

PCA Case No. 2020-11

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – PERU TRADE  
PROMOTION AGREEMENT, ENTERED INTO FORCE ON FEBRUARY 1, 2009**

**- and -**

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (the “UNCITRAL Rules”)**

**- between -**

**BACILIO AMORRORTU (USA)**

**(the “Claimant”)**

**- and -**

**THE REPUBLIC OF PERU**

**(the “Respondent”, and together with the Claimant, the “Parties”)**

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**PROCEDURAL ORDER NO. 1**

**Rules of Procedure**

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*Tribunal*

Judge Ian Binnie, CC, QC (Presiding Arbitrator)  
Prof. Bernard Hanotiau  
Mr. Toby Landau, QC

*Registry*

Permanent Court of Arbitration

**June 29, 2020**

**1. Continuation in force of prior orders**

- 1.1 The provisions of this and future orders shall apply in addition to the Terms of Appointment executed by the Parties and the Tribunal.
- 1.2 Procedural orders made by the Tribunal shall remain in force unless expressly amended or terminated.

**2. Language**

- 2.1 The languages of the arbitration shall be English and Spanish, subject to the provisions below.
- 2.2 Correspondence among the Parties, the Tribunal and the PCA shall be in English.
- 2.3 In accordance with the bilingual nature of the proceeding, submissions shall be made as follows:
  - 2.3.1 Pleadings, witness statements, and expert reports or opinions (together the “**Main Documents**”) in both procedural languages, one language on the **Filing Date** and a translation into the other language no later than (4) weeks thereafter.
  - 2.3.2 Exhibits, legal authorities, and annexes (together the “**Supporting Documents**”) may be submitted in any language. For the convenience of the Tribunal, any Supporting Document provided in a language other than English shall, no later than four (4) weeks after the relevant filing date, be translated into English with respect to the specific relevant part thereof. In the case of excerpts, there must also be translated such other portions of the document as are necessary to provide proper context. In case of disagreement, the Tribunal will decide.
  - 2.3.3 The Tribunal may also, on application by a Party or on its own initiative, direct the translation of any other documents or excerpt(s) by the Party making the production. To avoid confusion, exhibits and legal authorities in English need not be translated.
  - 2.3.4 The governing language of documents (including pleadings, witness statements, expert reports, and Supporting Documents) shall be the original language of the document.
- 2.4 The **Production of Documents** shall be conducted through correspondence in English and documents shall be produced solely in their original language without the need for translation.
- 2.5 Translations shall be accepted as accurate unless contested by the other Party, in which case the Parties shall attempt to reach agreement on the translation of the document and, if necessary, produce a certified translation. If no agreement is reached, the Tribunal shall take the corresponding decision, for which it may appoint a certified translator to have the document(s) in question translated.
- 2.6 Oral testimony and argument before the Tribunal may be in either English or Spanish. The Tribunal will be provided with the interpretation into English of oral testimony or argument made in Spanish. The Parties will confer in advance of any hearing regarding the language of oral testimony and argument to be presented at the hearing and whether simultaneous / sequential interpretation is needed at the hearing by either Party, and will inform the PCA accordingly so that it can make appropriate arrangements. The PCA will also make arrangements for English and, if the hearing involves simultaneous / sequential translation, Spanish *verbatim* transcripts to be produced.

- 2.7 Routine procedural communications and applications to the Tribunal and official communications between the Parties and the Tribunal and/or the PCA that are less than 15 pages in length shall be made in English or Spanish, as preferred, but shall be accompanied by an English translation if submitted in Spanish. Procedural orders, submissions and decisions related to document production will be in English only.
- 2.8 The Parties will notify the Tribunal, as soon as practicable, and no later than at the pre-hearing organizational meeting, which witnesses or experts require interpretation.
- 2.9 The costs of the interpreter(s) will be paid from the deposit made by the Parties, without prejudice to the decision of the Tribunal as to the allocation of costs.
- 2.10 The Tribunal shall render any Decision or Award in English with a translation into Spanish.

