

Investment Arbitration: The Renco Group, Inc. v. Republic of Peru (UNCT/13/1)

The Republic of Peru is a party to international treaties and contracts concerning the promotion and protection of foreign investment.

These instruments typically provide for the resolution of disputes through internationally recognized mechanisms, such as arbitration.

In this context, Peru is a Contracting State to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID Convention”), which has been ratified by 148 States. The ICSID Convention establishes a dispute resolution mechanism before the International Centre for Settlement of Investment Disputes (“ICSID”), an organ of the World Bank which supervises arbitration proceedings.

To coordinate the representation of Peru in investment arbitrations under international treaties and contracts, Law No. 28933 created the Special Commission in Charge of the Defense of the Republic of Peru in International Disputes Relating to Investment. The Special Commission works with government agencies across relevant sectors in connection with each matter. Among other things, the Special Commission retains lawyers to defend Peru. Given the limited number of lawyers with the expertise to manage these complex investment arbitrations, the Commission follows a formal bidding process to select legal representation.

Peru – United States Trade Promotion Agreement

Among other international treaties related to foreign investment, Peru is a party to the Peru – United States Trade Promotion Agreement (“TPA”) which entered into force on February 1, 2009. The TPA reflects the commitment to foreign investment that Peru shares with the United States. Chapter Ten of the TPA contains provisions designed to promote and protect foreign investment.

As with many investment treaties, the TPA also establishes agreed mechanisms to facilitate the resolution of disputes between investors and States. In the event of such a dispute, a qualified investor potentially may be able to bring claims in arbitration proceedings under (i) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings or the ICSID Additional Facility Rules, as applicable; (ii) the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL Rules”); or (iii) other arbitration rules agreed upon by the investor and State where a proper jurisdictional basis exists.

Case under the TPA involving Peru

Since the TPA entered into force, one arbitration case has been filed against Peru. The United States company The Renco Group, Inc. (“Renco”) has filed an arbitration against Peru, in the framework of Chapter 10 of the TPA (Investment), under the UNCITRAL Rules. Renco, through its Peruvian affiliate Doe Run Peru S.R.LTDA, acquired ownership of the metallurgical facility in La Oroya, Peru, in a 1997 privatization sale.

The dispute relates to the parties’ respective obligations regarding operations and environmental remediation measures at the La Oroya facility.

Renco claims that Peru allegedly violated obligations of Chapter 10 of the TPA concerning fair and equitable treatment, non-discriminatory treatment, and expropriation.

Renco presented an Amended Notice of Arbitration and Statement of Claim dated August 9, 2011. The Amended Notice is in addition to the Notice of Intent to Commence Arbitration dated December 29, 2010, in which Renco stated its intent to bring an arbitration against Peru under the TPA. The Amended Notice contains claims exclusively under the TPA between Renco, as the only claimant, and the Republic of Peru, as the only respondent. Previously, Renco and Doe Run Peru presented a Notice of Arbitration and Statement of Claim dated April 4, 2011, that sought to bring claims under a contract, as well as the under the TPA. This notice generated certain procedural and jurisdictional issues, and was subsequently amended by Renco.

The Tribunal was constituted on April 8, 2013, and consists of: Michael J. Moser (Austria), L. Yves Fortier (Canada) (appointed by Claimant), Toby T. Landau (United Kingdom) (appointed by Respondent). The International Centre for Settlement of Investment Disputes is acting as administering authority.

For this arbitration, Peru is represented by the experienced international law firm White & Case LLP and the Peruvian law firm Estudio Echeopar.

Further to transparency obligations under Article 10.21 of the TPA, publicly available documents submitted in the dispute to date are available at the links below.

29. Dec. 2010	Claimant's Notice of Intent to Commence Arbitration under United States – Peru Trade Promotion Agreement
04 Apr. 2011	Claimants' Notice of Arbitration and Statement of Claim
06 May 2011	Peru's Response Letter to Claimant's Notice of Arbitration and Statement of Claim
09 Aug. 2011	Claimant's Amended Notice of Arbitration and Statement of Claim
09 Sept. 2011	Peru's Response Letter to the Amended Notice of Arbitration and Statement of Claim
18 Jul. 2013	Transcript of the First Session of the Arbitral Tribunal
22 Aug. 2013	Procedural Order No. 1
20 Feb. 2014	Claimant's Memorial on Liability
	Peru's Notification Letter of Preliminary Objections

21 Mar. 2014

03 Apr. 2014

Claimant's Submission Challenging the Scope of Preliminary Objections

23 Apr. 2014

Peru's Submission on the Scope of Preliminary Objections

07 May 2014

Claimant's Reply on Scope of Respondent's Article 10.20(4) Objections

31 July 2014

Procedural Order No. 2

10 Sep. 2014

Non-Disputing State Party Submission of the United States of America

01 Oct. 2014

Claimant's Comments on the Submission of the United States of America Regarding the Interpretation of Article 10.20(4)

03 Oct. 2014

Peru's Comments on the Non-Disputing Party Submission

18 Dec. 2014

Decision as to the Scope of the Respondent's Preliminary Objections under Article 10.20.4

20 Feb. 2015

Peru's Preliminary Objection Under Article 10.20.4

17 Apr. 2015

Claimant's Opposition to Peru's 10.20(4) Objection

02 Jun. 2015

Decision Regarding Respondent's Requests For Relief

20 Jun. 2015

Procedural Order No. 3

06 Jul. 2015

Procedural Order No. 4

10 Jul. 2015

Peru's Memorial on Waiver

30 Jul. 2015

Claimant's Supplemental Opposition to Peru's Preliminary 10.20(4) Objection