

# Global Affairs Canada

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## Closing Report Request for Review File Number 2013-05-ARG

**Accessible, Effective, Independent, Predictable, Responsive, Transparent**

The [Office of the Extractive Sector Corporate Social Responsibility Counsellor](#)  
Government of Canada

**Views expressed herein are those of the Office of the Extractive Sector CSR Counsellor**

**Errors and omissions remain the responsibility of the Office**

September 2013

This report is also available in [Spanish](#).

## The Office's Key Guiding Principles: Accessible, Effective, Independent, Transparent, Responsive, Predictable

The Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor is part of the Government of Canada's CSR Strategy for the Canadian International Extractive Sector. The Counsellor reports to, and acts as a special advisor to, the Minister of International Trade. The Counsellor may make recommendations to parties and provide advice; however, the Office does not have any policy-making role. In executing its dispute resolution role, the Office acts as an impartial facilitator, an honest broker who brings parties together to fix problems before they become issues and resolve issues before they become intractable.

The first Extractive Sector CSR Counsellor, Marketa Evans, was appointed in October 2009. The Office was opened in Toronto in March 2010. To support the construction of this new Office, the Counsellor adopted a cross-sector, open and dialogue-based approach with the wide range of stakeholders interested in the issues of CSR and Canada's mining, oil and gas industries.

The construction of the Office's review mechanism, a dispute resolution process, was informed by a formal and proactive multi-perspective dialogue, during which over 300 individuals and organizations directly participated, both in Canada and overseas. The dispute resolution process was established in October 2010.

Supporting documents, including the rules of procedure, information brochure and Participant Guide, are available on the [Office's website](#).

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### 1. Executive summary

This report closes the request for review file #2013-05-ARG, related to Silver Standard Resources Inc.'s Pirquitas project in Argentina. This closing report reflects a summary of the request for review, and the activities undertaken in the context of the process.

The Office is part of the Government of Canada's CSR Strategy for the Canadian International Extractive Sector. The role of the Office is to promote responsible practices for Canadian companies abroad and to resolve, through constructive dialogue, corporate/community disputes connected with the CSR Strategy's endorsed performance standards.

The request for review passed the intake screening on April 10, 2013. The intake screening determines if the request meets the criteria as set out in the Counsellor's legal mandate. It is not a judgment on the merits of the request or an assessment of the information contained in the request. The request then proceeded to step four in the review process: "informal mediation/trust-building." Activities that take place under this stage include desk research, interviews, information-gathering, field visit(s), discussions with the parties, discussions with other relevant parties, information exchanges, etc. One part of informal mediation is a "dispute analysis". An analysis of this nature is a common tool used in dispute resolution. It is not a judgment on the merits of the complaint, nor of information contained in the request. Rather, it is a multi-perspective assessment of how different parties see the dispute and the issues; it informs the process going forward. A dispute analysis helps to determine if a constructive dialogue under the auspices of the Office is likely to be effective or appropriate.

The Office's review mechanism is a voluntary dialogue process designed to explore interests and generate creative options in order to resolve and reduce disputes. This process was built to enhance the ability of Canadian extractive sector companies operating overseas to manage their social and environmental risks, including the risk of unresolved social or community disputes. Such a process requires good faith on all sides, mutual commitment, and two way responsibilities.

In this case, during the dispute analysis, the Office received information from both the requesters and Silver Standard about the situation on the ground. Given the asymmetries of information between the parties the Office believed there to be room to strengthen trust and relationships at site through increased information-sharing and additional stakeholder engagement. Prior to the completion of the dispute analysis, Silver Standard informed the Counsellor that it did not intend to proceed with the process. The Office presented opportunities for the company to participate actively in the dispute analysis, including a field visit. The company declined to do so. The requesters reiterated their desire for facilitated dialogue with the company under the auspices of the Office. Given the voluntary nature of the Office's review mechanism, and the lack of willingness on the part of Silver Standard to participate, the Office concluded that this request is not amenable to resolution through facilitated dialogue at this time.

