[redacted] [redacted]

8 April 2019

Honorable Martín Alberto Vizcarra Cornejo
President of the Republic of Peru
Office of the President
Jr. de la Unión s/n 1era cuadra
Lima, Peru

Honorable Carlos Augusto Oliva Neyra
Minister
Ministry of Economy and Finance
Jr. Junin 319, Cercado de Lima
Lima, Peru

Honorable Ricardo Manuel Ampuero Llerena
Titular Representative of the Ministry of Economy and Finance and President of the Special Commission
Ministry of Economy and Finance
Jr. Junin 319, Cercado de Lima
Lima, Peru

Honorable Pedro Paul Herrera Catalán
Director General of Matters of International Economy, Competency, and Productivity
Ministry of Economy and Finance
Jr. Junin 319, Cercado de Lima
Lima, Peru

Re: Notice of Intent to submit claims to arbitration pursuant to Article 10.16 of the United States-Peru Trade Promotion Agreement and Article 821 of the Canada-Peru Free Trade Agreement (the "Notice of Intent")

Pursuant to Chapter 10 of the 1 February 2009 United States-Peru Trade Promotion Agreement (the "US-Peru TPA") and Chapter 8 of the 1 August 2009 Canada-Peru Free Trade Agreement (the "Canada-Peru FTA") (collectively, the "Treaties"), [redacted] Kaloti Metals & Logistics, LLC ("Kaloti Metals") (collectively, "Claimants") hereby provide this Notice of Intent to submit to arbitration against the Republic of Peru ("Peru" or "the State") claims arising out of Claimants' investment in Peru, including investments made in its mining and precious metals industries.

[redacted]

I. Claimants

1. [redacted] is a national of the United States of America and is an investor in the State. A copy of his passport is attached as **Exhibit A**. [redacted] is a national of Canada and is an investor in the State. A copy of his passport is attached as **Exhibit B**. Kaloti Metals is a State of Florida, United States of America, limited liability company and is an investor in the State. Copies of Kaloti Metals' articles of organization and 2019 State of Florida annual report are attached as composite **Exhibit C**. Kaloti Metals is a gold and precious metals company that provided both U.S.-based and Latin America-based customers with complete precious metals solutions including trading, financing, and assaying. [redacted] own 25% and 37.5% of Kaloti Metals, respectively.

II. Legal Representative and Service of Documents

2. Claimants are represented in this matter by [redacted]. Please direct correspondence and communications related to this matter to [redacted] at the following address:

[redacted]

III. Service

3. This Notice of Intent is submitted to:

Honorable Martín Alberto Vizcarra Cornejo
President of the Republic of Peru
Office of the President
Jr. de la Unión s/n 1era cuadra
Lima, Peru

Honorable Carlos Augusto Oliva Neyra
Minister
Ministry of Economy and Finance
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Jr. Junin 319, Cercado de Lima
Lima, Peru

IV. Treaty Provisions Breached by Peru

4. Peru has breached its obligations under the Treaties, including the following provisions:

US-Peru TPA	Article 10.3: National Treatment Article 10.5: Minimum Standard of Treatment Article 10.7: Expropriation and Compensation
Canada-Peru FTA	Article 803: National Treatment Article 805: Minimum Standard of Treatment Article 812: Expropriation

V. Factual Basis for the Claims

5. Before Peru expropriated Claimants' investment, and enacted arbitrary and discriminatory measures targeting their enterprise, Kaloti Metals was a prosperous company dedicated to commercializing Peruvian gold, including purchasing gold from local Peruvian suppliers for subsequent sale on the international market. After establishing operations in Peru, Kaloti Metals' business grew rapidly and, despite Peru's ruinous conduct, it managed to put at least US $790 million into the Peruvian economy before its demise. In 2013 alone, the company generated over US $560 million in sales of Peruvian gold.

