

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Blue Water Worldwide LLC and others**

**v.**

**Republic of Peru**

**(ICSID Case No. ARB/26/8)**

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**PROCEDURAL ORDER No. 2**  
**On Transparency and Confidentiality**

***Members of the Tribunal***

Ms. Meg Kinnear, President of the Tribunal  
Prof. Andrés Jana Linetzky, Arbitrator  
Prof. Jorge E. Viñuales, Arbitrator

***Secretary of the Tribunal***

Mr. Marco Tulio Montañés-Rumayor

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July 17, 2026

## I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. This Procedural Order No. 2 (“**PO2**”) contains the Parties’ agreements and the Tribunal’s decisions concerning the transparency and confidentiality regime governing this case, including the designation and use of protected or confidential information.
2. On June 1, 2026, the Tribunal circulated a draft of PO2 (“**Draft PO2**”) for discussion by the Parties.
3. On July 6, 2026, the Parties commented on Draft PO2, indicating the provisions they agreed upon and any provisions on which they disagreed.
4. On July 7, 2026, the Tribunal circulated a further revised Draft PO2.
5. The First Session in this case was held on July 8, 2026. The Parties and the Tribunal discussed the Parties’ comments on Draft PO2 during the First Session, and the Tribunal subsequently issued this order.

## II. LEGAL FRAMEWORK

6. The legal framework applicable to these proceedings is provided by the United States-Peru Trade Promotion Agreement (“**US-Peru TPA**”), in particular Articles 10.20 and 10.21 of that Agreement, and Rules 62-68 of the 2022 ICSID Arbitration Rules, as modified or supplemented by Section III of this Order.
7. For the purposes of this Procedural Order:
  - i. “*Amicus curiae*” is a person or entity that is not a party to the dispute, and is referred to as a “non-disputing party” (“**NDP**”) in ICSID Arbitration Rule 67 and in this order;
  - ii. “Disputing Party” or “Party” means either the Claimants or the Respondent in this proceeding;
  - iii. “Non-disputing Party” means the Government of the United States, and is referred to as a non-disputing Treaty Party (“**NDTP**”) in ICSID Arbitration Rule 68 and in this order;

iv. “Confidential information” and “protected information” means:

- (a) Confidential business information or information that is privileged or otherwise protected from disclosure under a Party’s law (Art. 10.28, US-Peru TPA);
- (b) Information the disclosure of which the State determines is contrary to its essential security interests (Art. 22.2, US-Peru TPA);
- (c) Information the disclosure of which the State determines would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private (Art. 22.4, US-Peru TPA); and
- (d) Information defined as confidential or protected information by ICSID Arbitration Rule 66(a) to (j).

### **III. TRANSPARENCY PROCEDURES**

8. The Tribunal adopts the following procedures to designate and manage confidential or protected information in these proceedings.

#### **A. GENERAL GUIDANCE**

9. Confidential or protected information shall not be shared with any person or entity that is not involved in this arbitration. Such information may only be used in these proceedings and may be disclosed exclusively in connection with these proceedings to and among:
- i. Counsel to the Disputing Parties and their support staff;
  - ii. Officials or employees of each Disputing Party to whom disclosure is reasonably considered necessary for preparation of the Disputing Party’s case;
  - iii. Independent experts or consultants retained or consulted by a Disputing Party in connection with these proceedings;

- iv. Witnesses who in good faith are reasonably expected by a Disputing Party to offer evidence in these proceedings but only to the extent material to their expected testimony;
  - v. Any key service providers (e.g., translators, data storage providers, trial graphics vendors, photocopying vendors, or the like) whose access is strictly necessary for the permitted use or processing of the information;
  - vi. Members of the Tribunal and the Tribunal Assistant;
  - vii. The ICSID Secretariat and persons employed by the ICSID Secretariat, including counsel, secretaries, paralegals, court reporters, translators, clerical and administrative personnel; and
  - viii. An NDP or NDTP that has obtained access to information pursuant to paragraph 31, below, and only with respect to those documents to which it has specifically been given access.
10. The confidentiality obligations in this Procedural Order shall not prevent a Disputing Party from complying with applicable mandatory laws, including securities laws. To the extent that a Disputing Party is legally obliged to disclose confidential or protected information, it shall inform the other Disputing Party and the Tribunal before the information is disclosed, with a reasonable explanation of the legal basis for such disclosure.
11. All persons receiving confidential or protected information in this proceeding shall be bound by this order to keep such information confidential. Each Disputing Party shall be obliged to notify all persons receiving such material of the obligations under this order and ensure that such persons undertake to protect such confidentiality.
12. If a Disputing Party inadvertently discloses confidential or protected information to a person not authorized to receive it under this Order, that Party shall promptly notify the other Disputing Party and the Tribunal, take reasonable steps to retrieve the information, and request that the recipient destroy or return all copies. Such

inadvertent disclosure shall not constitute waiver of the confidential or protected status of the information.

