

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. 13

(Respondent’s Request to Exclude Certain Evidence)

Tribunal

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

Registry

Permanent Court of Arbitration

19 May 2026

TABLE OF CONTENTS

I.	PROCEDURAL BACKGROUND.....	3
II.	BACKGROUND TO THE REQUEST.....	4
III.	THE PARTIES' POSITIONS	6
1.	The Respondent's Position.....	6
2.	The Claimant's Position	9
IV.	THE TRIBUNAL'S ANALYSIS.....	12
V.	THE TRIBUNAL'S ORDER.....	14

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 (“**RFPs**”) set forth in the Redfern Schedules they had filed with the Tribunal on 9 July 2024.
2. From 6 September 2024 to 16 October 2024, the Parties filed their respective submissions in connection to PO4.
3. On 6 February 2025, the Tribunal issued Procedural Order No. 5 (Second Decision on Document Production) (“**PO5**”), whereby it ruled on the Parties’ RFPs left outstanding in PO4. Among other things, the Tribunal ordered production in relation to the Claimant’s RFPs Nos. 1, 2 (as reframed), 3 (as reframed), 4 (as reframed), 8, and 9 (which was granted only in part), subject to a confidentiality regime being agreed between the Parties.
4. On 31 March 2025, the Tribunal issued Procedural Order No. 6 (First Confidentiality Agreement) (“**PO6**”), whereby it entered as an order, at the Parties’ request, their First Confidentiality Agreement, which “in essence replicates the Tribunal’s instructions as set out in [PO5].”¹
5. On 5 June 2025, the Tribunal issued Procedural Order No. 7 (Second Confidentiality Agreement) (“**PO7**”), whereby it entered as an order the Second Confidentiality Agreement executed by the Parties, which “in essence replicates the Tribunal’s instructions as set out in [PO5].”²
6. On 21 August 2025, the Tribunal issued Procedural Order No. 8 (Claimant’s Application to Admit Documents and Compel Production) (“**PO8**”), whereby (i) it directed the Parties to confer and attempt to seek agreement on the terms of a confidentiality protocol governing the disclosure, handing, and use of eight documents produced by the Respondent in accordance with PO5; and (ii) ordered the Respondent to produce, subject to a specified level of confidentiality protection, three additional documents.
7. On 18 September 2025, the Tribunal issued Procedural Order No. 9 (Third Confidentiality Agreement), (“**PO9**”) whereby it entered as an order the Parties’ Third Confidentiality Agreement, which “in essence replicates the Tribunal’s instructions as set out in [PO5].”³
8. On 3 October 2025, the Tribunal issued Procedural Order No. 10 (Confidentiality Protocol and Confidentiality Undertakings) (“**PO10**”), whereby it declared the document phase of the proceedings closed, subject to certain conditions.⁴ Additionally, the Tribunal instructed the Parties to conclude their discussions on a revised procedural calendar and to revert to the Tribunal thereafter.
9. On 29 October 2025, the Tribunal issued Procedural Order No. 11, whereby, after having consulted the Parties and taken note of their agreement, the Tribunal (i) adopted an updated Procedural Calendar; and (ii) directed that the hearing be held from Monday, 18 January 2027

¹ See PO6, para. 6.

² See PO7, para. 4.

³ See PO9, para. 9.

⁴ See PO10, para. 20.

through Friday, 22 January 2027 at the facilities of ICSID in Washington, D.C., United States of America.