The good offices of the Counsellor remain open to the parties for facilitated dialogue should circumstances so permit in future. The file is now closed.

## 2. Introduction

### Summary

This is the closing report for the request for review involving Silver Standard Resources Inc.'s Piriquitas project in Argentina. The purpose of this report is to meet statutory reporting requirements and our commitment to our key guiding principles. This request for review file is now closed.

### Reporting

In accordance with the Office's rules of procedure, as approved by the Canadian Minister of International Trade in September 2010 and renewed in October 2012, this closing report reflects a summary of the request for review, and the activities undertaken by the Counsellor and the participants to resolve the dispute.

The Counsellor is not a judge or an arbitrator and does not pronounce on the merits of substantive points of disagreement between the parties. The views expressed in this report on such substantive issues are those of the parties, and not those of the Counsellor. The Counsellor listens to all points of view but does not take sides. The Counsellor believes that when different perspectives are surfaced, areas of common ground and mutual interest are often found. Information sharing has been found to be an effective way of clarifying and resolving disputes.

In accordance with the rules of procedure, parties are instructed not to share confidential information with the Office until the "express written consent" to proceed to structured dialogue is obtained. In this instance, the request did not proceed to that stage.

### Results

The objective of the Office is to bring parties together, share information and develop a framework that would result in a productive and constructive path forward. The Counsellor understands that parties may come together in a dialogue forum and may be unable to reach an agreement for any number of reasons. Such dialogue is not always fruitful. In this case, Silver Standard declined to participate.

#### Steps in the review process - file#2013-05-ARG

April 4, 2013	Step 1: A complete request for review was submitted to the Office.
April 4, 2013	Step 2: The Office acknowledged the request.
April 10, 2013	Step 3: The request passed the Office's intake screening and the parties were advised accordingly. This intake screening determines if the request meets the criteria as set out in the Counsellor's legal mandate. The intake

	screening is not a judgment on the merits of the request or an assessment of the information contained in the request.
<b>April-August, 2013</b>	Step 4: Dispute analysis/informal mediation/trust-building.
<b>August 27, 2013</b>	The request was closed.

### 3. Background and review process in brief

The Government of Canada's CSR Strategy for the International Extractive Sector was announced in March 2009, and this Office was created as a result of that Strategy.<sup>1</sup> The CSR Strategy seeks to improve the competitive advantage and reputation of Canada's international extractive sector companies by enhancing their ability to manage social and environmental risks, including the risks arising from unresolved social conflict.

The Government of Canada encourages and expects all Canadian companies working around the world to respect all applicable laws and international standards, to operate transparently and in consultation with host governments and local communities, and to conduct their activities in a socially and environmentally responsible manner.

In addition to the OECD Guidelines for Multinational Enterprises, which the Government of Canada has long endorsed and supported, the CSR Strategy notes that the Government of Canada will promote three widely-recognized global CSR performance standards with Canadian extractive companies operating abroad. These endorsed standards are the IFC Performance Standards, the Voluntary Principles on Security and Human Rights, and the Global Reporting Initiative.<sup>2</sup> Working with these standards helps Canadian companies to understand, meet and exceed their obligations with respect to corporate social responsibility. Companies can use these standards to assess their environmental and social risks and current performance, and to formulate action plans based on their particular circumstances and unique operating environments.

#### The guidelines endorsed under the Government of Canada's CSR Strategy:

- The International Finance Corporation Performance Standards on Social & Environmental Sustainability for extractive projects with potential adverse social or environmental impacts
- The Voluntary Principles on Security and Human Rights for projects involving private or public security forces
- The Global Reporting Initiative for CSR reporting by the extractive sector to enhance transparency and encourage market-based rewards for good CSR performance
- The OECD Guidelines for Multinational Enterprises

The role of the Extractive Sector CSR Counsellor is to promote responsible practices for Canadian companies abroad and to resolve disputes connected with the endorsed performance standards of the CSR Strategy.