6. Claimants initially chose to invest in Peru because of its legal framework and rich gold supply. But that legal framework failed. Peru used its powers arbitrarily and unjustly to paralyze Kaloti Metals' import and export operations, subjecting the company and its owners to a public scandal by baselessly linking it to crimes of purchasing illegal gold and money laundering. Through a series of immobilizations and seizures beginning in November 2013, Peru took, without justification, over US $17.6 million of gold that Kaloti Metals owned and legally purchased in accordance with Peruvian law, without notice and without giving the company an opportunity to defend its property interest in the gold. Incredibly, four out of the five seizures at issue were effected pursuant to judicial and administrative proceedings to which Kaloti Metals was not a party.

7. Peru's discriminatory and expropriatory scheme began when the *Superintendencia Nacional de Aduanas y de Administración Tributaria* (the "SUNAT"), Peru's tax and customs agency, initially immobilized Kaloti Metals' gold shipments—the first of many expropriatory measures—purportedly to determine whether its suppliers had legally sourced the gold purchased. The agency, however, refused to return the gold even after Kaloti Metals and its suppliers provided documentation evidencing that the gold was in fact legally sourced and purchased and that Kaloti Metals, not its suppliers, was the legal owner of the gold.

8. These immobilizations by the SUNAT were just the first step in a long history of discriminatory and arbitrary conduct by Peru. Following the immobilizations, local prosecutors then initiated investigations against Kaloti Metals' suppliers for purported money laundering, again without formally charging or providing notice of these investigations or proceedings to Kaloti Metals. Based on these investigations, Peruvian courts issued seizure orders against Kaloti Metals' gold, even though the allegations of money laundering have not been substantiated or proven to this day. In a kind of cruel irony, the courts then rejected a number of the company's petitions for the return of the gold precisely because the company was not a party to the criminal proceedings at issue. Other petitions to have the gold returned remain pending without resolution.

9. With that, Peru expropriated Kaloti Metals' property and violated the State's international obligations. Peru's actions not only destroyed the Kaloti Metals enterprise, but also impugned the integrity of its owners and operators. The injuries damaged the name, brand, and perception that others had of Kaloti Metals and its owners. Banks questioned fund transfers, which affected Kaloti Metals' ability to meet its obligations. The media reported the State's actions, reaching many with whom Kaloti Metals did business. As a result, Kaloti Metals' base of customers and suppliers diminished and its sales dropped precipitously, eventually causing the company to shutter its Peruvian operations in September 2018.

10. In the end, after taking its property, ruining its reputation, and effectively making it impossible for the company to conduct business, Peru succeeded in destroying Claimants' investment and eliminating the company's promising future prospects.

A. Kaloti Metals' Operations and Claimants' Investment in Peru

11. Attracted by a rich supply of precious metals and by what then appeared to be a favorable investment environment, Kaloti Metals invested in Peru in 2011 to provide precious metals and related services to customers in the United States and Latin America. Its business included importing and exporting gold to and from the United States and Latin America, as well as providing customers with assaying, or purity-testing services, to ensure that customers' products met certain quality standards.

12. Kaloti Metals conducted its business in part through established and continuous relationships with reputable Peruvian precious metals suppliers. These suppliers included, among others, [redacted], [redacted], [redacted], and [redacted] (collectively, the "Suppliers"). Each of these Suppliers was duly registered with the Registry of the Ministry of Mining and Energy (*Registro Especial de Comercializadores y Procesadores de Oro*) and was in good standing at the time of Kaloti Metals' purchases. Kaloti Metals executed a series of purchase and sale agreements with its suppliers, pursuant to which the suppliers delivered the metals to Kaloti Metals' facilities, at which time the company's employees, among other actions, tested the weight and purity of the metals. The company would then export the precious metals to the United States for sale to refineries.

13. Claimants established an enterprise with substantial operations in Peru. It hired local employees to manage and monitor the purchase, storage, transportation, assay, and sale of gold, and rented offices and vault space from [redacted], a Peruvian company. Kaloti Metals contracted this company's services to also provide transportation for its precious metals and used [redacted]' facilities for the assay and storage of the metals purchased.