10. On 17 November 2025, the Tribunal issued Procedural Order No. 12, whereby it partially granted the Claimant's request for an extension of the deadline for the filing of his Reply in support of his Statement of Claim, and, accordingly, adopted an updated Procedural Calendar.
11. On 22 December 2025, the Claimant filed his Reply in support of his Statement of Claim (the "**Reply Memorial**").
12. On 18 March 2026, the Respondent requested that the Tribunal exclude from the record certain evidence that the Claimant "purports to have recreated from memory after this arbitration was initiated" (the "**Request**"). On the same day, the Claimant requested the Tribunal's leave to submit a response to the Request, which the Tribunal granted on 19 March 2026.
13. On 25 March 2026, the Claimant requested a two-day extension to respond to the Request. The Respondent did not object, and the Tribunal granted the extension the following day.
14. On 27 March 2026, the Claimant submitted his comments on the Request (the "**Response**"). On the same day, the Respondent requested the Tribunal's leave to submit a reply to the Response.
15. On 30 March 2026, the Tribunal granted the Respondent and the Claimant leave to submit a reply and a rejoinder, respectively.
16. On 31 March 2026, the Claimant requested an extension to submit his rejoinder. On the same day, the Respondent requested that, should the Tribunal grant the Claimant's extension, its own deadline to file the reply be adjusted accordingly. The Claimant did not oppose this request.
17. On 1 April 2026, the Tribunal extended both Parties' deadlines to file their second round of submissions on the Request.
18. On 3 April 2026, the Respondent submitted its comments on the Claimant's Response (the "**Reply**").
19. On 13 April 2026, the Claimant submitted its comments on the Respondent's Reply (the "**Rejoinder**").

II. BACKGROUND TO THE REQUEST

20. The Respondent requests that the Tribunal exclude from the record six documents originally produced by the Claimant on 6 September 2024 in response to PO4 and subsequently submitted to the record together with the Reply Memorial as exhibits C-182 through C-187 (the "**Disputed Exhibits**");⁵
 - a. AMORRORTU_PROD000032–000037 (C-182);
 - b. AMORRORTU_PROD000038–000072 (C-183);

⁵ Request, pp. 1-2.

- c. AMORRORTU_PROD000073–000109 (C-184);
 - d. AMORRORTU_PROD000110 (C-185);
 - e. AMORRORTU_PROD000111 (C-186); and
 - f. AMORRORTU_PROD000112 (C-187).
21. The Respondent notes that the Disputed Exhibits are also cited in Mr. José Zamalloa’s expert report, which was also filed with the Claimant’s Reply Memorial (the “**Zamalloa Report**”).⁶
22. According to the Respondent, the Disputed Exhibits are relied upon by the Claimant to (i) support his argument that he has a protected investment; and (ii) advance the “position that Baspetro could have qualified as an oil company and pursued direct negotiations with Perupetro or participated in competitive bids”.⁷ The Respondent argues that the Disputed Exhibits were not created nor provided contemporaneously during Baspetro’s participation in the bidding process for Block III, but were instead reconstructed by the Claimant from memory at a later stage – an admission the Claimant himself has made – for purposes of this arbitration.⁸ Thus, the Respondent requests that the Tribunal exclude the Dispute Exhibits from the record, and strike any portions of the witness statements, expert reports and the Claimant’s Reply Memorial that rely on those exhibits.
23. The Claimant recalls that the Respondent has had actual knowledge and possession of the Disputed Exhibits since 6 September 2024.⁹ According to the Claimant, this “egregious delay” of more than more than 558 days (over 18 months) constitutes a waiver of the Respondent’s right to request the exclusion of the Disputed Exhibits from the case record.¹⁰ Moreover, the Claimant considers that the Respondent mischaracterized both the process for the reconstruction of the Disputed Exhibits, as well as the applicable legal standard for the exclusion of evidence.¹¹ In the Claimant’s view, the Disputed Exhibits are not the product of a “lone act of recollection” by an interested Party but rather the result of Baspetro’s team’s rigorous collaborative reconstruction.¹² Finally, the Claimant affirms that the applicable evidentiary standard requires the Tribunal to weigh the evidence, not to exclude it.¹³ The Claimant therefore requests the Tribunal to deny the Respondent’s Request in its entirety.¹⁴ Alternatively, the Claimant requests that the Tribunal reserve any questions related to the weight of the Disputed Exhibits for the hearing.¹⁵

⁶ Request, p. 3; Zamalloa Report, para. 7.1.

