

PCA Case No. 2023-22

**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”)

TERMS OF APPOINTMENT

Tribunal

Hon. Mr. Justice David Unterhalter (Presiding Arbitrator)
Professor Bryan Schwartz
Mr. Hugo Perezcano Díaz

Registry

Permanent Court of Arbitration

July 18, 2023

1. Parties to the Arbitration

The Claimant	Counsel for the Claimant
<p>Mr. Bacilio Amorrortu</p>	<p>Francisco A. Rodriguez Gilberto A. Guerrero-Rocca Sandra J. Millor Ana R. Ulseth <i>Reed Smith LLP</i> 200 S Biscayne Blvd Suite 2600 Miami, Florida 33131 United States E-mail: francisco.rodriguez@reedsmith.com gilberto.guerrero@reedsmith.com smillor@reedsmith.com aulseth@reedsmith.com amorrortu@reedsmith.com</p> <p>Rebeca E. Mosquera <i>Reed Smith LLP</i> 599 Lexington Avenue New York, New York 10022-7650 United States E-mail: rmosquera@reedsmith.com</p>

The Respondent	Counsel for the Respondent
<p>The Republic of Peru</p>	<p>Vanessa Rivas Plata Saldarriaga Jhans Armando Panihuara Aragón <i>Dirección General de Asuntos de Economía Internacional Competencia e Inversión Privada Ministerio de Economía y Finanzas</i> Jirón Lampa 277, piso 5 Lima, Peru E-mail: vrivasplata@mef.gob.pe jpanihuara@mef.gob.pe</p> <p>Kenneth Juan Figueroa Derek C. Smith <i>Foley Hoag LLP</i> 1717 K Street, N.W., Suite 1200 Washington, D.C. 20006 United States E-mail: kfigueroa@foleyhoag.com dcsmith@foleyhoag.com AmorrortuPeruCase@foleyhoag.com</p>

	<p>Ofilio Mayorga <i>Foley Hoag LLP</i> 1301 Avenue of the Americas New York, NY 10019 United States E-mail: omayorga@foleyhoag.com</p>
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2. The Dispute and Commencement of the Arbitration

- 2.1 According to the Claimant, a dispute has arisen between the Parties under the United States – Peru Trade Promotion Agreement, ratified by Peru on June 28, 2006, signed by the United States on December 14, 2007, and entered into force on February 1, 2009 (the “**USPTPA**” or the “**Treaty**”).
- 2.2 By Notice of Arbitration dated August 16, 2022, the Claimant commenced arbitration proceedings against the Respondent pursuant to Chapter 10 of the USPTPA and the Arbitration Rules of the United Nations Commission on International Trade Law.
- 2.3 In accordance with the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on August 22, 2022, the date on which the Respondent received the Notice of Arbitration.

3. Applicable Procedural Rules

- 3.1 By agreement of the Parties, this arbitration shall be conducted under the Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2013 (the “**UNCITRAL Rules**”).
- 3.2 Pursuant to Article 10.19(2) of the USPTPA, the Secretary General of the International Centre for Settlement of Investment Disputes (ICSID) shall act as appointing authority in this matter.
- 3.3 Procedural orders shall be signed and issued by the presiding arbitrator alone after consultation with his co-arbitrators. In cases of urgency or if a co-arbitrator cannot be reached in a timely manner, the presiding arbitrator may take procedural decisions on his own, subject to revision, if any, by the full Tribunal.

4. Representation

- 4.1 The Parties have designated their respective representatives listed above as being authorized to act on their behalf in these arbitration proceedings.
- 4.2 To the extent they have not already done so, the Parties shall confirm these designations by each providing to the others copies of the powers of attorney or letter of representation granted to its representative(s).
- 4.3 In the event of any change by a Party of its representatives or of the contact details of any of its representatives, that change shall be notified promptly in writing to opposing counsel, to each member of the Tribunal and to the Permanent Court of Arbitration (PCA). The Tribunal reserves the right to exclude the participation of any representatives from any hearing or other

meeting where their participation has not been duly notified sufficiently in advance of that hearing or meeting.

5. Appointment of the Tribunal

- 5.1 In his Notice of Arbitration, the Claimant appointed Professor Bryan Schwartz, a Canadian national, as the first arbitrator. Professor Schwartz's contact details are as follows:

Professor Bryan Schwartz
1550 Mathers Bay West
Winnipeg, Manitoba R3N0T7
Canada
E-mail: bryan.schwartz@umanitoba.ca; bryanpschwartz@gmail.com

- 5.2 On November 2, 2022, the Respondent appointed Mr. Hugo Perezcano Díaz, a national of Mexico, as the second arbitrator. Mr. Perezcano Díaz's contact details are as follows:

Mr. Hugo Perezcano Díaz
180 Northfield Drive West, Unit 4
Waterloo ON N2L 0C7
Canada
E-mail: hugo.perezcano@iiuris.com

- 5.3 On February 15, 2023, the Secretary General of ICSID appointed The Hon. Mr. David Unterhalter, a national of South Africa, as presiding arbitrator. Justice Unterhalter's contact details are as follows.