14. Kaloti Metals financed these operations initially through lender financing of approximately US $12 million and startup capital of US $800,000 from its shareholders, most of which came from [redacted] and [redacted].

15. Kaloti Metals positioned itself well in the Peruvian market. As Claimants' investment in Peru proved fruitful, Kaloti Metals in turn injected large sums into the Peruvian economy. From the time that it entered the Peruvian market until Peru's breaches of the Treaties, Kaloti Metals operated successfully and conducted a substantial volume of transactions involving the purchase and sale of gold from its suppliers.

16. In 2012, only a year after Kaloti Metals initiated operations in Peru, it generated over US $10 million in sales, purchasing approximately 256 kilograms of gold from approximately three suppliers. Building on the success of its first year, Kaloti Metals significantly expanded its activity in Peru in 2013, engaging in over 500 transactions, buying approximately 14,010 kilograms of gold from over 20 suppliers, and increasing sales to US $563 million. Notably, none of these over 500 transactions were questioned or challenged by Peruvian authorities.

17. Kaloti Metals' success, however, made it a target for the Peruvian authorities. As will be described in detail below, beginning in November 2013, Peru initiated a series of arbitrary and discriminatory actions aimed at immobilizing and seizing gold Kaloti Metals had lawfully purchased from its Peruvian suppliers, purchases that it had made hundreds of times before without incident. As a result of Peru's unjustified actions Kaloti Metals' sales dropped precipitously. In 2014, the company's sales totaled just US $126 million, and between 2015 and

2018 its sales totaled just under US $92 million, a significant decline from prior years. This represents a decline of approximately 75% from 2014 and 95% from 2013. In September 2018, devastated by the government's actions, Kaloti Metals was forced to shutter its operations in Peru.

B. Immobilizations and Seizures by Peru of Kaloti Metals' Gold

18. In November 2013, Peru began a series of immobilizations and seizures that crippled the company's operations, destroyed the profitability of the enterprise, and wiped out Claimants' investment. The initial immobilizations were conducted under the pretext of verifying the legal origin of the gold acquired by Kaloti Metals. But when the legal origin of the gold was verified with extensive documentation, provided by both Kaloti Metals and its Suppliers, the gold was not returned.

19. Instead, Peru then initiated criminal proceedings against Kaloti Metals' suppliers alleging that the gold was purchased from illegal sources and used in furtherance of money laundering. Kaloti Metals, however, was not made a party, much less a defendant, to these proceedings, even though it legally owned the gold that was the subject of the proceedings. Peru used these proceedings against third parties, and later a civil suit, to eventually seize gold that belonged to Kaloti Metals. The State then rejected Kaloti Metals' petitions for the return of the gold because Kaloti Metals was not a party to the criminal proceedings in which its gold was seized. Thus, in a paradigmatic denial of due process, Peru treated Kaloti Metals as a non-party when it served to block the company from the courthouse, but treated it as a party when the time came to impose criminal sanctions.

20. The following chart details the Kaloti Metals purchases that have been immobilized and/or seized by Peru. The facts surrounding those immobilizations and/or seizures are discussed in detail below.

Purchase and Status	Gross Weight (Grams)	Declared Value (USD)
PURCHASE NO. 1: [redacted] (Seized)	111,545.37	US $4,187,442.29
PURCHASE NO. 2: [redacted] (Seized)	98,591.20	US $3,605,304.30
PURCHASE NO. 3: [redacted] (Seized)	38,600.90	US $1,427,371.11

PURCHASE NO. 4: [redacted] (Seized)	126,775.30	US $4,496,675.68
PURCHASE NO. 5: [redacted] (Immobilized)	99,843.22	US $3,939,674.15
Total in Kilos	**475,355.99**	**US $17,656,467.53**

1. Purchase No. 1 – Immobilization and Seizure of Gold Purchased by Kaloti Metals from [redacted]

21. Peru's discriminatory and expropriatory actions began with its immobilization of gold purchased from [redacted], a reputable supplier with whom Kaloti Metals had previously conducted hundreds of transactions without incident.