**B. REPOSITORY OF PUBLISHED INFORMATION**

13. Without prejudice to the Respondent's obligations under Article 10.21 of the US-Peru TPA, the Parties agree that ICSID shall serve as repository of published information.
14. The Repository shall make documents available to the public by uploading them on the ICSID website, subject to the provisions of this Order and the Tribunal's instructions.
15. In accordance with Article 10.21.1 of the US-Peru TPA, and subject to the redaction of information designated as "confidential and protected information", ICSID will publish the following documents on its website:
  - (a) the notice of intent;
  - (b) the notice of arbitration;
  - (c) pleadings, memorials, and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Articles 10.20.2, 10.20.3 and 10.25;
  - (d) minutes or transcripts of hearings of the tribunal, where available; and
  - (e) orders, awards, and decisions of the tribunal.
16. For purposes of paragraphs 13-15, above, the reference in Article 10.21.1 of the US-Peru TPA to the "notice of arbitration" and to "pleadings, memorials and briefs" does not include accompanying material (i.e., witness statements, expert reports, exhibits and legal authorities).

**C. NOTICE OF INTENT AND NOTICE OF ARBITRATION (ART. 10.21(1)(A) & (B), US-PERU TPA)**

17. In accordance with Article 10.21(1)(a) and Article 10.21(1)(b) of the US-Peru TPA, the Respondent shall transmit the notice of intent ("NoI") and notice of arbitration

(“NoA”)<sup>1</sup> in this proceeding to the Government of the United States. The NoI and NoA shall be redacted in accordance with Section E of this order.<sup>2</sup>

18. The Parties shall send the NoI and NoA, with any agreed redactions, to the ICSID Tribunal Secretary by August 30, 2026 for publication on the ICSID website.
19. Either Disputing Party may revert to the Tribunal if they are unable to agree on redaction of the NoI or NoA. The NoI and NoA shall be redacted in accordance with Section E of this order.

**D. DOCUMENTS EXCHANGED IN DOCUMENT PRODUCTION**

20. Any document produced by either Disputing Party during document production shall be treated as confidential and protected in its entirety and may not be disclosed to NDPs, NDTPs, or third parties, except that:
  - i. if a Disputing Party files a document produced by the other Disputing Party as part of its pleadings, memorials or briefs, that Disputing Party must follow the process for designating information as confidential or protected in paragraphs 21-27 of this Procedural Order; and
  - ii. any document produced that is already available in the public domain will not be treated as confidential or protected information.

**E. PROCEDURE FOR DESIGNATION OF CONFIDENTIAL OR PROTECTED INFORMATION IN FILED DOCUMENTS (ART. 10.21(4) US-PERU TPA)**

21. In accordance with Article 10.21(4) of the US-Peru TPA, the Disputing Parties and the Tribunal shall not disclose to any NDP, NDTP or the public any protected or confidential information that the Disputing Party has clearly designated as “Confidential or Protected”.
22. Any Disputing Party claiming that certain information constitutes confidential or protected information shall clearly designate such information at the time it is either produced to the other Disputing Party through document production or submitted

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<sup>1</sup> Article 10.16 (4) of the US-Peru TPA uses “Notice of Arbitration” and “Request for Arbitration” interchangeably, and hence the Respondent would make a jointly redacted version of the ICSID Request for Arbitration publicly available.

to the Tribunal. This shall be done by filing both a complete version of the document (without redaction) and a redacted version, in electronic version only, of the document that strikes out the confidential or protected information. Each version of the document shall be marked “Redacted Version” or “Unredacted Version” (as the case may be) on the top of each page of the document.