The Hon. Mr. Justice David Unterhalter
50 Hume Road
Dunkeld
Johannesburg
South Africa 2196
E-mail: david@unterhalter.law; sec@unterhalter.law

- 5.4 The Parties confirm that the members of the Tribunal have been validly appointed in accordance with the Treaty and the UNCITRAL Rules.
- 5.5 The members of the Tribunal confirm that they are and shall remain impartial and independent of the Parties. Each of the members of the Tribunal confirms that he has disclosed, to the best of his knowledge, all circumstances likely to give rise to justifiable doubts as to his impartiality or independence and that he will without delay disclose any such circumstances that may arise in the future.
- 5.6 The Parties confirm that they have no objection to the appointment of any member of the Tribunal on the grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them as at the date of signature of these Terms of Appointment.

6. Place of Arbitration

- 6.1 In accordance with Article 10.20(1) of the Treaty and Article 18(1) of the UNCITRAL Rules, the Tribunal shall determine the legal place (or “seat”) of this arbitration in a future procedural order, having regard to the circumstances of the case, after consultation with the Parties.
- 6.2 Pursuant to the UNCITRAL Rules, meetings and hearings may take place at other locations if so decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations.
- 6.3 Irrespective of the place where hearings are held or an award is signed, the award will be deemed to have been made at the place of arbitration.

7. Language of the Arbitration

- 7.1 Pursuant to the UNCITRAL Rules, the Tribunal will determine the language(s) of the arbitration in a future procedural order, having regard to the circumstances of the case, after consultation with the Parties.

8. Case Administration

- 8.1 By agreement of the Parties, the PCA shall act as registry (the “**Registry**”) and shall administer the arbitral proceedings on the following terms:
- 8.1.1 In consultation with the Tribunal, the Secretary-General of the PCA shall designate a legal officer of the International Bureau to act as Registrar and Secretary to the Tribunal. Mr. José Luis Aragón Cardiel, Legal Counsel, has been designated for this purpose.
- 8.1.2 The PCA shall maintain an archive of filings of correspondence and submissions.
- 8.1.3 The PCA shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal’s supervision.
- 8.1.4 If needed, the PCA shall make its hearing and meeting rooms at the Peace Palace in The Hague or elsewhere available to the Parties and the Tribunal at no charge. Costs of catering, court reporting, or other technical support associated with hearings or meetings at the Peace Palace or elsewhere shall be borne by the Parties equally, subject to any final apportionment and corresponding reimbursement the Tribunal may order in its final award.
- 8.1.5 Upon request, the PCA shall carry out administrative tasks on behalf of the Tribunal, the primary purpose of which would be to reduce the costs that would otherwise be incurred by the Tribunal carrying out administrative tasks. Work carried out by the PCA shall be billed in accordance with the PCA’s schedule of fees.
- 8.1.6 The PCA’s fees and expenses shall be paid in the same manner as the Tribunal’s fees and expenses.

8.2 The contact details of the PCA are as follows:

Permanent Court of Arbitration
Attn.: Mr. José Luis Aragón Cardiel, Legal Counsel
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands
Tel: +31 70 302 4155
Fax: +31 70 302 4167
E-mail: jaragoncardiel@pca-cpa.org
bureau@pca-cpa.org

8.3 The appointment of the PCA as Registry shall not affect the legal place of arbitration, the geographical location of meetings and hearings, the applicable procedural rules, or other aspects of the arbitral proceedings, which shall remain subject to the Treaty, the UNCITRAL Rules, these Terms of Appointment, any agreement between the Parties and any determinations by the Tribunal.

9. Procedural Meeting

9.1 Further procedural details, and in particular a procedural calendar, shall be discussed and, as far as possible, agreed at a procedural meeting to be held with the Parties in person or by telephone or video conference call.

9.2 The results of the procedural meeting shall be included in a further procedural order.

10. Communications

10.1 Subject to any modification arising from the procedural meeting, the following provisions shall apply to communications.

10.2 The Parties and their representatives shall not engage in any oral or written communications with any member of the Tribunal *ex parte* in connection with the subject-matter of the arbitration.

10.3 Except where the Parties have simultaneous deadlines for submissions, the Parties shall send all communications for the attention of the Tribunal by e-mail simultaneously to opposing counsel, to each member of the Tribunal, and to the PCA, unless otherwise determined by the Tribunal.