22. On 26 November 2013, Kaloti Metals purchased 111,545.37 grams (gross weight) of gold from [redacted]. Before delivery, Kaloti Metals verified that the supplier's business information was up-to-date and accurate, and confirmed, upon delivery, that the gold was legally sourced and all documentation required under Peruvian law was provided. For example, Kaloti Metals obtained (i) bills of lading (*Guías de Remisión*) describing the items shipped as well as their origin and destination, (ii) Declaration of the Origin of Material (*Declaración Jurada de Procedencia de Mineral Aurífero*), confirming the lawful origin of the gold, (iii) "Anexo Nº 5", a declaration in which the exporter confirms company information, and (iv) a certificate of assay from a certified laboratory in Peru attesting to the purity of the gold to be sold (collectively, the "Supporting Documentation").

23. Upon confirming the documentation and legal origin of the gold, Kaloti Metals paid US $4,100,000 for the gold and had the gold transported to its [redacted] facility.

24. On 27 November 2013, Kaloti Metals scheduled a Miami-bound shipment for the export of the 111,545.37 grams of gold. At that time, [redacted], a company duly registered with the Registry of the Ministry of Mining and Energy, again produced the necessary Supporting Documentation to allow Kaloti Metals to book the reservation for export. Despite presenting the required documentation and complying with all Peruvian regulations, the customs branch of the SUNAT immobilized the shipment. Of the over 500 transactions performed by Kaloti Metals, this was the first shipment to be immobilized.

25. In the immobilization documents (*Acta de Inmovilización* #316-0300-2013-001479 & #316-0300-2013-001497), the SUNAT claimed the immobilization was necessary to investigate and obtain clarification of the local transport document, or *Guía de Remisión*, and verify the source of gold, i.e., that the gold was sourced through legal means. Specifically, the *Actas* stated that the immobilization was necessary "to substantiate the origin of the gold from its source." The *Actas*, however, ignored the fact that both Kaloti Metals and [redacted] had

already provided this documentation.

26. It soon became clear that the requests for information were merely a pretext for arbitrarily taking Kaloti Metals' gold. Following the immobilization, the SUNAT continued to request the same information from the supplier, making such requests on 2 December and 5 December 2013. Even though the information requested had already been provided to the SUNAT at the time of export, [redacted] timely complied with each request.

27. The immobilization, however, continued notwithstanding that all of the information relating to the gold's legal origin was presented to the SUNAT both at the time of exportation and pursuant to the SUNAT's subsequent, repeated requests. Notably, to date, no formal notice or determination has been made that [redacted] supplied Kaloti Metals with gold produced from illegal mining sources. [redacted] has been in operation for over 18 years and, apart from this incident, has not experienced a problem of this kind.

28. Peru's actions, however, did not stop with the immobilization. While on 26 February 2014 the initial immobilization of the gold was lifted without prejudice (through *Acta de Levantamiento* # 316-0300-2014-000103 and 316-0300-2014-000104), the gold was immediately seized pursuant to judicial orders issued by local courts in furtherance of a criminal investigation into alleged money laundering by the Suppliers initiated at the SUNAT's request. The criminal investigation came as a surprise to Kaloti Metals, given that it had received no notice of this investigation nor did it have an opportunity to present evidence or oppose the judicial order seizing the gold that it legally purchased and owned.

29. The SUNAT's orchestration of a seizure on unrelated grounds relating to a third party just as the original immobilization orders were being lifted highlights the arbitrary nature of the State's efforts to seize and retain the gold by any possible means.

30. The seized gold purchased by Kaloti Metals from [redacted] is valued at US $4,187,442.29. The gold remains under judicial seizure today.

