

PCA Case No. 2023-22

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

PROCEDURAL ORDER NO. 6
(First Confidentiality Agreement)

Tribunal

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

Registry

Permanent Court of Arbitration

31 March 2025


I. PROCEDURAL BACKGROUND

1. On 29 August 2024, the Tribunal issued Procedural Order No. 4 (Decision on Document Production) (“**PO4**”), whereby it ruled on the Parties’ requests for document production set forth in the Redfern Schedules they had filed with the Tribunal on 9 July 2024.
2. On 6 February 2025, the Tribunal issued Procedural Order No. 5 (Second Decision on Document Production) (“**PO5**”), whereby it ruled on the Parties’ requests for document production left outstanding in PO4. In respect of the Claimant’s requests for production Nos. 1, 2, 3, 4, and 8 (among others) the Tribunal directed the Parties to confer to seek agreement on the terms of an appropriate confidentiality regime and revert to the Tribunal.
3. On 17 February 2025, the Claimant requested “(i) ... that its authorized reviewers [under PO5] be expanded to four members of the Reed Smith team; (ii) that the period for document review by the authorized persons of Claimant’s team be reasonable and confirmed by the Parties once the volume is ascertained or once the review has commenced; and (iii) that the Parties be allowed to meet and confer on a proposed and amended Procedural Calendar once there is a clarification as to the volume of the production or once the review of the same has commenced” (the “**Claimant’s Request**”). The Claimant accompanied his request with a template confidentiality agreement, the terms of which were agreed between the Parties, subject to the Claimant’s Request. On the same date, the Respondent confirmed “its agreement with the text of the Confidentiality Agreement as well as the request to the Tribunal to allow the Parties to meet and confer on the Procedural Calendar once the Tribunal has ruled upon Claimant’s requests”.
4. On 21 February 2025, the Respondent requested, in respect of item (i) of the Claimant’s Request, that the Tribunal decline to reconsider PO5.
5. On 13 March 2025, the Tribunal granted the Claimant’s Request in full.
6. On 28 March 2025, the Parties informed the Tribunal that they had agreed on a First Confidentiality Agreement which “in essence replicates the Tribunal’s instructions as set out in [PO5]” and requested “that the Tribunal issue a Procedural Order incorporating this Confidentiality Agreement as envisioned in paragraph 3 of the Agreement.”

II. THE TRIBUNAL’S ORDER

7. Having taken note of the Parties’ agreement, the Tribunal hereby:
 - a. ENTERS as an order the First Confidentiality Agreement set forth in the **Annex** to this Procedural Order and directs the Parties to abide by its terms forthwith.
 - b. In acknowledgement of the obligation to abide by the First Confidentiality Agreement, the Tribunal directs that the Parties submit a signed copy thereof by **Wednesday, 2 April 2025**.

Place of Arbitration: New York, United States of America

A handwritten signature in dark ink, appearing to read 'J. Unterhalter', is positioned above a horizontal line.

Justice David Unterhalter
(Presiding Arbitrator)

On behalf of the Tribunal

Annex

FIRST CONFIDENTIALITY AGREEMENT

1. Mr. Bacilio Amorrortu (“**Claimant**” or “**Mr. Amorrortu**”) and the Republic of Peru (“**Respondent**” or “**Peru**”) are the parties (jointly the “**Parties**”) in *Bacilio Amorrortu (USA) v. The Republic of Peru*, PCA Case No. 2023-22 (“**Arbitration**”).

2. The Parties have agreed to respect and maintain the confidentiality of all documents and information responsive to Claimant’s Requests for Production Nos. 1, 2, 3, 4, and 8 in accordance with this Confidentiality Agreement as directed by the Tribunal in Procedural Order No. 5, paragraph 124(b).

3. Pursuant to Procedural Order No. 6 dated 31 March 2025, this Confidentiality Agreement is hereby entered as an order by the Tribunal and shall be valid, effective and binding as of the date of signature of this agreement, [date].

I. CONFIDENTIALITY REGIME

4. The Parties confirm their understanding that the documents and information responsive to Claimant’s Requests for Production Nos. 1, 2, 3, 4, and 8 (“**Responsive Documents**”) are strictly confidential and may only be exhibited with the following measures in place, pursuant to the Tribunal’s Procedural Order No. 5 dated 6 February 2025:

- a. Any responsive documents shall be designated and labelled as “attorney’s eyes only;”
- b. No more than four of the most senior members of the Claimant’s outside counsel team (“**Authorized Persons**”) shall be granted access to responsive documents;
- c. Any responsive documents shall be made available to the Authorized Persons of Claimant’s counsel’s team at Foley Hoag’s Offices, located at 1717 K St NW, Washington, D.C. 20006 (the “**Secure Location**”). Claimant will begin to review the Responsive Documents subject to this First Confidentiality Agreement starting on March 31, 2025 through April 8, 2025.
- d. The Responsive Documents subject to this First Confidentiality Agreement are documents responsive to RFP Nos. 1, 2, 4, and 8. The Republic of Peru is still in the process of searching for and identifying additional documents responsive to RFP Nos. 1, 3 and 4. Once these documents are identified and secured, Claimant and Peru will determine an additional time frame for Claimant to conduct a review of any outstanding documents subject to PO5 and a Second Confidentiality Agreement;
- e. The Authorized Persons may examine responsive documents at the Secure Location and may take notes, but shall not make copies of the documents;
- f. When examining the responsive documents, the Authorized Persons shall be accompanied by at least one member of Respondent’s counsel’s team;

- g. No other person shall be granted access to the responsive documents;
- h. Should Claimant's counsel wish to introduce any responsive documents into the record, or share them with specific persons for the purpose of seeking instructions or witness/expert testimony, an application should be filed with the Tribunal as necessary; and
- i. Before accessing any responsive documents, Claimant's counsel shall execute a confidentiality undertaking confirming that they shall maintain the confidentiality of such material, shall not copy or disclose the material or any portion thereof to any non-authorized person and shall ensure that they and any persons acting under their supervision shall not use the material for any purpose other than in connection with this arbitration.

5. The Authorized Persons, as designated by the Tribunal's Second Letter dated March 13, 2025, and thus authorized to examine and review the confidential documents are: Francisco Rodriguez; Gilberto Guerrero Rocca; Ana Ulseth; and Franchesca Suber.

6. Each Party acknowledges and agrees that it is entitled to relief to restrain breaches of this Confidentiality Agreement, to enforce the terms and provisions hereof in addition to any other remedy to which any Party to this arbitration may be entitled at law.

7. Nothing in this Confidentiality Agreement shall be deemed to limit, prejudice, or waive any right of any Party (a) to seek to modify or obtain relief from any aspect of this Confidentiality Agreement; or (b) to object to the use, relevance, or admissibility at the hearing or otherwise of any material. Any modification of the Confidentiality Agreement shall, however, be only with the consent of both Parties or as directed by the Tribunal.

II. EFFECT, SURVIVAL AND GOVERNING LAW

8. This Confidentiality Agreement shall be valid, effective and binding as of the date of signature of this agreement, [date].

9. This Confidentiality Agreement shall be governed by the law of New York.

10. The obligations created by this Confidentiality Agreement shall survive the termination of these proceedings.

++signature++

For Claimant

++signature++

For Respondent