10.4 The Parties shall send copies of correspondence between them to the Tribunal and to the PCA only if such correspondence relates to a matter where the Tribunal is required to take action or to abstain from acting or if it gives notice of a relevant event that the Tribunal and the PCA should be apprised of.

11. Deposit

11.1 In accordance with the UNCITRAL Rules and the Tribunal's instructions, as set out in its letter of May 17, 2023, the Parties shall make an initial deposit of USD 300,000 (i.e. USD 150,000 each Party) to be deposited with the PCA by wire transfer to the following PCA account:

Bank:	ABN Amro Bank N.V. Gustav Mahlerlaan 10 1082 PP Amsterdam The Netherlands
BIC:	ABNANL2A
Account number:	0533 5127 51
IBAN:	NL61 ABNA 0533 5127 51
Beneficiary:	Permanent Court of Arbitration
Reference:	PCA Case N° 2023-22

11.2 The PCA will review the adequacy of the deposit from time to time and, at the request of the Tribunal, may invite the Parties to make supplementary deposits. For the avoidance of doubt, unless otherwise directed by the Tribunal, the Parties shall make payments of any deposit in equal shares, without prejudice to the final decision of the Tribunal as to the allocation of costs.

11.3 Any transfer fees or other bank charges will be charged by the PCA to the deposit. No interest will be paid on the deposit.

11.4 The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

12. Tribunal Fees and Expenses

12.1 Each member of the Tribunal shall be remunerated at the rate of USD 500 per hour plus VAT, if applicable, for all time spent in connection with the arbitration. Time spent on travel will be charged at 50% of this rate.

12.2 The members of the Tribunal shall be remunerated in the amount of 50% of their fees for each day reserved for a hearing or meeting, based on an eight hour day, in respect of any hearing or other meeting for which they are asked to reserve more than one day and that is cancelled, or postponed by more than one week, by one or both of the Parties within four weeks from the first day of such hearing or meeting.

12.3 Members of the Tribunal shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration, including but not limited to travel expenses, telephone, fax, delivery, printing, and other expenses.

12.4 Members of the Tribunal may bill for reimbursement of disbursements and charges as and when they are incurred, and may submit to the PCA periodic bills in respect of fees.

12.5 All payments to the Tribunal shall be made from the deposit administered by the PCA.

13. Immunity of the Tribunal

- 13.1 The Parties shall not seek to make the Tribunal or any of its members, or any official of the PCA, liable in respect of any act or omission in connection with any matter related to this arbitration.
- 13.2 The Parties shall not require any member of the Tribunal or any official of the PCA to be a party or witness in any judicial, administrative, or other proceedings arising out of or in connection with the arbitration.

14. Signature of the Terms of Appointment

- 14.1 These Terms of Appointment may be signed in counterparts, collectively forming one composite signed document.

[signature page follows]

THE CLAIMANT:

THE RESPONDENT:



FRANCISCO A. RODRIGUEZ

Date: June 27, 2023

Date:

THE TRIBUNAL:

Professor Bryan Schwartz
Date:

Mr. Hugo Perezcano Díaz
Date:

Justice David Unterhalter
(Presiding Arbitrator)

Date:

THE CLAIMANT:

THE RESPONDENT:



Kenneth Juan Figueroa

Date:

Date: July 14th 2023

THE TRIBUNAL:

Professor Bryan Schwartz
Date:

Mr. Hugo Perezcano Díaz
Date:

Justice David Unterhalter
(Presiding Arbitrator)

Date:

THE CLAIMANT:

THE RESPONDENT:

Date:

Date:

THE TRIBUNAL:



Professor Bryan Schwartz
Date: July 18, 2023

Mr. Hugo Perezcano Díaz
Date:

Justice David Unterhalter
(Presiding Arbitrator)

Date:

THE CLAIMANT:

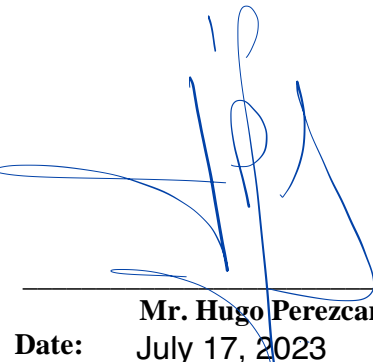
THE RESPONDENT:

Date:

Date:

THE TRIBUNAL:

Date: Professor Bryan Schwartz



Date: Mr. Hugo Perezcano Díaz
July 17, 2023

Justice David Unterhalter
(Presiding Arbitrator)

Date:

THE CLAIMANT:

THE RESPONDENT:

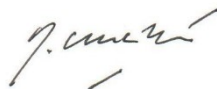
Date:

Date:

THE TRIBUNAL:

Date: **Professor Bryan Schwartz**

Date: **Mr. Hugo Perezcano Díaz**



Justice David Unterhalter
(Presiding Arbitrator)

Date: July 18, 2023