2. Purchase Nos. 2-4 – Immobilization and Seizure of Gold Purchased by Kaloti Metals from [redacted], [redacted], and [redacted]

31. The same pattern of arbitrary immobilizations, seizures, and denial of due process continued in early 2014.

32. Pursuant to purchase and sale agreements between Kaloti Metals and three additional Peruvian suppliers, [redacted], [redacted], and [redacted], these suppliers delivered gold shipments weighing 98,591.20 grams, 38,600.90 grams, and 126,775.30 grams, respectively, to Kaloti Metals at its [redacted] facility between 7 and 8 January 2014. All three of these Suppliers were, at all relevant times, duly registered with the Registry of the Ministry of Mining and Energy. Just as with prior shipments, Kaloti Metals verified before delivery that the suppliers' business information was up-to-date and accurate, and confirmed, upon delivery, that all requirements relating to the source of the gold were met and all Supporting Documentation was provided.

33. Kaloti Metals paid [redacted] and [redacted] US $3,300,000 and US $4,477,810, respectively, for the gold by wire transfers to the suppliers' banks in Peru between 7 and 9 January 2014. In light of the SUNAT's prior immobilization and seizure of Kaloti Metals' gold, [redacted] agreed to allow Kaloti Metals to maintain possession of the gold, but not pay for it until it reached the United States. In return, Kaloti Metals credited the gold to [redacted]'s account and received title to the gold.

34. Upon presenting the shipments for export on 8 January 2014 with all of the required documentation, the customs division of the SUNAT immobilized the shipments. Just like the prior immobilization, the SUNAT claimed that the immobilizations were to verify the source of the minerals, even though Kaloti Metals and the Suppliers had presented the SUNAT with documentation demonstrating the lawful origin of the gold.

35. Notwithstanding that it had already provided all of the information regarding the gold's origin, the SUNAT proceeded to request the information a second time. Kaloti Metals and the Suppliers complied with the request and by the end of February 2014, the SUNAT had timely received all of the documentation it had requested. In fact, with respect to the gold purchased from [redacted] and [redacted], the SUNAT issued documents acknowledging that all documentation had been received.[1] Nonetheless, the SUNAT refused to release the gold to Kaloti Metals.

36. Instead, as with the gold purchased from [redacted], the SUNAT delayed the lifting of the immobilization orders until seizure orders could be issued by the local criminal courts. On 11 March, 27 March, and 6 May 2014, local prosecutors obtained judicial seizures of the gold purchased from [redacted], [redacted], and [redacted], respectively, again premised upon criminal investigations into alleged money laundering by third parties, without notice to Kaloti Metals, without giving it an opportunity to present evidence to challenge the seizures.

37. These three seized purchases from [redacted], [redacted], and [redacted] are valued at US $3,605,304.30, US $1,427,371.11, and US $4,496,675.68, respectively. As a result of the seizures, Kaloti Metals has been unable to export and sell the gold it lawfully purchased.

3. Purchase No. 5 – Seizure, Attachment, and Continuing Immobilization of Gold Purchased from [redacted]

38. On 8 January 2014, Sumaj and Kaloti Metals agreed to a sale of 99,843.22 grams of gold for a price of US $3,939,674.15. Then, on 26 March 2014, the *Segunda Fiscalía Supraprovincial a cargo de Delitos de Lavado de Activos y Pérdida de Dominio* issued a seizure order for the gold, again as part of a criminal investigation into the suspected conduct of parties other than Kaloti Metals and again despite the documented legal origin of the gold.

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[1] *Resultado de Requerimiento* #1150-2014-SUNAT/3X4100, 1346-2014-SUNAT/3X4100 & 886-2014-SUNAT/3X4100.

