

PCA CASE N° 2019-46

**IN THE MATTER OF AN ARBITRATION
BEFORE A TRIBUNAL CONSTITUTED IN ACCORDANCE WITH THE
TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PERÚ AND THE
UNITED STATES OF AMERICA**

- and -

THE UNCITRAL ARBITRATION RULES 2013

-between-

THE RENCO GROUP, INC.

-and-

THE REPUBLIC OF PERÚ

TERMS OF APPOINTMENT

The Arbitral Tribunal

Judge Bruno Simma (Presiding Arbitrator)
Prof. Horacio Grigera Naón
Mr. J. Christopher Thomas QC

3 February 2020

1. Parties to the Arbitration

- 1.1 The Claimant is the Renco Group, Inc., a legal entity organized under the laws of New York, USA, with its principal place of business at One Rockefeller Plaza, 29th Floor, New York, NY 10020, USA (the “**Claimant**”). The Claimant is represented in this arbitration by the following counsel:

Mr. Edward Kehoe
Mr. Cedric Soule
King & Spalding LLP
1185 Av. of the Americas, 34th Floor
New York, NY 10036
USA

E-mail: ekehoe@kslaw.com
csoule@kslaw.com

- 1.2 The Respondent is the Republic of Perú (the “**Respondent**,” and together with the Claimant, the “**Parties**”). The Respondent is represented in this arbitration by the following counsel:

Mr. Jonathan Hamilton
Mr. Francisco Jijón
White & Case LLP
701 Thirteenth Street, NW
Washington, DC 20005-3807
USA

E-mail: jhamilton@whitecase.com
fjijon@whitecase.com
equipoasuntorenco@whitecase.com

2. Commencement of the Arbitration

- 2.1 According to the Claimant, a dispute has arisen between the Parties under the Trade Promotion Agreement between the Republic of Perú and the United States of America, dated 12 April 2006, entered into force on 1 February 2009 (the “**Treaty**”).
- 2.2 By a Notice of Arbitration and Statement of Claim dated 23 October 2018, the Claimant commenced arbitration proceedings against the Respondent pursuant to Article 10.16 of the Treaty. The Notice of Arbitration and Statement of Claim was received by the Respondent on 23 October 2018.
- 2.3 In accordance with Article 3(2) of the UNCITRAL Rules, these arbitration proceedings are deemed to have commenced on 23 October 2018, the date on which the Respondent received the Notice of Arbitration and Statement of Claim.

3. Applicable Procedural Rules

- 3.1 By agreement of the Parties, the arbitration shall be conducted in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013) (the “**UNCITRAL Rules**”) and Chapter 10 of the Treaty.

3.2 By agreement of the Parties, the Secretary-General of the Permanent Court of Arbitration (the “PCA”) acts as the appointing authority in this arbitration for all purposes under the UNCITRAL Rules.

3.3 Procedural orders shall be signed and issued by the presiding arbitrator alone after consultation with his co-arbitrators. 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 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 each provide copies of the powers of attorney or letters of representation granted to their representatives.

4.3 In the event of any change by a Party in the designation or 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 PCA. The Tribunal may, after having heard the Parties, exclude the participation of any such representatives from the arbitration where their participation might create a conflict of interest.

5. Constitution of the Tribunal

5.1 In its Notice of Arbitration and Statement of Claim, the Claimant appointed as arbitrator Professor Horacio A. Grigera Naón, whose contact details are as follows:

Professor Horacio Grigera Naón
5224 Elliott Road
Bethesda, Maryland 20816
United States of America

E-mail: hgnlaw@gmail.com
hgrigeranaon@yahoo.com

5.2 In its Response to the Notice of Arbitration dated 14 January 2019, the Respondent appointed as arbitrator Mr. J. Christopher Thomas QC, whose contact details are as follows:

Mr. J. Christopher Thomas QC
1200 Waterfront Centre
200 Burrard Street, PO Box 48600
Vancouver, British Columbia V7X-1T2
Canada

E-mail: jcthomas@thomas.ca

5.3 By letter dated 17 October 2019, the Parties appointed as presiding arbitrator Judge Bruno Simma, whose contact details are as follows:

Judge Bruno Simma
Iran-United States Claims Tribunal
Parkweg 13
2585 JH The Hague
The Netherlands

E-mail: judgesimma@gmail.com

- 5.4 The Parties confirm that the Tribunal is validly constituted in accordance with the Treaty, the UNCITRAL Rules, and the Parties' Procedural Agreement of 10 June 2019.
- 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 promptly 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 grounds of conflict of interest or lack of independence or impartiality in respect of matters known to them at the date of signature of these Terms of Appointment.