⁷ Request, pp. 3-4.

⁸ Request, p. 4; Claimant’s Response to PO4, 6 September 2024, para. 9.

⁹ Rejoinder, p. 2.

¹⁰ Response, p. 1.

¹¹ Response, p. 1.

¹² Response, p. 1.

¹³ Response, p. 2.

¹⁴ Response, p. 14.

¹⁵ Response, p. 14.

III. THE PARTIES' POSITIONS

1. The Respondent's Position

24. The Respondent bases its Request on (i) Article 27 of the UNCITRAL Rules; (ii) paragraph 6.9 of Procedural Order No. 1 (“**PO1**”); (iii) and Article 9(2) of the IBA Rules on the Taking of Evidence in International Arbitration (the “**IBA Rules**”).¹⁶
25. First, the Respondent denies that its Request is untimely or that it has waived its right to challenge the authenticity of the Disputed Exhibits.¹⁷ It affirms that, pursuant to paragraph 6.9 of PO1, only evidence “submitted” to the Tribunal may be challenged.¹⁸ Moreover, pursuant to paragraph 5.3 of PO1, no documents produced shall be considered part of the record “unless and until a Party subsequently submits them to the Tribunal.”¹⁹ Hence, the Respondent argues that its Request was timely, as it was filed at the first procedural opportunity, which arose only when the Claimant submitted the Disputed Exhibits on 22 December 2025 with his Reply Memorial.²⁰ In any case, the Respondent submits that it did not seek relief in PO5 but only reserved its rights to invite the Tribunal to draw appropriate inferences once the relevant evidence was submitted.²¹
26. Second, the Respondent argues that the Disputed Exhibits must be excluded from the case record because (i) they do not satisfy the applicable authenticity requirements; (ii) the Claimant fails to offer evidence that the original versions of the Disputed Exhibits existed; and (iii) the Claimant has not established that the Disputed Exhibits “faithfully and accurately” represent the original documents.²²
27. The Respondent posits that Article 27 of the UNCITRAL Rules endows the Tribunal with authority to exclude evidence that is unreliable, prejudicial, or otherwise inadmissible under the law governing the proceedings.²³ In addition, paragraph 6.9 of PO1 allows a Party to “dispute the authenticity of evidence submitted”.²⁴ Furthermore, under Article 9(2) of the IBA Rules, the Tribunal shall “exclude from evidence [...] any [d]ocument” on grounds such as lack of authenticity and considerations of fairness.²⁵ The Respondent adds that tribunals have a “broad

¹⁶ Request, pp. 1-2, 7-9.

¹⁷ Reply, p. 2.

¹⁸ Reply, p. 2.

¹⁹ Reply, p. 3.

²⁰ Reply, pp. 2-3.

²¹ Reply, footnote 9.

²² Request, pp. 1.

²³ Request, p. 2; A. Godhe, “Tribunal duties and the exclusion of evidence in international arbitration: the tug-of-war of fairness and efficiency,” *Arbitration International*, Vol. 41, Issue 1, March 2025, p. 109 (**RLA-196**).

²⁴ Request, p. 1.

²⁵ Request, p. 2, footnote 2. The Respondent notes that, pursuant to para. 6.1 of PO1, the Tribunal may use the IBA Rules as additional guideline.

discretion to determine the admissibility, relevance, materiality, and weight of evidence submitted by the parties”.²⁶