39. While the seizure order was later lifted, on 18 June 2014 the *33º Juzgado Civil de Lima* immobilized the gold purchased based on an unsupported and summary evaluation of breach-of-contract claims brought by [redacted] against Kaloti Metals. The court issued the immobilization order even though Kaloti Metals was not provided proper notice of the claims. On 11 December 2015, the same court ruled on [redacted]'s claims and ordered the attachment of the gold in favor of [redacted], a successor in interest to [redacted]. On appeal, the *Corte Superior de Justicia de Lima* overturned the lower court's decision on 10 November 2018, finding that the lower court had denied Kaloti Metals its due process rights and its opportunity to present a defense against [redacted]'s claims, and that the court had failed to provide a reasoned decision. To this day, however, Kaloti Metals remains without access to this gold.

40. The immobilized gold purchased by Kaloti Metals from [redacted] is valued at US $4,150,000.

C. Peruvian Courts Refuse Petitions to Return the Gold

41. Between 2015 and 2016, following the issuance of the seizure orders, Kaloti Metals submitted three petitions to the courts presiding over the criminal proceedings pertaining to the seizures, including the *Sexto Juzgado Penal del Callao*, the *Octavo Juzgado Penal del Callao*, and the *Juzgado Penal Transitorio del Callao.* The petitions requested that these Peruvian courts order the return of the gold that Kaloti Metals had legally purchased. Each of these requests, however, were summarily rejected by the Peruvian courts on the basis that Kaloti Metals was not a party to the criminal proceedings. The ruling of the *Cuarta Sala Penal*, dated 3 February 2016, is representative of the arbitrary nature of these rejections, stating merely that "not being a party to this proceeding, the petition is deemed to have not been filed." Thus, the Peruvian courts violated Kaloti Metals' right to due process by denying it a meaningful opportunity to defend itself and leaving Kaloti Metals without a means of vindicating its rights. To this day, the State continues to hold Kaloti Metals' gold while denying it the opportunity to participate in the proceedings where its property rights are being determined.

D. Consequences of Peru's Actions

42. As a result of the State's arbitrary immobilizations and seizures, Kaloti Metals has lost its investment and operations in Peru, given that it has been unable to sell the gold that it purchased from its Suppliers and Peru's actions have crippled its ability to find new suppliers and customers. Moreover, it has been unable to deliver the gold to meet its forward-sale commitments to its refinery customers, prohibiting it from generating revenue. To date, Kaloti Metals has made actual payments for the purchases outlined above to three of its suppliers in the amount of US $11,877,810, which has been financed through a financing arrangement with a third party, pursuant to which Kaloti Metals is required to pay interest. Because Kaloti Metals has been unable to sell the gold to a refinery, it has been forced to incur millions of dollars in interest in relation to this financing arrangement.

43. In addition to these economic damages, Kaloti Metals has suffered, and continues to suffer, significant reputational harm as a result of Peru's actions. Indeed, the immobilizations, seizures, and allegations of illegal trading and money laundering have been publicized in newspapers and other media sources both in Peru and around the world. For example, one Swiss news outlet reported that "while Swiss refineries, including Metalor and MKS/PAMP, appear to have stopped buying gold from dubious traders following local press reports exposing the metal's provenance, other refiners, particularly in the United States (such as . . . Kaloti Metals), have stepped in to buy from the questionable Peruvian exporters." The cloud of Peru's false allegations continues to follow Claimants, ensuring that they will not be able to resume Kaloti Metals' operations in Peru.

44. As a direct result of the reputational damage that Peru caused to Kaloti Metals, the company's customer and supplier base dwindled, resulting in substantially decreased revenue. Between 2015 and 2018, the company was only able to purchase approximately US $91.9 million of gold in Peru, or an average of US $30.6 million per year, which represents a decline of approximately 75% from 2014 and 95% from 2013. In September 2018, devastated by the government's actions, Kaloti Metals was forced to shutter its operations in Peru.

