the DTZO no later than 30 days prior to April 1, 2016 (*Response*, p. 7, para. 28)?

This was based on the Georgia Planning Act, s. 47.

10. Page 7, para. 26 in the Notice of Arbitration says: "One of the reasons raised by the City of Somerset was the lack of completion of a Haul Route Study" – What were the other reasons raised by the City of Somerset? Were these other reasons?

The company GBQW had prepared a Haul Route Study, which analyzes how much truck traffic from the quarry is going to affect the streets of the vicinity. However, the regulation was not clear as to whether the Haul Route Study had to be submitted as supporting documentation for the ARA application. The City of Somerset rejected the ARA application alleging that no Haul Route Study had been submitted. However, if the company had known that such study was required, it could have furnished the document.

11. Did the Official Plan influence the decision of the Claimant to make an investment?

As stated in the Notice of Arbitration, p. 4, para. 5, Claimant knew about the Official Plan and took it into account when deciding about the investment.

12. Was the above-average rainfall an official reason for refusing to issue the permit to proceed with the water pumping tests? – Yes it was. If so, was it a reason stated in any official DOE guidelines? – No, no reference to the impact of rainfall on the water pumping efforts by the companies existed in the relevant regulations.

13. If the rainfall was the reason for refusing to grant the *WWP* to the Claimant, why were other investors in the same quarry granted the permits?

We do not know why the other investors were granted permits, but none of the other mining investors had their applications pending at the same time Claimant had.

14. Why did previous owner fail to obtain approvals from relevant Georgia and municipal authorities to transform the Site into a major bauxite quarry?

The seller did indicate that the relevant public bodies did not consider that the company's submissions of reports and studies were sufficient in scope, depth of analysis and data precision.