28. The Respondent notes that PO1 does not define the terms “authentic evidence” or “authenticity” and therefore refers to the law of the seat (New York).²⁷ Under New York law, as explained in *People v. Price*, “the proponent of the evidence must establish that such evidence is what he or she claims it to be”.²⁸ The Respondent adds that this principle is not foreign to international arbitration, as established in *EDF v. Romania*, *Libananco Holdings Co. Limited v. Turkey* and *Ipek Investment Limited v. Turkey*.²⁹
29. The Respondent asserts that there are compelling indications that the Disputed Exhibits were produced for the first time during this arbitration.³⁰ The Respondent emphasizes that Baspetro did not include the information contained in the Disputed Exhibits in its Form 1 submitted to Perupetro on 31 October 2014.³¹ Additionally, the Claimant did not submit the information purportedly reproduced in the Disputed Exhibits in response to the Commission’s notice of Baspetro’s failure to meet the technical indicators for the bidding process.³² Moreover, the Respondent alleges that the Disputed Exhibits contradict contemporary evidence on the record.³³
30. The Respondent notes that, during the document production phase, the Claimant stated that the Disputed Exhibits had been “recreated from memory”, rather than from contemporaneous notes, backup copies, or any other reliable source.³⁴ Moreover, the Disputed Exhibits were allegedly prepared by the Claimant with help from Mr. Mario Chávez and Mr. Rigoberto Francia, his witnesses in this arbitration, who the Respondent deems to be predisposed in the Claimant’s favour.³⁵ In the Respondent’s view, the Claimant’s contention that the Disputed Exhibits qualify

²⁶ Request, p. 2.

²⁷ Request, p. 7; PO1, para. 2.1.

²⁸ Request, p. 8; Reply, p. 3, fn. 11; *People v. Price*, 29 N.Y.3d 472, 80 N.E.3d 1005, 58 N.Y.S.3d 259 (N.Y. 2017) (**RLA-194**). The Respondent clarifies that it relies on New York law in order to delimit the notion of “authenticity” of evidence, rather than as a source of substantive law as the Claimant suggests.

²⁹ Request, pp. 7-9; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Procedural Order No. 3, 29 August 2008, paras. 29, 35 (**RLA-192**), *Libananco v. Turkey*, ICSID Case No. ARB/06/8, Award, 2 September 2011, paras. 382.1, 383.4 (**CLA-169**); *Ipek Investment Limited v. Turkey*, ICSID Case No. ARB/18/18, Award, 8 December 2022, para. 261.

³⁰ Request, p. 5.

³¹ Request, p. 5; *See* Baspetro, Formal Presentation of Forms 1-3, 31 October 2014, (**R-35**).

³² Request, p. 5.

³³ Request, p. 5; Request, pp. 5-6; Alleged Proposal from Baspetro SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West, 27 May 2014, pp. 2, 6, (**C-11**); Baspetro Startup Operations Report, pp. 3-4, 8, 34, 36 (PDF), (**C-184**). As an example, the Respondent cites information concerning the Claimant’s nationality, which the former argues that the Claimant modified through disputed exhibit C-184 “to bolster his defense to Peru’s nationality objection”.

³⁴ Request, p. 7;

³⁵ Request, p. 7; Francia Witness Statement, para. 8, (**CWS-1**); Chavez Witness Statement, para. 8, (**CWS-1**).

as business records under New York law is unfounded because documents created for litigation are not business records.³⁶