#### The mandate of the Counsellor is linked solely to the voluntary standards of the CSR Strategy, not to host country laws, regulations or standards.

The Office promotes responsible practices for Canadian companies by promoting good practice international standards endorsed under the Government of Canada's CSR Strategy. The endorsed standards themselves reflect critical issues facing the extractives sectors – from security at site to biodiversity. The standards provide comprehensive guidance and practical tool kits. The job of the Office is to ensure Canadian companies are aware of the standards, and how the standards can help them to more effectively manage social and environmental risks. As many companies are financed by equity, not debt, IFC standards or Equator Principles standards would not automatically apply to their activities. As a result, many companies may be unaware of the CSR Strategy and the standards.

Our objective is not to audit for compliance, but rather to raise awareness and provide good practice guidance for performance improvement.

For example, IFC Performance Standards note that: "Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project's environmental and social impacts. Stakeholder engagement is an ongoing process that may involve, in varying degrees, the following elements: stakeholder analysis and planning, disclosure and dissemination of information, consultation and participation, grievance mechanism, and ongoing reporting to Affected Communities." Stakeholders are defined by the IFC: "For the purposes of Performance Standard 1, stakeholders are defined as persons, groups or communities external to the core operations of a project who may be affected by the project or have interest in it. This may include individuals, businesses, communities, local government authorities, local nongovernmental and other institutions, and other interested or affected parties. Stakeholder identification broadly involves the determination of the various individuals, groups or communities who may have an interest in the project or who may affect or be affected by the project."

## 4. About this request for review

The Office of the Extractive Sector CSR Counsellor received a complete request for review on April 4, 2013. At the time, the requesters asked that their identities be kept confidential.<sup>3</sup> The responding party identified was Silver Standard Resources Inc., relating to the Pirquitas project in Argentina.

The individual requesters identify as indigenous persons and representatives from project-affected communities. In their request, they provided a report they had authored, which voiced concerns of residents in at least three communities impacted by the mine.

The primary issues in the request related to environmental impacts, in particular water quality, and community engagement. According to the requesters' report, after a period of heavy rains and flooding, the rivers flowing through the local communities became polluted with toxic run off from the mine site. This created discoloration of the river and caused negative impacts to local populations and animals downstream. The report also states that when community members raised concerns with the company, they were not appropriately addressed. According to the requesters, water testing had been carried out, but the results were not shared with them.

According to the company's website,<sup>4</sup> Silver Standard holds a 100% interest in the Pirquitas project, an open-pit mine. The mine is located in Province of Jujuy, northern Argentina, at an elevation of 4,100 meters above sea level. The mine achieved commercial production on December 1, 2009.

## 5. Developments with this request for review

### Intake screening

The Office acknowledged the request on April 4, 2013 and the request moved to Step 3 of the process, the intake screening. This intake screening determines if the request meets the criteria as set out in the Counsellor's legal mandate. The screening is not a judgment on the merits of the request or an assessment of the information contained in the request. The request passed the intake screening on April 10, 2013 and the request moved to Step 4, the informal mediation/trust-building stage.

### Dispute analysis

As part of informal mediation, the Office undertakes an assessment of the situation – called a “dispute analysis”. The dispute analysis is a key tool widely used by third party neutrals to inform a dispute resolution process, and it forms a critical part of the Office's due diligence.

The Office's methodology follows standard best practice for third party dispute resolution, modeled for example, by the World Bank Group's Compliance Advisor Ombudsman, the US Institute for Environmental Conflict Resolution, and many others.

The Office's dispute analysis is not a judgment on the merits of the complaint, or an assessment of the information contained in the request. The dispute analysis is a way to inform the process going forward, and to ascertain if a dialogue-based approach is likely to be effective or appropriate.

The dispute analysis:

1. gathers further information on the issues;
2. maps stakeholders; and
3. provides information to stakeholders about the process.

