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. 16

(Respondent's Request to Strike Portions of the Claimant's Rejoinder on Jurisdiction)

Tribunal

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

Registry

Permanent Court of Arbitration

19 October 2026

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I. PROCEDURAL BACKGROUND

1. On 18 August 2026, the Claimant filed his Rejoinder Memorial on Jurisdiction (the "**Rejoinder on Jurisdiction**") along with the Claimant's Third Witness Statement of Bacilio Amorrortu ("**CWS-3**"), the Claimant's Third Expert Report of Anibal Quiroga ("**CER-3**"), Exhibits C-307 through C-330, and Legal Authorities CLA-206 through CLA-281 (jointly referred to as the "**Submission**").

2. On 8 September 2026, the Respondent requested that the Tribunal strike from the record certain portions of the Claimant's Submission "that exceed the scope of the Parties' dispute on jurisdiction" or, in the alternative, that the Respondent's counsel and legal expert be permitted to contradict the arguments and exhibits presented by the Claimant by submitting documents and being granted additional time at the upcoming Hearing (the "**Request**").[1]

3. On 16 September 2026, the Claimant submitted his response to the Respondent's Request (the "**Response**"). He there requested that the Tribunal "[d]eny Peru's application in its entirety" or, "[i]n the alternative, retain the challenged material in the record and limit its consideration at this stage to the jurisdictional issues to which it is relevant, assigning such weight as the Tribunal considers appropriate and reserving any merits determination".[2]

II. THE PARTIES' POSITIONS

1. The Respondent's Position

4. The Respondent requests that the Tribunal strike from the record the following portions of the Submission (the "**Disputed Portions**"):[3]

   a. Paragraphs 1 through 3 on page 1 and paragraph 2 on page 21 through paragraph 2 on page 24 of the Claimant's Rejoinder on Jurisdiction;[4]

   b. Paragraph 32 of CWS-3;

   c. Paragraphs 3.2, 3.31 through 3.33, 3.36 through 3.39, and 3.46 of CER-3;

   d. Exhibits C-319, C-320, C-322, C-323, C-324, C-325, C-326, C-327, and C-328; and

   e. All passages in the Claimants Rejoinder on Jurisdiction, CWS-3 and CER-3 that rely on the exhibits identified in sub-paragraph 4.d above.

5. According to the Respondent, the Disputed Portions are relied upon by the Claimant to "introduce arguments and evidence directed at the Parties' dispute on the facts and merits that bear no

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1 Request, p. 1.

2 Response, p. 4.

3 Request, pp. 4-6, 6-7.

4 Since the Claimant's Rejoinder on Jurisdiction does not contain numbered paragraphs, the Respondent identifies the portions of the Submission that should be stricken from the record by page number and the paragraph number starting from the first full paragraph on the relevant page. *See* Request, p. 4, fn. 4.

genuine relation to their jurisdictional dispute".[5] While the Respondent acknowledges that the Claimant may invoke a fact where it is necessary to rebut a jurisdictional objection, it considers that the Claimant advanced, "under the guise of a jurisdictional reply, arguments about the alleged corruption and Peru's alleged Treaty breaches".[6]

6. The Respondent further notes that Exhibit C-322 – the official resolution dissolving the *Lava Jato* Special Team – evidences a fact that was introduced by the Respondent in its Rejoinder on the Merits.[7] As per the Respondent, Exhibit C-322 bears no relation to the jurisdictional issue in dispute.[8] Likewise, the Respondent notes that Exhibit C-323 – a news report regarding the reorganization of the Public Ministry, including Rafael Vela's return to the National Superior Prosecutor's office specializing in Money Laundering – addresses a question of fact that was introduced by the Respondent in Rafael Vela's Second Witness Statement.[9] In the Respondent's view, Exhibit C-323 is disconnected to any jurisdictional issue in dispute.[10]

7. Against this background, the Respondent advances two reasons in support of its Request.

8. First, the Respondent's argues that the Claimant's Submission exceeds the scope permitted by Procedural Order No. 14 ("**PO14**"). It notes, in particular, that under the procedural calendar set out in PO14, this round of the proceedings is limited to jurisdictional issues.[11] The Claimant, says the Respondent, understood the jurisdictional delimitation established by PO14.[12] This is evidenced, in the Respondent's submission, by the fact that the Claimant stated in his Rejoinder on Jurisdiction that the pleading "focuses only on jurisdictional issues in line with the Procedural Order No. 14".[13] Relying on *Glencore International A.G. v. Colombia*, the Respondent argues that arbitral practice supports striking portions of submissions that exceed the scope set out by a tribunal's procedural orders.[14]

9. Second, the Respondent submits that, under the procedural calendar, it is entitled to the last written submission on matters of fact (not related to jurisdiction) and merits.[15] It posits that the limitation of the Submission's scope to jurisdictional issues was designed to ensure the fair and efficient conduct of this phase of the arbitration.[16] Moreover, as per the Respondent, allowing the

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5 Request, p. 1.