31. The Respondent emphasizes that the Claimant and his witnesses have not provided a precise date for the document recreation, nor the methodology employed.³⁷ The Respondent adds that the Claimant fails to provide any evidence, including e-mails or the communications with the Baspetrol team, that “served as the basis for recreating the Business Plans and other documents”.³⁸ According to the Respondent, the Claimant has also shifted the method of the recreation of the Disputed Exhibits.³⁹ While the Claimant said in his statement dated 6 September 2024 in response to PO4 that the Disputed Exhibits were “recreated from memory”, he currently posits that the recreation was done through an active, multi-participant process.⁴⁰
32. Noting that the *EDF v. Romania* tribunal rejected a request to admit an audio recording and transcript due to concerns over the lack of authenticity of said materials, the Respondent argues that the alleged reconstruction of the Disputed Exhibits from memory raises similar concerns about the manipulation of such documents, especially considering that these were created post-dispute.⁴¹
33. The Respondent draws certain conclusions from the timing of the submission of the Disputed Exhibits.⁴² It argues that the Claimant has presented three competing narratives regarding the date of creation of the Disputed Exhibits, maintaining that these were created (i) “during the course of this arbitration”; (ii) during 2019, 2020, 2022 and 2024; and (iii) during a social gathering that took place in December 2017.⁴³ Against this background, the Respondent emphasizes that the Claimant has been aware of its arguments and defences since at least its preliminary objections in the *Amorrortu I* case submitted on 15 March 2021, yet did not provide the information contained in the Disputed Exhibits in his Request for Arbitration, nor in his Statement of Claim.⁴⁴ In the Respondent’s view, this omission suggests that the Disputed Exhibits were created after the Statement of Defence was submitted, or in response to the Respondent’s requests in the document production phase.⁴⁵
34. As a result, the Respondent concludes that the Disputed Exhibits are fabricated documents that never existed or are not authentic, and should therefore be excluded from the case record.⁴⁶

³⁶ Reply, pp. 3-4.

³⁷ Request, pp. 7, 9.

³⁸ Request, p. 6; Amorrortu Second Witness Statement, para. 55, (CWS-2).

³⁹ Reply, p. 2.

⁴⁰ Reply, p. 2.

⁴¹ Request, p. 8; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Procedural Order No. 3 29 August 2008, paras. 29, 35, (RLA-192).

⁴² Request, p. 6.

⁴³ Reply, pp. 1-2.

⁴⁴ Request, p. 6

⁴⁵ Request, p. 7; Reply, p. 2.

⁴⁶ Request, pp. 7, 9.

Alternatively, the Disputed Exhibits are a *post-hoc* reconstruction of purportedly pre-existing information, prepared by an individual, or pursuant to his instructions, with a direct and substantial interest in the outcome of this arbitration, giving rise to the risk that the Disputed Exhibits have been “consciously or unconsciously tailored to support Claimant’s position in the arbitration”.⁴⁷

35. In the Respondent’s view, the admission of the Disputed Exhibits into the record would be prejudicial to its position.⁴⁸ In particular, the Respondent submits that it would not be able to effectively challenge the Disputed Exhibits at the January 2027 hearing through cross-examination, as there is no documentary record against which the witness’ testimony could be tested.⁴⁹

2. The Claimant’s Position

36. First, the Claimant submits that the Respondent’s Request is untimely and that the Respondent has waived any objection to the authenticity of the Disputed Exhibits under PO1 and Article 32 of the UNCITRAL Rules.⁵⁰ The Claimant recalls that paragraph 6.9 of PO1 requires that the Parties submit any objections to the authenticity or completeness of the evidence “within a reasonable time”.⁵¹ Additionally, a Party’s failure to raise a prompt objection constitutes a waiver of its right to object pursuant to Article 32 of the UNCITRAL Rules.⁵²
37. In this connection, the Claimant notes that the Respondent received the Disputed Exhibits more than 558 days ago (over 18 months) and yet failed to make a prompt objection.⁵³ Moreover, even on the Respondent’s own case, it waited nearly three months after 22 December 2025 before raising its objection.⁵⁴ The Claimant adds that the Respondent’s decision to reserve its rights rather than litigate its objections before PO5 does not entitle it to a “second bite at the apple” over 18 months later.⁵⁵
38. Second, the Claimant argues that (i) the applicable legal standard does not support the exclusion of the Disputed Exhibits; (ii) the Respondent’s “indicia” of fabrication of the Disputed Exhibits are meritless; (iii) the Procedural Calendar does not support the exclusion of the Disputed Exhibits; (iv) the exclusion of the Disputed Exhibits would deny the Claimant a fair opportunity

⁴⁷ Request, pp. 7, 9.

⁴⁸ Reply, p. 3.

⁴⁹ Reply, p. 3.