Its objective is to inform next steps. It can relatively quickly illuminate cases where dialogue-based alternatives are not likely to work.

The aim of the Office is to ensure a fair and balanced process. The Office meets with the parties, in person and by telephone, in equal measure to the extent possible. These meetings allow the Office to educate parties about the way we work, and allow parties to share information, perspectives, and concerns. Discussions give people the opportunity to educate the Office on the issues and the dispute, as the parties see them.

The Counsellor is not a judge or an arbitrator and does not pronounce on the merits of substantive points of disagreement between the parties. The views expressed in this report on such substantive issues are those of the parties, and not those of the Counsellor. The Counsellor listens to all points of view but does not take sides.

Between April and July 2013, the Office engaged in desk research and meetings with the parties on this request. During our conversations with Silver Standard, two key issues were raised:

1. the involvement of an NGO in the request; and
2. the existing stakeholder engagement process at site.

The Office strived to be responsive to these concerns.

Silver Standard expressed a concern about the involvement of a Buenos Aires-based non-governmental organization (NGO) in the request. They understood that this NGO was interfering and influencing the requesters in bringing their concerns to the Office. The Office's mandate does not

preclude assistance of third party advisors (lawyers, consultants or NGOs) so long as the request is led by project-affected individuals, groups or communities. The Office's due diligence works to ensure that parties are acting in good faith throughout the process.

According to both parties, a stakeholder engagement platform operates at site. Called the "Liaison Table," it meets to share and exchange information with representatives of the 13 communities affected by Pirquitas. The company queried why the involvement of the Office was necessary, given this close-to-the-ground process. The Office explained that the requesters had informed us of their prior efforts to engage at the Liaison Table, but that they had not found it to be responsive enough to their concerns. They therefore sought the involvement of the Office, as a neutral third party, to strengthen trust and transparency in the Liaison Table.

Recognizing that a field visit is critical to supplement information obtained through desk research and stakeholder analysis, the Office began planning for a field visit to Argentina. Such a visit consists of tours and meetings at the project site and the requesters' communities. The objective of any field visit is not to assess corporate CSR performance. It is to ensure a more complete understanding of the situation, and to find areas of common ground between the parties. More than one field visit may be required. Following completion of each field visit, the Office briefs the parties on the issues and perspectives surfaced. People can then make a more informed decision about whether dialogue is likely to be effective and appropriate in this situation.

The Office recommended proceeding with the field visit to Argentina. The Office sought participation from all parties to ensure a fair and balanced analysis. Silver Standard declined to participate in the field visit and advised their withdrawal from the Office's review process. The Office was therefore unable to complete the dispute analysis. We moved to close the file.

## Closing the file

Prior to the conclusion of the dispute analysis, Silver Standard informed the Office of its decision to withdraw from the process. During the dispute analysis the requesters indicated their interest in participating in a facilitated dispute resolution process under the auspices of the Office. However, given the voluntary nature of the review process, and the lack of willingness on the part of Silver Standard in moving forward, the Office concludes that this request is not amenable to resolution through facilitated dialogue at this time.

The good offices of the Counsellor remain open to the parties for future engagement, should circumstances permit. The file is now closed.

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- [1](#) The strategy is entitled "[Building the Canadian Advantage: A Corporate Social Responsibility \(CSR\) Strategy for the Canadian International Extractive Sector](#)", posted at [Corporate Social Responsibility](#).
  - [2](#) The Office does not receive requests for review pertaining solely to the OECD Guidelines for Multinational Enterprises. The review mechanism for the OECD Guidelines remains with the Canadian National Contact Point. A protocol between Canada's NCP and the Office governs how the two work together; it is posted on our website.
  - [3](#) The rules of procedure for the review process provide that requesters can ask the Office to keep their identities confidential. Later on, the requesters provided permission for their names to be disclosed to company representatives.
  - [4](#) Refer to [Silver Standard Projects - Pirquitas Mine](#).
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