23. A Disputing Party has 21 calendar days from the filing of a document on the record by the other Disputing Party or from the issuance of a decision or order by the Tribunal:
  - i. to object to a designation of confidential or protected information made by the opposite Disputing Party in its filed document; or
  - ii. to propose additional designations of confidential or protected information in the relevant document, decision or order;
  - iii. such an objection or proposal shall be in the form of Annex A to this order.
24. The Disputing Parties will confer and seek to agree on the designations referred to in paragraph 23(i) and (ii). If they are unable to agree on the designations, the Disputing Party responding to such an application may refer the dispute to the Tribunal for determination by filing a reasoned response addressing the appropriate designations within 10 business days of receiving an objection or proposal pursuant to paragraph 23. The Tribunal shall decide the matter on the basis of the written submissions of the Disputing Parties.
25. If the Tribunal determines that information in a filing by a Disputing Party was not properly designated, the Disputing Party that submitted the information may: (i) withdraw all or part of the submission containing such information, or (ii) agree to resubmit complete and redacted designations in accordance with the Tribunal’s determination. The Disputing Party should advise the Tribunal and the other Disputing Party which option it elects and shall file any updated redacted document with the Tribunal Secretary within 5 business days of the Tribunal’s determination. ICSID shall publish the updated redacted version of the document on its website. In either case, the other Disputing Party shall, whenever necessary, resubmit complete and redacted documents, in electronic version only, which either remove

the information withdrawn under (i) by the Disputing Party that first submitted the information or redesignate the information consistent with the designation under (ii) of the Disputing Party that first submitted the information.

26. If the Tribunal determines that information in a decision or order was not properly designated, it shall make the necessary designations and issue the updated decision or order. ICSID will simultaneously publish the updated decision or order on its website.
27. Absent an objection by a Disputing Party in the time allowed by paragraph 23, the Tribunal will authorize publication of the filed document on the ICSID website with the redactions proposed by the moving Party.

**F. PLEADINGS, MEMORIALS AND BRIEFS FILED BY THE DISPUTING PARTIES  
ART. 10.21(1)(C), US-PERU TPA**

28. In accordance with Article 10.21(1)(c) of the US-Peru TPA, a Disputing Party that files a pleading, memorial or brief containing confidential or protected information shall follow the procedure described in paragraphs 21-27 of this Order. The redacted pleadings, memorials and briefs need not include appended expert opinions, witness statements, exhibits, legal authorities and annexes.
29. Neither the Disputing Parties nor the Tribunal shall disclose to the United States of America (the **NDTP**), or to the public (including an **NDP**) any confidential or protected information redacted in accordance with this Order or a subsequent ruling of the Tribunal.

**G. PLEADINGS, MEMORIALS AND BRIEFS FILED BY NON-DISPUTING PARTIES (“AMICUS CURIAE”) AND NON-DISPUTING TREATY PARTIES (ART. 10.21(1)(C), US-PERU TPA)**

30. In accordance with Article 10.21(1)(c) of the US-Peru TPA, an **NDP** or **NDTP** that files a pleading, memorial or brief that does not contain protected or confidential information shall make it available to the public by sending it to the ICSID Tribunal Secretary for distribution to the Disputing Parties and the Tribunal and for publication on the ICSID website.

31. The pleadings, memorials and briefs made public by an NDP or an NDTP need not include appended expert opinions, witness statements, exhibits, legal authorities and annexes.

**H. ACCESS TO HEARINGS (US-PERU TPA ARTICLE 10.21(2))**

32. In accordance with Article 10.21(2) of the US-Peru TPA, hearings shall be open to the public, subject to a procedure to ensure that confidential or protected information is not disclosed to the public. The Tribunal shall hold portions of the hearing *in camera* to the extent necessary to prevent the disclosure of confidential or protected information.
33. The following logistical arrangements will be made to facilitate public access to hearings:
- i. An audio-video recording of the hearing will be made available on the ICSID website, and the video recording will be streamed in the English and Spanish languages on the ICSID website as soon as possible after the conclusion of the hearing. The Parties shall propose edits to the audio-video recording on account of confidential or protected information within 30 days of its receipt from ICSID.
  - ii. At any time during a hearing, a Disputing Party may request that part of the hearing be held in private-to ensure that confidential or protected information is excluded from the video. Such a request must be made on a reasoned basis and is subject to the right of the other Disputing Party to object to the request to go *in camera*.
  - iii. A Disputing Party shall inform the Tribunal before raising topics where confidential or protected information could reasonably be expected to arise. The Tribunal will then consult the Parties *in camera* and the transcript shall be marked “*Confidential*”. After consultation with the Disputing Parties, the Tribunal shall decide whether to mark the relevant portion of the transcript as “*Confidential*.”