⁵⁰ Response, p. 5.

⁵¹ Response, p. 5; Rejoinder, p. 2.

⁵² Response, p. 5.

⁵³ Response, p. 5; Rejoinder, p. 2.

⁵⁴ Rejoinder, p. 2.

⁵⁵ Rejoinder, p. 3.

to present his case; and (v) the Respondent will suffer no procedural prejudice from maintaining the Disputed Exhibits in the record.⁵⁶

39. The Claimant argues that, under the UNCITRAL Rules, the admission of evidence is the default position, while exclusion remains an exceptional measure.⁵⁷ He notes that Article 27(4) of the UNCITRAL Rules grants the Tribunal broad authority to determine the admissibility, relevance, materiality and weight of the evidence offered.⁵⁸ Additionally, the IBA Rules, which constitute an “additional guideline” under the paragraph 6.1 of PO1, also adopt a “liberal approach to admissibility”.⁵⁹
40. The Claimant explains that the Disputed Exhibits are business records which can, under New York law, be authenticated through witness statements by employees.⁶⁰ According to the Claimant, that is what Mr. Amorrortu, Mr. Francia, and Mr. Chavez have provided through their witness statements.⁶¹ The Claimant therefore submits that the Disputed Exhibits have been authenticated.⁶²
41. The Claimant sustains that the case law referred to by the Respondent is inapposite.⁶³ He argues that the decisive distinction driving evidentiary exclusion in both *EDF v. Romania* and *Libananco v. Turkey* was bad faith and alleges that there is none here.⁶⁴ The Claimant alleges that *Ipek v. Turkey* is similarly inapposite, as in that case the tribunal determined that there was a total absence of corroboration of the respective evidence.⁶⁵ Moreover, the Claimant argues that *Methanex v. United States* demonstrates that the exclusion of evidence is an exception rather than the norm.⁶⁶
42. The Claimant submits that the Respondent has not demonstrated that compelling grounds exist to exclude the Disputed Exhibits.⁶⁷ In particular, he claims that the non-inclusion in Baspetrol’s bidding submission does not establish self-serving fabrication and it is justified by the Claimant’s expulsion from the process.⁶⁸

⁵⁶ Response, pp. 2-13.

⁵⁷ Response, pp. 5-6.

⁵⁸ Response, p. 5.

⁵⁹ Response, p. 5.

⁶⁰ Response, p. 6; Rejoinder, p. 4.

⁶¹ Response, p. 6.

⁶² Response, p. 6.

⁶³ Response, p. 7 and Rejoinder, p. 4.

⁶⁴ Response, p. 7.

⁶⁵ Response, p. 7.

⁶⁶ Response, p. 7.

⁶⁷ Response, p. 6.

⁶⁸ Response, p. 9. In response to the Respondent’s argument that that the Disputed Exhibits contradict contemporary evidence on the record, the Claimant clarifies that the nationality references in exhibit C-184 merely shows factual accuracy.