VI. Basis for the Claims

45. Peru has violated the protections granted to Claimants and their investment under the US-Peru TPA and the US-Canada FTA. An investment under the US-Peru TPA includes "every asset that an investor owns or controls" including "an enterprise," "equity participation in an enterprise," and "tangible or intangible property."[2] Similarly, an investment under the Canada-Peru FTA includes "an enterprise," "an interest in an enterprise that entitles the owner to share in income or profits of the enterprise," and "property, tangible or intangible, acquired in the expectation or used for the purpose of economic benefit or other business purpose."[3] Claimants' protected investment therefore includes not only the gold that was improperly taken from Kaloti Metals, but the Kaloti Metals enterprise itself, which in turn includes the capital invested and expected profits that were lost as a result of the State's actions. Under the Treaties, Claimants and their investment are entitled to fair and equitable treatment, protection from expropriation, and treatment on par with that accorded to a national of Peru. Peru violated these obligations through its arbitrary and expropriatory immobilization and seizure of Kaloti Metals' property, which was perpetuated and compounded by the State's continuing denial of due process to Claimants' investment.

46. **Minimum Standard of Treatment/Fair and Equitable Treatment**: The State has breached its obligation to afford Claimants fair and equitable treatment under Article 10.5 and Article 805 of the US-Peru TPA and the Canada-Peru FTA, respectively. Both provisions require the State to provide treatment to covered investments in accordance with the customary international law minimum standard of treatment owed to aliens.

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2 US-Peru TPA Art. 10.28.

3 Canada-Peru FTA Art. 847.

47. Peru has violated this minimum standard by acting arbitrarily and unjustifiably, and by denying Claimants' investment due process. Peru immobilized and seized Kaloti Metals' property based on a constantly shifting set of purported justifications that related solely to alleged deficiencies or illegalities on the part of entities other than Kaloti Metals. The fact that the immobilizations and seizures continued despite the Suppliers' compliance with all requests for information highlights the arbitrary nature of the State's actions. Relatedly, Peru is also violating Claimants' fundamental right of due process. The State has deprived Kaloti Metals of a meaningful opportunity to present its defense and ensure that its legal rights to the seized gold are vindicated. Not only has the SUNAT repeatedly refused to acknowledge Kaloti Metals' ownership over the gold, but it has also refused to provide notice to Claimants regarding the immobilization and seizure proceedings. The Peruvian courts have also unjustifiably refused several judicial petitions seeking the return of the gold to its rightful owner—Kaloti Metals.

48. In addition, Peru has violated its own law in seizing and immobilizing Kaloti Metals' gold. It has denied Claimants the reasonable investment-backed expectations to which they are entitled, and has failed to abide by Peruvian laws and constitutional standards. The actions taken by the SUNAT and the prosecutor (at the SUNAT's behest) have deprived Kaloti Metals of its property rights guaranteed by the Political Constitution of Peru. In particular, Article 2, number 16 of the Constitution states that "[e]very person has the right . . . to property." Chapter III of the Constitution, titled "Property," further states:

> The right of property is inviolable. The State guarantees it. It is exercised in harmony with the common good and within the limits of the law. No one shall be deprived of his property, save, exclusively, on ground of national security or public need determined by law and upon cash payment of the appraised value, which must include compensation for potential damages.[4]

49. It also emphasizes that with regard to property, "aliens, whether they be natural or juridical persons, are in the same conditions as Peruvians."[5] Peru has violated these constitutional standards by depriving Kaloti Metals of the gold it legally purchased without a valid basis or justification.

50. **Expropriation**: Peru has wrongfully expropriated essentially all of Claimants' investment in the State and therefore breached its obligations under Article 10.7 and Article 812 of the US-Peru TPA and the Canada-Peru FTA, respectively. Under both provisions, the State is prohibited from expropriating a covered investment directly or indirectly, except for a public purpose, in accordance with due process of law, in a non-discriminatory manner, and on prompt, adequate and effective compensation equivalent to the fair-market value of the expropriated investment immediately before the date of expropriation.

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[4] Official English Translation of the Political Constitution of Peru, Ch. III, Art. 70.