6 Request, p. 2.

7 *See* Respondent's Rejoinder on the Merits, para. 262; fn. 448.

8 Request, p. 5.

9 *See* Rafael Vela's Second Witness Statement, paras. 2, 9.

10 Request, p. 5.

11 Request, p. 2.

12 Request, p. 1.

13 Request, p. 2.

14 Request, p. 3; *Glencore International A.G. v. Republic of Colombia*, ICSID Case No. ARB/21/30, Procedural Order No. 4 (23 April 2025), Annex 1, ¶¶ 53, 55-57.

15 Request, p. 2.

16 Request, p. 2.

Claimant to introduce content unrelated to jurisdictional issues in dispute "undermines the orderly progression of these proceedings, impairs Peru's ability to prepare and present its defense, and creates a procedural imbalance between the Parties that, if left unaddressed, prejudices the Republic's right to present its case".[17]

10. In this connection, the Respondent ties the requested relief to the Tribunal's authority under Article 17(1) of the UNCITRAL Rules to "conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case."[18]

2. The Claimant's Position

11. The Claimant opposes the Respondent's Request on three distinct grounds.

12. First, the Claimant submits that the Disputed Portions respond "to factual propositions Peru itself placed at issue as predicates for its jurisdictional objections" in its Rejoinder and Reply on Jurisdiction (the "**Reply on Jurisdiction**").[19] In this connection, he argues that the Respondent cannot deny the Claimant the opportunity to rebut the issues of fact upon which the Respondent itself has relied to support its jurisdictional objections.[20] In the Claimant's view, this proposition follows as a matter of procedural equality. In particular, he relies on Article 17(1) of the UNCITRAL Rules to contend that striking responsive material would impair the Claimant's opportunity to present its case and "create an asymmetry in the evidentiary record".[21]

13. As per the Claimant, the Disputed Portions respond to the following jurisdictional objections raised by the Respondent itself.[22]

14. The Claimant explains that the Disputed Portions are necessary to determine the Respondent's objection on limitations under Article 10.18.1 of the TPA. He argues that the disputed corruption evidence is directed to the determination of the moment when he "first acquired, or should first have acquired, the knowledge required by Article 10.18.1 [of the TPA]".[23] The Claimant adds that the Respondent relies on findings of the *Lava Jato* Special Team and on Dr. Rafael Vela's testimony as support for its limitations objection. As a consequence, the Claimant submits that paragraph 32 of CWS-3 and Exhibits C-319, C-322, C-323, C-325 and C-327, concerning subsequent developments involving Dr. Vela, José Domingo Pérez and the *Lava Jato* Special Team, are properly admissible insofar as they bear on the reliability, completeness and institutional context of the very materials on which the Respondent relies.[24]

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17 Request, p. 2.

18 Request, p. 3.

19 Response, p. 1.

20 Response, p. 4.

21 Response, p. 4.

22 Response, p. 2.

23 Response, p. 2.

24 Response, p. 3.

15. In this connection, the Claimant refers specifically to paragraphs 3.2, 3.31 through 3.33, 3.36 through 3.39, and 3.46 of CER-3 as addressing the proposition that "PeruPetro exercised governmental authority in the administration and award of hydrocarbon rights"[25] – a fact underpinning the Claimant's opposition to the Respondent's jurisdictional objection concerning attribution.[26] In the same vein, the Claimant relies on Exhibit C-328 as "evidence concerning the regulatory and administrative character of the licensing function Peru asks the Tribunal to characterize for attribution purposes".[27]

16. The Claimant, in turn, submits that CER-3 responds to the Respondent's objection that no protected investment exists, in that it analyses "PeruPetro's licensing procedures, the diversion of Baspetrol from Direct Negotiation to the Public Bidding Process, and the institutional rules governing those procedures".[28] Consequently, as per the Claimant, CER-3 addresses the Respondent's contention that the Directed Negotiation did not commence and that Baspetrol did not possess procedural rights capable of forming part of a protected investment.[29]

17. As per the Claimant, all remaining disputed Exhibits, namely C-320, C-324, C-326 and C-328, should be retained "insofar as they bear or jurisdictional issues presently before the Tribunal".[30]

18. Second, across all of the Disputed Portions, the Claimant contends that, where the same material responds to factual predicates on which the Respondent relies for both its jurisdictional objections and its merits defence, the Tribunal may consider that material "for the limited purpose for which it is relevant at this stage and reserve any merits determination".[31] The Claimant relies on *Glencore v. Colombia* for the proposition that where factual issues concerning jurisdiction and merits overlap, "the Tribunal should employ a practical approach that permits a meaningful response while reserving merits determinations".[32]

19. Third, the Claimant asserts that the Respondent's Request conflates the weight to be given to the evidence with its admissibility.[33] In the Claimant's submission, the Tribunal may assign a particular passage or exhibit the appropriate weight or disregard it for jurisdictional purposes, and in any case the Respondent may test the evidence through examination at the hearing.[34]

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25 Response, p. 3.