### **3. Procedural calendar**

- 3.1 The procedural calendar is set forth in **Annex 1** to this order.
- 3.2 In accordance with Article 23(2) of the UNCITRAL Rules, a plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the Statement of Defense.
- 3.3 No later than in its Statement of Defense, the Respondent may submit a request that the Tribunal rule on certain matters pertaining to jurisdiction and / or liability in a preliminary phase, setting forth in full the grounds for such request.
- 3.4 On or before the Filing Date for any written submission, the Party in question shall send the Main Documents (but excluding the Supporting Documents), to the Tribunal, PCA, and opposing counsel by e-mail in accordance with Section 10 of the Terms of Appointment.
- 3.5 To facilitate filing, citations, and word processing, all written submissions, including pleadings, witness statements and expert reports or opinions, shall be provided as searchable Adobe Portable Document Format (**PDF**) files, and preceded by a hyper-linked table of contents.
- 3.6 Within five business days following the submission of the Main Documents by e-mail, hard copies of the Main Documents and Supporting Documents (except for legal authorities), shall be sent to **Judge Binnie, Prof. Hanotiau**, the PCA, and opposing counsel, by courier, in A5 format, unbound in self-standing ring binders, organized in chronological or other appropriate order, with a separate tab for each exhibit, and preceded by a list describing each document by exhibit number, date, type of exhibit, author, and recipient (as applicable). **Mr. Landau** will only require hard copies of the Main Documents in A5 format (excluding exhibits and legal authorities).
- 3.7 The Main and Supporting Documents (including legal authorities) shall also be submitted to each of the Tribunal Members in electronic form on a USB flash memory drive, preferably as searchable PDF files. Within five (5) business days following the submission of the Main Documents, the Parties will also upload the written submission and all accompanying materials to a secure online document exchange platform, such as Box Platform, to be established, administered and controlled by the PCA. The selected document exchange platform must be accessible to the Parties, the Tribunal and the PCA. Any costs associated with establishing a secure document exchange platform shall be paid from the case deposit established with the PCA.

- 3.8 For any simultaneous submissions, each Party shall submit all electronic and hard copies only to the PCA. The PCA will then distribute copies to the Tribunal and opposing counsel once both submissions have been received.
- 3.9 A submission shall be deemed timely if sent by a Party by midnight, Washington, D.C. time, on the Filing Date.
- 3.10 Extensions may be agreed between the Parties or granted by the Tribunal for justifiable reasons provided that such extensions do not affect the dates fixed for any hearing or other meeting and that the request for an extension is submitted as soon as practicable after a Party becomes aware of the circumstances which prevent it from complying with the deadline.
- 3.11 The Tribunal will endeavor to issue its Awards within a reasonable period of time after the relevant oral hearing, or if the Tribunal orders Post-Hearing Briefs, after submission of said briefs. The Tribunal will send regular updates to the Parties regarding the status of its Awards if they have not been issued within eight (8) months after the oral hearing or submission of the Post-Hearing Briefs, as the case may be.

#### **4. Document production**

- 4.1 The Parties shall exchange a request for production of documents, limited in scope to documents relevant to the case and material to its outcome. The exchange shall be done simultaneously, in accordance with the procedural calendar (each a “**Request to Produce**”). Each Request to Produce shall be in writing and set forth reasons for the request in respect of each document or class of documents requested. Unless the requested Party objects to production, it shall produce the requested documents within the time limit set forth in the procedural calendar. If a party objects to only a certain aspect of a request, it shall produce responsive documents that are responsive to the non-objected portion of the request within the time limit set forth in the procedural calendar.
- 4.2 If the requested Party objects to production, the following procedure shall apply:
  - 4.2.1 The requested Party shall submit a response stating which documents or class of documents it objects to producing. The response shall state the reasons for each objection and shall indicate the documents, if any, that the Party would be prepared to produce instead of those requested.
  - 4.2.2 The requesting Party shall respond to the other Party’s objection, indicating, with reasons, whether it disputes the objection.
  - 4.2.3 The Parties shall seek agreement on production requests to the greatest extent possible.
  - 4.2.4 To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall submit all outstanding requests to the Tribunal for decision. All other correspondence or documents exchanged in the course of this process shall not be copied to the Tribunal.
  - 4.2.5 Document production requests submitted to the Tribunal for decision, together with objections and responses, must be in tabular form pursuant to the model appended to this Procedural Order as **Annex 2** (vertical Redfern Schedule). The Parties shall use the model format throughout their exchange of requests, objections, and responses.

- 4.2.6 The Tribunal shall rule on any such application. Documents ordered by the Tribunal to be disclosed shall be produced within the time limit set forth in the procedural calendar.
- 4.2.7 Should a Party fail to produce documents as ordered by the Tribunal, the Tribunal shall draw the inferences it deems appropriate, taking into consideration all relevant circumstances.
- 4.3 Documents produced according to the above procedure shall not be considered part of the evidentiary record unless and until a Party subsequently submits them to the Tribunal in accordance with the procedural calendar.
- 4.4 Pursuant to the UNCITRAL Rules, the Tribunal may also, on its own motion, request the production of documents.