[5] *Id.* Ch. III, Art. 71.

51. The SUNAT's actions deprived Claimants of the economic use and enjoyment of their investment. It took over US $17.6 million of Kaloti Metals' gold without a reasonable explanation or viable justification, and without compensating Kaloti Metals for the unjustified taking. In doing so, it has directly and indirectly expropriated Claimants' investment. In addition, the State's actions have deprived Kaloti Metals of the ability to operate in Peru, and have therefore financially crippled the enterprise and ruined its reputation.

52. Similar conduct by the Peruvian government has been found expropriatory. In *Tza Yap Shum v. Republic of Peru*, an ICSID tribunal held that the SUNAT indirectly expropriated a Chinese investor's investment in a Peruvian company by imposing interim measures that froze the company's assets and substantially impacted its ability to conduct business.[6] The tribunal found the interim measures were arbitrary and not in compliance with Peruvian law.[7]

53. **National Treatment**: The State breached its obligation to afford Claimants equal treatment under Article 10.3 and Article 803 of the US-Peru TPA and the Canada-Peru FTA, respectively, by providing less favorable treatment to Claimants than it has provided to similarly situated Peruvian nationals. Notably, the SUNAT appears to be targeting shipments involving Kaloti Metals, an American company, while companies of other nationalities are not being treated in the same manner. Of all the companies that purchase gold in Peru for export, Kaloti Metals has been unfairly targeted and has been subjected to a disproportionate number of unwarranted immobilizations and seizures of its gold purchases.

VII. Relief Sought and Damages Claimed

54. Claimants have suffered both economic and non-economic damages as a result of Peru's actions. In particular, Peru's ongoing Treaty violations have resulted in Kaloti Metals being unable to access over US $17.6 million of gold it purchased legally from its Suppliers. Kaloti Metals has also incurred millions in interest on debts to its lender that it has been unable to pay because of its inability to fulfill its obligations to its refinery customers. These losses have devastated the company's finances, making it effectively impossible to fund further purchases and marketing of gold. As a result, Kaloti Metals has lost all of its operations in Peru, and future profits relating to those operations.

55. Kaloti Metals is also incurring substantial legal fees in trying to protect its investment and it continues to suffer severe reputational damage as a result of Peru's actions. Taken together, Peru's actions have deprived Kaloti Metals of its ability to profitably operate in the country. The reputational damage that the enterprise unjustly suffers further ensures that Kaloti Metals will be unable to resume operations in Peru.

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6 *See Tza Yap Shum v. Republic of Peru*, ICSID Case No. ARB/07/06 (July 7, 2011).

7 *See id.* ¶¶ 171–217.

56. Claimants will seek full compensation for the losses suffered as a result of the State's breaches of the Treaties, and will claim damages in excess of US $102,000,000, exclusive of interest, costs, and other such relief as the arbitrators deem appropriate.

57. This damage estimate includes:

a. Compensatory damages for the expropriation of Claimants' investment and the State's discriminatory, arbitrary, unfair, and inequitable conduct;

b. Lost business opportunities;

c. Lost profits;

d. Incidental damages; and

e. Moral damages for the State's wrongful acts.

VIII. Conclusion

58. Notwithstanding Claimants' willingness to attempt to resolve the dispute, Claimants reserve all rights as to any dispute, including the right to pursue international arbitration as provided by the Treaties. Claimants also reserve any other rights under the law or any other applicable agreements or instruments, including the right to seek compensation for any remaining issues that are not settled directly or through an international arbitration proceeding, as provided in the Treaties. Finally, Claimants reserve the right to amend, modify, and/or expand upon this Notice of Intent.

59. Nothing herein is intended to prejudice or waive any rights or entitlements that Claimants, or any other parties, may have under the law, the Treaties, or any other applicable agreements or instruments.

Very truly yours,

[redacted]

Cc: [redacted]
Kaloti Metals & Logistics, LLC