43. The Claimants explains that he produced the Disputed Exhibits in response to PO4, which directed him to explain whether documents responsive to Respondent’s RFPs Nos. 5, 6 and 7 were ever in his possession, and if so, how they were lost.⁶⁹ The Claimant affirms that the original versions of the Disputed Exhibits were not preserved after Perupetro arbitrarily awarded the contracts for Blocks III and IV to Graña y Montero and that, as a result, he produced them as reconstructed documents.⁷⁰
44. The Claimant denies that the phrase “recreated from memory” entails admitting a pure *post-hoc* fabrication by a self-interested party.⁷¹ Instead, he clarifies that the Disputed Exhibits’ reconstruction was conducted through an active, multi-participant process that was not a *post-hoc* litigation exercise, as it happened in December 2017, nearly two years before these proceedings were initiated.⁷² The Claimant adds that his submissions consistently expand on the same account, with increasing detail but no contradictions, reflecting good-faith disclosure.⁷³ In any case, the Claimant considers that the plausibility of his explanation “is a matter of weight for the Tribunal to assess in the context of all the evidence, not a basis for categorical exclusion”.⁷⁴
45. The Claimant states that the Procedural Calendar does not support the exclusion of the Disputed Exhibits.⁷⁵ In the Claimant’s view, the Respondent has a full opportunity to submit countervailing evidence, expert analysis, and rebuttal witness statements addressing every aspect of the Disputed Exhibits in its upcoming written submission and can also perform cross-examination for this purpose during the upcoming hearing.⁷⁶
46. The Claimant submits that the exclusion of the Disputed Exhibits from the record would deny him a fair opportunity to present his case.⁷⁷ According to the Claimant, he lost his original documents as a direct consequence of the interruption of his investment, which is the injury he seeks to remedy in these proceedings.⁷⁸ The Claimant affirms that the Respondent cannot benefit from evidentiary gaps resulting from its own conduct by requesting the Tribunal to exclude the only available reconstruction of the documents it prevented him from formally submitting.⁷⁹ The Claimant considers that allowing the Respondent’s Request would amount to impermissibly conferring favourable treatment on the Respondent.⁸⁰

⁶⁹ Response, p. 2.

⁷⁰ Response, p. 2.

⁷¹ Response, p. 3.

⁷² Response, p. 3.

⁷³ Rejoinder, p. 4.

⁷⁴ Response, p. 10.

⁷⁵ Response, p. 4.

⁷⁶ Response, p. 4.

⁷⁷ Response, p. 11.

⁷⁸ Response, p. 11.

⁷⁹ Response, p. 11.

⁸⁰ Response, p. 12.

47. Lastly, the Claimant considers that the Respondent will suffer no procedural prejudice from maintaining the Disputed Exhibits in the record.⁸¹ According to the Claimant, the Procedural Calendar affords the Respondent an opportunity to challenge the Disputed Exhibits on the merits rather than suppress them. For the Claimant, such procedural reality undermines any prejudice.⁸²

IV. THE TRIBUNAL'S ANALYSIS

48. At the outset, the Tribunal notes that the Parties disagree on the timeliness of the Request.⁸³ Recalling that it produced the Disputed Exhibits to the Respondent more than 18 months before the filing of the Request, the Claimant considers that the Respondent has failed to dispute the authenticity of the Disputed Exhibits “within a reasonable time” as required under Section 6.9 of PO1 and Article 32 of the UNCITRAL Rules. The Respondent, in turn, asserts that it filed the Request “at the first procedural opportunity”, that is, after the Claimant submitted the Disputed Exhibits into the record with his Reply Memorial on 22 December 2025.

49. In this connection, Section 6.9 of PO1 reads:

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.

50. In light of this provision, the Tribunal rejects the Claimant’s argument that the “reasonable time” for challenging the authenticity or completeness of the Disputed Exhibits should be deemed to commence on 6 September 2024, the date on which the Claimant produced those exhibits to the Respondent. The Tribunal notes that the Disputed Exhibits did not become part of the record of the arbitration until the Claimant filed them on 22 December 2025 together with his Reply Memorial. Prior to that date, the Disputed Exhibits did not constitute “evidence submitted to the Tribunal” for the purposes of Section 6.9 of PO1. Whether the Claimant had produced the Disputed Exhibits to the Respondent at an earlier stage is not relevant for present purposes: in accordance with Section 5.3 of PO1, “[d]ocuments produced according to the above procedure [*i.e.*, the procedure set out in PO1 for the production of documents *inter partes*] 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”. In other words, the Disputed Exhibits did not fall within the Tribunal’s purview over evidentiary matters in this arbitration, as enshrined in Article 27(4) of the UNCITRAL Rules, until 22 December 2025.
51. In light of this critical date, the Tribunal is not persuaded that the Respondent failed to bring the Request within a reasonable time, as required under PO1. While almost three months elapsed between the filing of the Disputed Exhibits and the submission of the Request, sufficient time remained for the Tribunal to be fully briefed on the Request and to rule on it before the Respondent files its Rejoinder Memorial, which constitutes the final written submission in which the Respondent will be in a position to rebut the Disputed Exhibits. Furthermore, no prejudice arises

⁸¹ Response, p. 13.