## **5. Evidence and legal authorities**

- 5.1 In addition to the relevant articles of the UNCITRAL Rules and the provisions on document production above, the Tribunal may use, as an additional guideline, but will not be bound by, the *IBA Rules on the Taking of Evidence in International Arbitration 2010*, when considering matters of evidence.
- 5.2 The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, documents, and all other evidence in whatever form.
- 5.3 In their rebuttal submissions (i.e., Reply and Rejoinder), the Parties shall submit only additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party's prior written submission, except for new evidence they receive through document production.
- 5.4 Following submission of the Reply and Rejoinder, the Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Tribunal grants leave. Should such leave be granted to one Party, the other Party shall have an opportunity to submit counter-evidence. When making an application for leave to submit new evidence, a Party shall not append the new evidence that the Party seeks to admit to such application. The Party may only produce the evidence to the Tribunal once it grants leave for the admission of the evidence or if the Tribunal otherwise orders it.
- 5.5 The Parties shall identify each exhibit submitted to the Tribunal with a distinct number. Each exhibit submitted by the Claimant shall begin with a letter "C" followed by the applicable number (i.e., C-1, C-2, etc.); each exhibit submitted by the Respondent shall begin with a letter "R" followed by the applicable number (i.e., R-1, R-2, etc.). The Parties shall use sequential numbering throughout the proceedings. The Parties shall number each exhibit page separately and consecutively using Bates numbering (i.e., C-1\_001, C-1\_002, C-1\_003, C-2\_001, etc. or R-1\_001, R-1\_002, R-1\_003, R-2\_001, etc.).
- 5.6 Statements of fact witnesses or reports of experts shall be numbered separately as "CWS-" for Claimant's witness statements and as "CER-" for Claimant's expert reports, and "RWS-" for Respondent's witness statements and "RER-" for Respondent's expert reports, followed by the applicable number and name (for example, CWS-1 [Jones]). Numbered paragraphs should be used in witness statements and expert reports.

- 5.7 The Parties shall identify each legal authority submitted to the Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters “CLA” followed by the applicable number (i.e., CLA-1, CLA-2, etc.); each legal authority submitted by the Respondent shall begin with the letters “RLA” followed by the applicable number (i.e., RLA-1, RLA-2, etc.). The Parties shall use sequential numbering throughout the proceedings.
- 5.8 Excel spreadsheets or other calculations performed by experts shall be provided in their native electronic format (i.e. in Excel format rather than PDF).
- 5.9 All evidence submitted to the Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete.
- 5.10 Legal authorities shall be submitted in electronic version only, unless specifically requested by the Tribunal in hard copy.

## **6. Witnesses**

- 6.1 Any person may present relevant evidence as a witness, including a Party or a Party’s officer, employee, or other representative.
- 6.2 For each witness, a written and signed witness statement shall be submitted to the Tribunal. Where in exceptional circumstances a Party is unable to obtain such a statement from a witness, the evidence of that witness shall be admitted only with leave of the Tribunal and in accordance with its directions. Should such a situation arise, a Party shall seek leave from the Tribunal and the Tribunal’s directions well in advance to allow sufficient time to produce the evidence in whatever form ordered by the Tribunal within the time limit set forth in the procedural calendar.
- 6.3 Each witness statement shall contain at least the following:
- 6.3.1 the name, date of birth, and present address of the witness;
  - 6.3.2 a description of the witness’s position and qualifications, if relevant to the dispute or to the contents of the statement;
  - 6.3.3 a description of any past and present relationship between the witness and the Parties, counsel, or members of the Tribunal;
  - 6.3.4 a description of the facts on which the witness’s testimony is offered and, if applicable, the source of the witness’s knowledge; this should be done in a narrative form containing the full substance of the witness’s testimony;
  - 6.3.5 an affirmation of the truth of the statement; and
  - 6.3.6 the signature of the witness.