26 Response, p. 3.

27 Response, p. 2.

28 Response, pp. 2-3.

29 Response, pp. 2-3.

30 Response p. 3.

31 Response, p. 1.

32 Response, p. 4.

33 Response, p. 4.

34 Response, p. 4.

III. THE TRIBUNAL'S ANALYSIS

20. The Respondent requests the Tribunal to strike from the record certain portions (defined earlier as the "Disputed Portions") of the Claimant's final written brief on jurisdiction and accompanying materials (defined earlier as the "Submission") on the basis that they exceed the scope of the Parties' dispute on jurisdiction. It also requests, in the alternative, that that the Respondent's counsel and legal expert be permitted to contradict the arguments and exhibits presented by the Claimant by submitting documents and being granted additional time at the upcoming Hearing.

21. The Claimant, in turn, requests that the Tribunal reject the Respondent's request, as the Disputed Portions respond "to factual propositions Peru itself placed at issue as predicates for its jurisdictional objections".[35] In the alternative, the Claimant asks the Tribunal to "retain the challenged material in the record and limit its consideration at this stage to the jurisdictional issues to which it is relevant, assigning such weight as the Tribunal considers appropriate and reserving any merits determination".[36]

22. The Parties share the understanding that the Claimant's Submission may only be a response to the Respondent's jurisdictional objections, as last addressed in the Respondent's Reply on Jurisdiction.[37] This follows from the rule set out in Section 6.3 of Procedural Order No. 1, pursuant to which "[i]n their rebuttal submissions (i.e., Reply and Rejoinder), the Parties shall submit only additional written witness testimony, expert opinion testimony and documentary or other evidence to respond to or rebut matters raised in the other Party's prior written submission, except for new evidence they receive through document production." This provision preserves the responsive nature of the Reply and Rejoinder, prevents the belated introduction of evidence that should have accompanied earlier submissions, and ensures that each Party has a fair opportunity to address the other's case. It also safeguards the agreed sequence of submissions, under which the Respondent has the final opportunity to address the merits and the Claimant the final opportunity to address jurisdiction.[38]

23. The Parties' disagreement turns on whether the Disputed Portions respond to the Respondent's jurisdictional objections or instead address the merits of the case. Having carefully considered the Respondent's Request and the Claimant's Response, as well as the Disputed Portions themselves, the Tribunal does not consider it prudent, at this stage of the proceedings, and before the Parties have fully aired their arguments before the Tribunal at the Hearing, whether the Disputed Portions relate exclusively to jurisdiction or also bear on the merits. To exclude the Disputed Portions at this stage would risk prejudging their relevance to issues of jurisdiction, before full submissions have been made to the Tribunal. This could result in the denial of a full opportunity for the Claimant to address matters properly raised in response to the Respondent's jurisdictional objections. At the same time, however, the Tribunal cannot permit the Disputed Portions, which were permissibly submitted in response to the Respondent's jurisdictional objections, to be used

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35 Response, p. 1.

36 Response, p. 4.

37 Request, p. 2 *citing* Claimant's Rejoinder on Jurisdiction, note 1; Response, p. 1.

38 PO14, Annex A.

further to advance the Claimant's case on the merits because the Respondent enjoys the right to have the final opportunity to address the merits.

24. Accordingly, the Tribunal determines that it will only consider the Disputed Portions, forming part of the Claimant's Submission, to the extent that they are relevant to the Tribunal's ultimate determination of the Respondent's jurisdictional objections. This is best finally decided once the Parties have presented their cases at the Hearing and in any post-hearing briefs. To the extent that the Claimant has sought to adduce evidence that could be of mixed relevance – that is, in part relevant to the jurisdictional objections and in part relevant to the merits – the Claimant may only rely on that evidence at the upcoming Hearing, as well as in any subsequent post-hearing submissions, insofar as it bears on those objections, and not in support of its case on the merits.

IV. THE TRIBUNAL'S ORDER

25. For the above reasons, the Tribunal:

a. DETERMINES that it will only consider the Disputed Portions forming part of the Claimant's Submission to the extent they are relevant to the Tribunal's ultimate determination of the Respondent's jurisdictional objections, and not in support of the Claimant's case on the merits;

b. DETERMINES that the Claimant may rely on evidence identified in the Disputed Portions that accompany the Submission at the upcoming Hearing, as well as in any subsequent post-hearing submissions, only insofar as it is relevant to the Respondent's jurisdictional objections, and not in support of its case on the merits;

c. Except as otherwise determined above, REJECTS the Parties' requests set out in the Respondent's Request and the Claimant's Response;

d. DECIDES that whether the Disputed Portions are relevant to the Tribunal's ultimate determination of the Respondent's jurisdictional objections will be finally decided by the Tribunal, once the Parties have fully presented their cases; and

e. RESERVES for later determination any question of costs arising from the Respondent's Request.

Place of Arbitration: New York, United States of America



Justice David Unterhalter
(Presiding Arbitrator)

On behalf of the Tribunal