- iv. An NDTP may attend hearings in-person or virtually (if the hearing is held remotely) in real time, subject to the procedures for protection of information.

**I. MINUTES OR TRANSCRIPTS OF HEARINGS OF THE TRIBUNAL, WHERE AVAILABLE (US-PERU TPA ART. 10.21(1)(D))**

34. In accordance with Article 10.21(1)(d) of the US-Peru TPA, minutes or transcripts of hearings shall be published on the ICSID website with redaction of all portions that were taken *in camera* and are marked “*Confidential*”. The Parties shall jointly agree on these redactions and provide an approved redacted transcript to the ICSID Tribunal Secretary for publication on the ICSID website. The jointly redacted transcript shall be provided to ICSID within 30 days of receipt of the transcript by the Disputing Parties. The Tribunal will decide if there are any pending disagreements.

**J. ORDERS, DECISIONS AND THE AWARD OF THE TRIBUNAL (ART. 10.21(1)(E), US-PERU TPA)**

35. In accordance with Article 10.21(1)(e) of the US-Peru TPA, orders, decisions and the Award of the Tribunal shall be publicly available and shall be published on the ICSID website.
36. The procedure to address designations of confidential or protected information in orders and decisions of the Tribunal is addressed in paragraphs 21-27, above.
37. The procedure to address designations of confidential or protected information in the Award prior to its publication is addressed in paragraph 39, below.

**K. PROPOSED AWARD (US-PERU TPA ARTICLE 10.20(9))**

38. A proposed Award shared with the Disputing Parties pursuant to Article 10.20(9) of the US-Peru TPA shall be confidential and shall not be shared beyond counsel for the Parties and their clients.

**L. PROCEDURE FOR REDACTION OF CONFIDENTIAL OR PROTECTED INFORMATION FROM THE AWARD OF THE TRIBUNAL (ART. 10.21(1)(E), US-PERU TPA)**

39. Within 30 days after the dispatch of the Award, the Disputing Parties shall:
- i. Confer regarding redaction of protected or confidential information in the Award;
  - ii. Jointly notify the ICSID Tribunal Secretary if the Disputing Parties seek redaction of confidential or protected information from the Award prior to its publication. If so, the joint notice shall be accompanied by a redacted copy of the Award indicating the redactions agreed upon by the Disputing Parties. The Award as jointly redacted by the Disputing Parties will thereafter be published on the ICSID website; or
  - iii. If the Disputing Parties disagree on redactions in the Award, they shall provide the Tribunal Secretary with a summary of their disagreements in the form attached as Annex A to this order and a list of the redactions upon which they agree. The ICSID Tribunal Secretary will communicate this information to the former Members of the Tribunal who will decide the redactions.
  - iv. Following the decision by the former Members of the Tribunal, the Disputing Parties will jointly prepare a redacted copy of the Award reflecting the redactions allowed by the decision of the former Members of the Tribunal. The Award so redacted will thereafter be published by the ICSID Secretariat.
  - v. Absent a notice from the Disputing Parties pursuant to paragraph 38(ii) above, within 30 days from the date of dispatch of the Award, the unredacted Award will be published on the ICSID website.
  - vi. The former Members of the Tribunal will be compensated for the time spent resolving disputes about redaction of the Award in accordance with section 3 of Procedural Order No. 1, with their claims being paid from the case fund administered by ICSID for this proceeding. Any such costs shall not be

considered costs of the proceeding for purposes of Rule 50 of the ICSID Arbitration Rules.

On behalf of the Tribunal,

[signed]

Ms. Meg Kinnear  
President of the Tribunal

**ANNEX A – TRANSPARENCY SCHEDULE**

|                                                    |             |
|----------------------------------------------------|-------------|
| [insert Party]                                     | Request [1] |
| Information sought to be protected from disclosure |             |
| Legal basis for protection                         |             |
| Comments                                           |             |
| Reply by opposing Party                            |             |
| Decision                                           |             |