6. Place of Arbitration

- 6.1 Pursuant to the UNCITRAL Rules, the Tribunal shall determine the legal place (or "seat") of the arbitration having regard to the circumstances of the case, after consultation with the Parties.
- 6.2 The Tribunal may hold meetings and hearings with the Parties at any location it considers appropriate, as decided by the Tribunal after consultation with the Parties. The Tribunal may meet at any location it considers appropriate for deliberations. The location of hearings shall not affect the designation of the legal place of arbitration, including that the location of a hearing shall not create any basis to seek, or be relied upon in any way or be cited as evidence to support the jurisdiction of or access to any court that would not otherwise have jurisdiction over any issue related to the dispute, or to otherwise aggravate the dispute.
- 6.3 Irrespective of where an award is signed, it will be deemed to have been made at the legal place of arbitration.

7. Language

- 7.1 Pursuant to the UNCITRAL Rules, the Tribunal shall determine the language(s) to be used in the proceedings, after consultation with the Parties.

8. Communications

- 8.1 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.
- 8.2 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, to the PCA, and to the Assistant to the Tribunal.

- 8.3 The Parties shall also send hard copies of communications if so requested by any member of the Tribunal or the PCA.
- 8.4 The Parties shall send copies of correspondence between them to the Tribunal and 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 of which the Tribunal and the PCA should be apprised.

9. Case Administration

- 9.1 The PCA shall act as registry and shall administer the arbitral proceedings on the terms set forth in this section.
- 9.2 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. Martin Doe Rodriguez, Senior Legal Counsel, has been designated for this purpose.
- 9.3 The PCA shall maintain an archive of filings of correspondence and submissions.
- 9.4 The PCA shall manage Party deposits to cover the costs of the arbitration, subject to the Tribunal's supervision.
- 9.5 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.
- 9.6 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.
- 9.7 The PCA's fees and expenses shall be paid in the same manner as the Tribunal's fees and expenses.
- 9.8 The contact details of the PCA are as follows:

Permanent Court of Arbitration

Attn.: Mr. Martin Doe Rodriguez, Senior Legal Counsel
Peace Palace
Carnegieplein 2
2517 KJ The Hague
The Netherlands

E-mail: m DOE@PCA-CPA.ORG
amartinovic@PCA-CPA.ORG

- 9.9 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 these Terms of Appointment, any agreement between the Parties and any determinations by the Tribunal.

10. Tribunal's Fees and Expenses

- 10.1 Each member of the Tribunal shall be remunerated at the rate of EUR 650 per hour for all work carried out in connection with the arbitration, plus VAT, if applicable.
- 10.2 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, at the request of one or both of the Parties within two weeks from the first day of such hearing or meeting.
- 10.3 The 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.
- 10.4 The 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.
- 10.5 All payments to the Tribunal shall be made from the deposit administered by the PCA.

11. Assistant to the Tribunal

- 11.1 In addition to the administrative support of the PCA and assistance by the Secretary to the Tribunal designated by the PCA, the Parties have agreed to the appointment of an Assistant to the Tribunal in order to enhance the overall efficiency of the proceedings.
- 11.2 The Tribunal appoints Dr. Heiner Kahlert as Assistant to the Tribunal, whose contact details are as follows:

Dr. Heiner Kahlert
Martens Rechtsanwaltsgesellschaft mbH
Agnesstr. 14
D-80798 Munich
Germany

Email: h.kahlert@martens-lawyers.com

- 11.3 The Assistant to the Tribunal shall undertake only such specific tasks as are assigned to him by the Presiding Arbitrator. Such tasks may include monitoring of case correspondence and the procedural timetable, marshalling of evidence, research on specific issues of law, and the organization of case documents.
- 11.4 The Assistant to the Tribunal shall be remunerated at the rate of EUR 200 per hour for all work carried out in connection with the arbitration, and shall be reimbursed for all disbursements and charges reasonably incurred in connection with the arbitration.
- 11.5 The fees and expenses of the Assistant to the Tribunal shall be paid in the same manner as the Tribunal's fees and expenses.
- 11.6 The Assistant to the Tribunal shall comply with the requirements of impartiality, independence, and disclosure in the same manner as the members of the Tribunal.

12. Deposit

- 12.1 Without prejudice to the decision of the Tribunal as to the allocation of costs, advances for the costs of the arbitration shall be made to a deposit held by the PCA.
- 12.2 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.
- 12.3 Any transfer fees or other bank charges associated with the management of the deposit will be charged by the PCA to the deposit. No interest will be paid to the Parties on the deposit.
- 12.4 The unused balance held on deposit at the end of the arbitration shall be returned to the Parties as directed by the Tribunal.

13. Immunity from Suit

- 13.1 The Parties shall not seek to hold any member of the Tribunal or official of the PCA or the Assistant to the Tribunal 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 official of the PCA or the Assistant to the Tribunal to be a party or witness in any judicial or other proceedings arising out of or in connection with this 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]

CLAIMANT

RESPONDENT

The Renco Group, Inc.

The Republic of Peru

Date:

Date:

TRIBUNAL

Professor Horacio Grigera Naón
Arbitrator

Mr. J. Christopher Thomas QC
Arbitrator

Date:

Date:

Judge Bruno Simma
Presiding Arbitrator

Date: