

**IN THE ARBITRATION UNDER THE RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW AND THE UNITED STATES-
PERU TRADE PROMOTION AGREEMENT**

BACILIO AMORRORTU

Claimant

v.

THE REPUBLIC OF PERU

Respondent

Response to the Notice of Arbitration

21 March 2020

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1. In accordance with the Article 4 of the UNCITRAL Arbitration Rules and the Parties' agreement, the Republic of Peru ("Respondent", "Peru" or the "Republic") submits this Response to Claimant's Notice of Arbitration (the "Response") filed by Mr. Bacilio Amorrortu ("Notice of Arbitration") on 13 February 2020.

I. RESPONSE TO THE INFORMATION SET FORTH IN THE NOTICE OF ARBITRATION

2. Mr. Amorrortu's claim against Peru is frivolous. He asserts that Peru frustrated his legitimate expectation that he would obtain a contract from Perupetro to resume the oil drilling and extraction operations in two blocks in the Talara Basin in the Province of Talara, Piura Region, Peru. But not only has Mr. Amorrortu failed to identify any acts attributable to Peru that had such an effect, in fact he had no such right and / or legitimate expectations. The limited evidence upon which Mr. Amorrortu relies simply shows his desire to operate in the two oil blocks. His desires, however, never materialized into a right to obtain a contract from Perupetro under Peruvian law.

3. The reason why Mr. Amorrortu and his company, Baspetro, did not have a right to obtain such a contract is simple: they did not meet the requirements of the applicable laws and regulations. Mr. Amorrortu's contention that he was the victim of an elaborate corruption scheme to benefit the company Graña y Montero S.A. ("Graña y Montero") is not supported by any of the evidence presented in the Notice of Arbitration, and has no basis.

4. The description of the claims in the Notice of Arbitration is based upon a wildly inaccurate portrayal of the facts and, as Peru will show if necessary, the actual facts show that there has been no breach of the Treaty and no entitlement to the relief requested.

5. But the tribunal that will be constituted to hear this case will not need to decide the merits of Mr. Amorrortu's claims since, as Peru will show in due course, Mr. Amorrortu cannot demonstrate that the case falls within the scope of the Treaty's provisions. There is no arbitration agreement between the Parties, and the dispute does not arise out of any contract, other legal instrument or relevant relationship between the Parties. Peru reserves its right to plead that the tribunal to be constituted lacks jurisdiction *ratione voluntatis*, *ratione personae*, *ratione materiae* and *ratione temporis*.

6. For these reasons, Peru rejects Mr. Amorrortu's claims that it breached article 10.5 of United States-Peru Trade Promotion Agreement (USPTA).

II. PROCEDURAL ASPECTS

7. In this section, the Republic of Peru provides the information required under Article 4 of the UNCITRAL Arbitration Rules in response to the Notice of Arbitration.

A. Identification of the arbitration agreement

8. In the Notice of Arbitration, Claimant invokes the application of the USPTA and the UNCITRAL Arbitration Rules. However, as will be explained in the course of the arbitration, Claimant does not meet the jurisdictional requirements under the Treaty. Therefore, the Arbitral Tribunal to be constituted under the USPTA and according to the UNCITRAL Arbitration Rules lacks jurisdiction.

B. Legal instrument in question

9. The legal instrument invoked by Claimant in this arbitration is the USPTA. Claimant alleges that Peru has breached some of the obligation contained in that instrument, but

Peru rejects those allegations, and categorically denies any breach of its obligations under the USPTPA.

C. Brief description of the claim and an indication of the amount involved

10. Claimant requests compensation for alleged damages caused by the alleged USPTPA breaches.

11. However, Claimant has not established, in the Request for Arbitration or any other document, the legal or factual basis that justify any form of compensation, let alone for the amounts referenced in the Request for Arbitration.

D. Relief or remedy sought

12. Claimant argues that Peru frustrated his legitimate expectation that he would obtain a contract from Perupetro to resume the oil drilling and extraction operations in two blocks in the Talara Basin in the Province of Talara, Piura Region, Peru.

13. Claimant requests that the Arbitral Tribunal: (1) Declare that Peru has breached its obligations acquired under the USPTPA; (2) Order Peru to pay Amorrortu compensation for damage caused to him; (3) Order Peru to pay interest on all amounts awarded, at a commercially reasonable rate or such other rate determined by applicable law, from date of award until full payment of the award; (4) Order Peru to pay Amorrortu's arbitration costs, including the costs of the PCA, the Arbitral Tribunal, and the legal and other costs incurred by Amorrortu in an amount to be determined by the Tribunal; and (5) Award such other and further relief as the Tribunal may deem appropriate.

14. The Republic of Peru will demonstrate in the arbitration that Claimant is not entitled to the relief requested because (i) the tribunal lacks jurisdiction over this matter (ii) Claimant is unable to demonstrate any responsibility on the part of the State and/or (iii) Claimant is unable to substantiate any of the amounts sought as compensation.

E. Language of the Arbitration

15. The Parties have agreed that they will discuss the language of the proceeding once the tribunal is constituted, including the possibility of having the proceeding in English and Spanish.

F. Place of the Arbitration

16. Peru agrees with Claimant's proposal to designate Paris as the place of arbitration, with the expectation that hearings will be held in Paris except as may otherwise be agreed by the parties or ordered by the tribunal.

G. Administrating Authority

17. Peru agrees with Claimant's proposal to designate the Secretary General of the Permanent Court of Arbitration (PCA) as the administering authority.

H. Arbitrator

18. Peru hereby affirms the appointment of Mr. Toby Landau, QC, as arbitrator to these proceedings. Mr. Landau may be contacted at:

Essex Court Chambers
24 Lincoln's Inn Fields
London WC2A 3EG, UK
T +44 (0)20 7813 8000
F +44 (0)20 7813 8080

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I. Contact Details Of Peru's Representatives

19. All communications related to this case must be addressed to the public officials¹ and representatives of the Republic of Peru listed below. The Republic of Peru has selected Foley Hoag LLP as its legal representatives in this arbitration, according to the letter of March 20, 2020.² Therefore, all communications to Peru in this case must also be addressed to the representatives of Foley Hoag LLP.

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20. Peru categorically rejects the allegations set forth by Claimant that the Republic has breached any obligation under the USPTPA and rejects that any compensation should be paid to Mr. Bacilio Amorrortu.

21. Based on the information contained in this response and additional arguments to be presented in the arbitration in due course, Peru requests that the Tribunal:

¹ See Resolución Ministerial No. 176-2016-EF/10, Ministry of Economy and Finance, June 6, 2016 (**Annex 1**).

² See Oficio No. 102-2020-EF/CE-32, Special Commission, March 20, 2020 (**Annex 2**).

- a. Rejects all claims presented by Mr. Bacilio Amorrortu (on the basis of lack of jurisdiction and / or due to substantive shortcomings thereof);
- b. Order Mr. Bacilio Amorrortu to compensate Peru for all the costs incurred by Peru in this arbitration, as well as the legal fees of its lawyers, and other pertinent expenses; and
- c. grant any other measure that the Tribunal deems appropriate.

22. Peru reserves all its rights under the USPTPA and the rules applicable to these proceedings.

Sincerely,



Mark A. Clodfelter
Kenneth Juan Figueroa
Partners