- 6.4 Before any oral hearing, and within the deadline set forth in the procedural calendar, a Party may be called upon by the Tribunal or the other Party to produce at the hearing for examination and cross-examination any witness or expert whose written testimony has been submitted with the written submissions. Should a Party wish to present any of its own witnesses or experts for examination at the hearing who have not been called by the Tribunal or the other Party, it shall request leave from the Tribunal.
- 6.5 Each Party shall be responsible for summoning its own witnesses to the applicable hearing, except when the other Party has waived cross-examination of a witness and the Tribunal does not direct his or her appearance. The Tribunal may grant leave for a witness to testify by video-conferencing in appropriate circumstances or if the Parties so agree.
- 6.6 The Tribunal may, on its own initiative or at the request of a Party, summon any other witness to appear.
- 6.7 If a witness or expert who has been called to testify by the Tribunal or the other Party does not appear to testify at the hearing, the witness's or expert's testimony shall be stricken from the record, unless the Tribunal determines that a valid reason has been provided for failing to appear. In such case, the Tribunal may summon the witness to appear a second time if satisfied that the testimony of the witness is relevant and material.
- 6.8 Each Party shall cover the costs of appearance of its own witnesses, including video-conferencing costs if any. The Tribunal will decide upon the appropriate allocation of such costs in its final award.
- 6.9 At any hearing, the examination of each witness shall proceed as follows:
  - 6.9.1 the witness shall make a declaration of truthfulness;
  - 6.9.2 although direct examination will be given in the form of witness statements and expert reports, the Party presenting the witness may conduct a brief direct examination;
  - 6.9.3 the adverse Party may then cross-examine the witness on relevant matters;
  - 6.9.4 the Party summoning the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; and
  - 6.9.5 the Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties.
- 6.10 The Tribunal shall, at all times, have complete control over the procedure for hearing a witness. The Tribunal may in its discretion:
  - 6.10.1 refuse to hear a witness if it considers that the facts with respect to which the witness will testify are either proven by other evidence or are irrelevant;
  - 6.10.2 limit or refuse the right of a Party to examine a witness when it appears that a question has been addressed by other evidence or is irrelevant; or
  - 6.10.3 direct that a witness be recalled for further examination at any time.

- 6.11 It shall not be improper for counsel to meet with witnesses and potential witnesses to establish the facts, prepare the witness statements, and prepare the examinations.
- 6.12 Unless the Parties agree otherwise, a factual witness shall not be present in the hearing room during opening statements or the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony or have access to any video or audio recording of the opening statements or oral testimony, prior to his or her examination. Upon application by one of the Parties, the Tribunal may make exceptions to this rule for Party or State representatives who also are factual witnesses.

## **7. Experts**

- 7.1 Each Party may retain and submit the evidence of one or more experts to the Tribunal.
- 7.2 Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit will be enough.
- 7.3 The provisions set out in relation to witnesses shall apply, *mutatis mutandis*, to the evidence of experts, except that, unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.
- 7.4 An expert witness may, if he or she so chooses, prepare a brief opening presentation (of no more than 45 minutes) summarizing his or her methodology and conclusions in lieu of direct examination, provided that any such presentation is limited to the scope of his or her expert report(s).
- 7.5 Following examination of the experts by the Parties, the Tribunal may in its discretion order two or more experts to be examined together.
- 7.6 The Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts. The Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert.

## **8. Hearings**

- 8.1 After consultation with the Parties, the Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its format, place, time, agenda, and all other technical and ancillary aspects.
- 8.2 By agreement of the Parties, the hearing scheduled for November 15-24, 2021 as per the procedural calendar set out at **Annex 1** shall be held at the facilities of the International Centre for Settlement of Investment Disputes (ICSID) at Washington, D.C., USA.
- 8.3 The Tribunal may order that any hearing take place by video conference in lieu of in person, if the circumstances so require, following consultation with the Parties.
- 8.4 Hearings shall be recorded and shall be transcribed in English, and, if the hearing involves simultaneous / consequential interpretation, Spanish, using LiveNote or similar software so that the transcript is available on a real-time basis. At the end of each day of hearings, the Parties shall be provided with the transcript of that day.



- 8.5 No new evidence may be presented at the hearing except with leave of the Tribunal. PowerPoint slides and demonstrative exhibits may be used by any Party during the hearing, provided that those materials reflect evidence on the record and do not introduce new evidence, directly or indirectly, and that the exhibit from which the referred information originates is clearly identified in each presentation. The Party submitting demonstrative exhibits shall provide hard and electronic copies to opposing counsel, the members of the Tribunal, the PCA, the court reporter and, if applicable, the interpreters, at a time to be decided during the pre-hearing conference.
- 8.6 Should the Tribunal grant leave to a Party to present new evidence in the course of the hearing, it should grant the other Party the opportunity to introduce new evidence to rebut it. When making an application for leave to submit new evidence, a Party may not append the new evidence that the Party seeks to admit to such application. The Party may only produce the evidence to the Tribunal once it grants leave for the admission of the evidence or if the Tribunal otherwise orders it.

