

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. 9
(Third Confidentiality Agreement)

Tribunal

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

Registry

Permanent Court of Arbitration

18 September 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 31 March 2025, the Tribunal issued Procedural Order No. 6 (First Confidentiality Agreement), whereby it entered as an order the First Confidentiality Agreement agreed between the Parties at their request.
4. On 5 June 2025, the Tribunal issued Procedural Order No. 7 (Second Confidentiality Agreement), whereby it entered as an order the Second Confidentiality Agreement agreed between the Parties at their request.
5. On 21 August 2025, the Tribunal issued Procedural Order No. 8 (Claimant’s Applications to Admit Documents and Compel Production) (“**PO8**”), whereby it ruled on the Claimant’s applications of 16 May and 13 June 2025 concerning, *inter alia* (i) the Claimant’s request for admission into the record of documents (the “**PO5 Documents**”) produced by the Respondent in accordance with PO5; and (ii) the Claimant’s request for production of additional documents. The Tribunal’s ruling in PO8 was as follows:
 - a. The Parties are instructed to confer and attempt to seek agreement on the terms of a confidentiality protocol governing the disclosure, handing, and use of the PO5 Documents in the context of these proceedings in accordance with the Tribunal’s directions set out in paragraphs 27-28 above. They should revert to the Tribunal on this matter no later than Thursday, 28 August 2025.
 - b. The Respondent shall produce the following documents to the Claimant: [REDACTED]; (ii) Attachment 39; and (iii) and Doc 158. These documents shall be subject to the same level of confidentiality protection foreseen under paragraph 42 of PO5 for the PO5 Documents. The Parties are instructed to seek agreement on an appropriate confidentiality regime, which may be modelled on the First and Second Confidentiality Agreements entered as PO6 and PO7 by the Tribunal. They shall revert to the Tribunal no later than Thursday, 28 August 2025 to report the extent of their agreement, and their reasons for any remaining disagreement.
6. On 3 September 2025, the Parties submitted a draft Confidentiality Protocol and two Confidentiality Undertakings for the Tribunal’s consideration in accordance with PO8. The Parties noted that they are “in full agreement regarding the documents’ text, except for the provisions on the destruction of documents, which the Parties respectfully submit for the Tribunal’s decision.”

7. On 5 September 2025, the Tribunal (i) noted its understanding that the Parties' proposed Confidentiality Protocol and Confidentiality Undertakings corresponded to the confidentiality protocol foreseen under paragraph 135(a) of PO8; and (ii) requested the Parties to clarify whether such protocol and undertakings were also meant to govern the confidentiality regime applicable to the production of the documents the Respondent was ordered to produce under PO8, as foreseen under paragraph 135(b) of PO8.
8. On 8 September 2025, the Parties confirmed jointly that their proposed draft Confidentiality Protocol and Confidentiality Undertakings sought to govern "the disclosure, handing, and use of the documents that Peru produced (or will produce) pursuant to Procedural Orders Nos. 5 and 8, and which are sought to be admitted into the record." Additionally, the Parties informed the Tribunal that they were in the process of finalizing the Confidentiality Agreement that would govern the Claimant's review of the Respondent's production pursuant to PO8.
9. On 12 September 2025, the Respondent informed the Tribunal that the Parties had agreed on a Third Confidentiality Agreement which "in essence replicates the Tribunal's instructions as set out in [PO5]" and requested "that the Tribunal issue Procedural Order No. 9 incorporating the [Third Confidentiality] Agreement as envisioned in paragraph 3 of the Agreement."
10. On 15 September 2025, the Claimant confirmed his agreement with the Third Confidentiality Agreement.

II. THE TRIBUNAL'S ORDER

11. Having taken note of the Parties' agreement, the Tribunal hereby ENTERS as an order the Third Confidentiality Agreement set forth in the Annex to this Procedural Order and directs the Parties to abide by its terms forthwith.

Place of Arbitration: New York, United States of America



Justice David Unterhalter
(Presiding Arbitrator)

On behalf of the Tribunal

THIRD 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. 9 dated _____, 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, 8 September 2025.

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 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 via Zoom. The meeting will be hosted by Respondent’s counsel. Claimant will review the Responsive Document subject to this Third Confidentiality Agreement on 8 September 2025 from 3:00 pm to 5:00 pm.
- d. The Responsive Document subject to this Third Confidentiality Agreement is responsive to RFP No. 1;
- e. The Authorized Persons may examine responsive documents at the Secure Location and may take notes, but shall not make copies, record, or take pictures or screenshots 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, 8 September 2025.

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

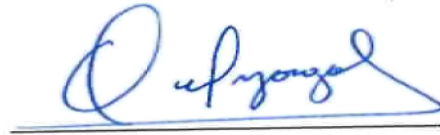
10. The obligations created by this Confidentiality Agreement shall survive the termination of these proceedings.



Francisco A. Rodriguez

For Claimant

09/08/2025



Ofilio Mayorga

For Respondent

09/08/2025