⁸² Response, p. 13.

⁸³ Reply, p. 2; Response, p. 5.

to the Claimant from ruling on the Request at this stage. Accordingly, the Request is admissible, and the Tribunal now turns to consider its merits.

52. The Respondent requests that the Disputed Exhibits be excluded from the record pursuant to Article 27(4) of the UNCITRAL Rules and on grounds of fairness within the meaning of Article 9(2)(g) of the IBA Rules, on the basis that they do not satisfy the authenticity requirements applicable to this arbitration. In particular, the Respondent submits that there is no evidence that the Disputed Exhibits recreate contemporaneous evidence, and even if there were, those exhibits are, on the Claimant's own account, a "*post-hoc* reconstruction of documents or information that allegedly once existed, prepared by or at the direction of an individual, Amorrortu, with a direct and substantial interest in the outcome of these proceedings, with the goal of improving his position in this arbitration".⁸⁴ The Respondent further cautions against the potential for manipulation, noting that "there is nothing preventing Amorrortu from creating evidence that never existed".⁸⁵ Lastly, the Respondent submits that it will not be able to challenge the Disputed Exhibits at the upcoming hearing, since the Claimant "has withheld every piece of underlying evidence relating to the reconstruction—the alleged emails, WhatsApp communications, virtual meeting records, drafts, and notes—that would reveal when each document was created, by whom, on what basis, and through what methodology".⁸⁶ Without those materials, argues the Respondent, "Peru would be forced to cross-examine Mr. Amorrortu, Mr. Francia, and Mr. Chavez with nothing more than their own uncorroborated assertions".⁸⁷
53. The Tribunal considers that the Respondent's objections are properly directed to the weight to be accorded to the Disputed Exhibits, rather than to their admissibility. The alleged absence of underlying materials supporting the reconstruction, the manner in which the Disputed Exhibits were prepared, and the asserted limitations on the Respondent's ability to test them through cross-examination do not, in and of themselves, warrant exclusion. These matters go to the evidentiary value of the Disputed Exhibits and may be taken into account by the Tribunal in its assessment of their probative weight in its Award.
54. In any event, the Tribunal is not persuaded that the Respondent is deprived of a fair opportunity to address the Disputed Exhibits. The Respondent will have the opportunity to present its full response in its Rejoinder Memorial and to test the evidence at the hearing through cross-examination of relevant witnesses. The existence of evidentiary gaps or perceived difficulties in rebutting evidence does not, without more, justify exclusion from the record. In the Tribunal's view, evidentiary exclusion is an exceptional measure, reserved for circumstances where fundamental fairness is compromised, as reflected in Article 9(2)(g) of the IBA Rules of Evidence, which is not the case here.⁸⁸ Any concerns as to reliability or completeness are

⁸⁴ Request, p. 7.

⁸⁵ Request, p. 8.

⁸⁶ Reply, p. 3.

⁸⁷ Reply, p. 3.

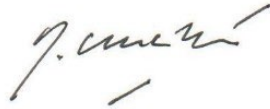
⁸⁸ IBA Rules, Article 9(2)(g): "The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons: [...] (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling".

appropriately reflected in the Tribunal's evaluation of weight rather than admissibility. Accordingly, the Respondent's Request must be rejected.

V. THE TRIBUNAL'S ORDER

55. For the above reasons, the Tribunal:
- a. REJECTS the Respondent's Request.
 - b. RESERVES its decision on costs.

Place of Arbitration: New York, United States of America



Justice David Unterhalter
(Presiding Arbitrator)

On behalf of the Tribunal