## **9. Transparency**

- 9.1 Subject to the provisions of Articles 10.20 and 10.21 of the Treaty, the arbitration shall be conducted in accordance with the *UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration* (the “**UNCITRAL Transparency Rules**”), with the PCA assuming the role of the “repository” foreseen under the UNCITRAL Transparency Rules with respect to this arbitration.
- 9.2 The PCA shall make information and documents regarding the arbitration available to the public in accordance with the UNCITRAL Transparency Rules, except as otherwise decided by the Tribunal. The Parties may re-publish any information and documents published by the PCA.
- 9.3 The PCA shall arrange for a public webcast of any hearing, except as otherwise decided by the Tribunal.
- 9.4 Any Party may designate information, at the time it is submitted to the Tribunal, as confidential or protected information in accordance with the UNCITRAL Transparency Rules and Article 10.21 of the Treaty by submitting, in addition to the original version of the document, a redacted version of the document excluding the confidential or protected information.
- 9.5 Any Party may designate information contained in the Tribunal’s awards, decisions, and procedural orders as confidential or protected information in accordance with the UNCITRAL Transparency Rules and Article 10.21 of the Treaty by submitting a redacted version of the award, decision, or procedural order excluding the confidential or protected information within 15 days of the issuance of the award, decision, or procedural order. If more than one Party submits a redacted version of the award, decision, or procedural order, the Parties shall attempt to agree and submit a joint redacted version within 21 days of the issuance of the award, decision, or procedural order.
- 9.6 The Tribunal shall decide any objection regarding the designation of information as confidential or protected information.
- 9.7 Confidential or protected information shall be kept confidential from all persons other than the Parties, their representatives, witnesses, experts, the Tribunal and the PCA, except as otherwise decided by the Tribunal.

**10. Submissions from Non-Disputing Parties and *Amicus Curiae***

- 10.1 Pursuant to Article 10.20.2 of the Treaty, a non-disputing party to the Treaty may make oral and written submissions regarding the interpretation of the Treaty. The Parties may comment on any non-disputing party submissions in subsequent pleadings.
- 10.2 Pursuant to Article 10.20.3 of the Treaty, the Tribunal shall have the authority to accept and consider *amicus curiae* submissions.
- 10.3 Should the Tribunal receive a request for leave to make a non-disputing party or *amicus curiae* submission, the Tribunal will give the necessary directions, following consultation with the Parties.

**Place of Arbitration: Paris, France**



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Judge Ian Binnie, CC, QC  
(Presiding Arbitrator)

On behalf of the Tribunal

**Annex 1: Procedural Calendar**

<b>Description</b>	<b>By</b>	<b>Days</b>	<b>Dates</b>
<b><i>Initial Phase</i></b>			
First Procedural Meeting	All		Wednesday, June 3, 2020
Statement of Claim, with any Witness Statement(s) and Expert Report(s)	Claimant	90	Tuesday, September 1, 2020
Statement of Defense, including any objection to the Tribunal's jurisdiction, request for bifurcation and/or counterclaim, with any Witness Statement(s) and Expert Report(s)	Respondent	90	Monday, November 30, 2020
<b><i>Document Production Phase</i></b>			
Request to Produce	Claimant and Respondent	15	Tuesday, December 15, 2020
Production of Non-Objected Documents and Objections to Produce	Claimant and Respondent	30	Thursday, January 14, 2021
Response to Objections to Produce and reasoned applications for an order on production of documents in the form of a Redfern Schedule (Annex 2)	Claimant and Respondent	32	Monday, February 15, 2021
Decision on Request to Produce	Tribunal	15	Tuesday, March 2, 2021
Production as ordered	Claimant and Respondent	20	Monday, March 22, 2021
<b><i>Written Pleadings</i></b>			
Reply with any Reply Witness Statement(s) and Expert Report(s)	Claimant	60	Friday, May 21, 2021
Rejoinder with any Rejoinder Witness Statement(s) and Expert Report(s)	Respondent	60	Tuesday, July 20, 2021

<i>Oral Pleadings</i>			
Notification of witnesses and experts for the examination and the Hearing	Claimant and Respondent	80	Friday, October 8, 2021
Pre-hearing Conference	All	10	Monday, October 18, 2021
Oral Hearing	All	28	November 15-24, 2021 (reserved)

[\*\*\*in the event bifurcation is ordered, the above schedule will forthwith be amended in consultation with counsel to fix new dates for next steps\*\*\*]

**Annex 2: Model Vertical Redfern Schedule for Document Requests**

<b>Document Request No.</b>	
<b>Documents or category of documents requested (requesting Party)</b>	
<b>Relevance and materiality, incl. references to submission (requesting Party)</b>	
<b>Reasoned objections to document production request (objecting Party)</b>	
<b>Response to objections to document production request (requesting Party)</b>	
<b>Decision of the Tribunal</b>	