

**ICSID Case No. ARB/07/5**

**ABACLAT AND OTHERS  
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC  
(RESPONDENT)**

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**PROCEDURAL ORDER NO. 31**

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**20 JUNE 2014**

## **IN VIEW OF**

- Procedural Order No. 28 of 9 June 2014;
- Procedural Order No. 30 of 11 June 2014;
- ICSID Arbitration Rule 34;
- Claimants' letter of 17 June 2014;
- Respondent's letter of 19 June 2014;
- The Parties' relevant oral arguments made during the hearing on 19 June 2014, at the beginning of the afternoon session.

## **CONSIDERING**

- That, in their letter of 17 June 2014, Claimants requested leave of the Arbitral Tribunal to introduce new material into the record;
- That, in the same letter, Claimants requested that Respondent produce certain documents;
- That, in its letter of 19 June 2014, Respondent objected in part to Claimants' request.

## **CONSIDERING FURTHER**

### **(1) In general**

- That Claimants contend, in brief, that the documents that they seek to introduce into the record relate to recent developments and are highly relevant to the present dispute, justifying admission into the record "*immediately, while the hearing is ongoing*", and that at the minimum Claimants should be allowed to use these documents during their closing argument;
- That Respondent is not opposed to the introduction of certain documents, but objects to the use of any of the documents Claimants seek to introduce at the hearing;
- That Procedural Order No. 28 records that "*the Parties [...] agreed during the pre-hearing conference that no document not already in the record shall be used without leave of the Arbitral Tribunal and exceptional circumstances*";
- That, in Procedural Order No. 30, the Arbitral Tribunal invited the Parties to refrain from sending any further unsolicited correspondence (other than relating to Mr. Bloch's replacement) to the Arbitral Tribunal before the launch of the hearing.

### **(2) As concerns the Paris Club's 29 May 2014 press release regarding its recent agreement with Argentina**

- That Claimants seek to introduce this press release into the record;
- That, in brief, Respondent objects to this request as being late, since the press release was issued well in advance of the hearing and that Claimants could have thus made the request earlier if they wanted to use this document at the hearing;
- That Claimants explained that they did not request to submit this document earlier notably because the Arbitral Tribunal had invited the Parties to refrain from sending unsolicited correspondence before the launch of the hearing;
- That, indeed, the Arbitral Tribunal had asked the Parties to refrain from sending unsolicited correspondence before the start of the hearing and that in these conditions Claimants' request cannot be considered to be late ;
- That, in addition, the document that Claimants seek to introduce is in any event public and that Claimants' request is therefore granted;
- That the Parties may not use the press release in their witness or expert examinations;
- That, however, in view of the apparent relevance of this agreement, the Parties may comment on it in their closing arguments, if they wish so;
- That the Parties may request to introduce further relevant documents relating to the above mentioned agreement when they become available;
- That, should further such documents be permitted to be produced at a later stage of the proceedings, the Parties will be granted an opportunity to comment thereon in their Post-Hearing Briefs , if any;

**(3) As concerns the ruling of the US Supreme Court of 16 June 2014 in the NML Capital case**

- That Claimants seek to introduce this decision into the record;
- That Respondent is not opposed to the submission of this document subject to its right to submit responsive documents in order to put the decision in context;
- That Claimants' request to introduce the decision into the record is thus granted, and that Respondent may file responsive documents into the record;
- That the Parties may not use this document in their witness and expert examinations;
- That, however, in view of the eventual relevance of this decision, the Parties may comment on it in their closing arguments, if they wish so.

**(4) As concerns the video, with accompanying transcript, of President Kirchner's 16 June address, and corresponding evidence of Minister (of Economy) Kicillof's statements**

- That Claimants seek to introduce these materials into the record;
- That Respondent is not opposed in principle to the submission of these materials, but only insofar as the official transcripts of the two declarations are admitted into the record;
- That Respondent has offered to produce these official transcripts;
- That Claimants' request to introduce into the record the video of President Kirchner's 16 June address is granted;
- That the official transcripts to be produced by Respondent will be admitted into the record, and that Respondent may submit further responsive documents if it wishes so;
- That these transcripts may be not be used in the Parties' witness or expert examinations, but can be discussed in the closing arguments.

**(5) As concerns Claimants' request that Respondent produce further documents relating to the Respondent's agreement with the Paris Club**

- That, in its letter of 17 June, in addition to its request to introduce certain new materials, Claimants formulated a request that Respondent produce documents regarding the terms of its Paris Club agreement (including any such agreement) and the negotiation process leading to that agreement;
- That Respondent explained in its letter of 19 June 2014 and at the hearing afternoon session of the same date that, for the time being, the only information it can provide is that this general agreement is subject to agreements with each of the member States of the Paris Club;
- That, in these conditions, Claimants' request is premature and thus rejected.

**CONSEQUENTLY THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:**

1. *Claimants may file the Paris Club's 29 May 2014 press release regarding its recent agreement with Argentina into the record; the Parties may not use this document in their witness and expert examinations; the Parties may use this document in their closing arguments; Respondent may file responsive documents into the record.*
2. *Claimants may file the ruling of the US Supreme Court of 16 June 2014 in the NML Capital case into the record; the Parties may not use this document in their witness and expert examinations; the Parties may use this document in their closing arguments; Respondent may file responsive documents into the record.*
3. *Claimants' request to introduce in the record the video of President Kirchner's 16 June address is granted, understanding that this video is in the public domain.*
4. *Respondent shall produce the official transcripts of President Kirchner's 16 June address, and of Minister (of Economy) Kicillof's statements; these documents will be filed into the record; the Parties may not use these documents in their witness and expert examinations; the Parties may use these documents in their closing arguments; Respondent may file responsive documents into the record.*
5. *Claimants' request that Respondent produce further documents relating to the Respondent's agreement with the Paris Club is rejected.*

[signed]

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*Pierre Tercier,  
President  
On behalf of the Arbitral Tribunal*