

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES  
WASHINGTON, D.C.

**AMBIENTE UFFICIO S.P.A. AND OTHERS**  
(CLAIMANTS)

and

**THE ARGENTINE REPUBLIC**  
(RESPONDENT)

(ICSID Case No. ARB/08/9)

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**ORDER OF DISCONTINUANCE OF THE PROCEEDING**

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**ARBITRAL TRIBUNAL**

Judge Bruno Simma, President  
Professor Karl-Heinz Böckstiegel, Arbitrator  
Dr. Santiago Torres Bernárdez, Arbitrator

*Representing the Claimants:*

Prof. Avv. Luca G. Radicati di Brozolo  
ARBLIT - Radicati di Brozolo Sabatini  
15 via Alberto da Giussano  
20145 Milan, Italy  
and  
Avv. Piero G. Parodi,  
Prof. Abogado Rodolfo Carlos Barra  
Via S. Maurilio 14  
20123 Milan, Italy

*Representing the Respondent:*

Dra. Angelina María Esther Abbona  
Procuradora del Tesoro de la Nación  
Argentina  
Posadas 1641 – Piso 1  
CP 1112 Buenos Aires  
Argentina

*Date: May 28, 2015.*

## Background

1. On 26 June 2008, the International Centre for Settlement of Investment Disputes (ICSID or the Centre) received a Request for Arbitration filed by Mr. Giordano Alpi and others (the Claimants) against the Argentine Republic (the Respondent).
2. The case was brought by holders of Argentine sovereign bonds alleging that the Respondent refused to honor the terms of the bonds and, thereby, breached its obligations under the Argentina-Italy BIT.<sup>1</sup>
3. On 28 July 2008, pursuant to Article 36(3) of the ICSID Convention and in accordance with Rules 6(1)(a) and 7(a) of the ICSID Institution Rules, ICSID's Acting Secretary-General registered the Request, and on the same date, notified the parties of the registration, inviting them to constitute an arbitral tribunal as soon as possible. On 5 December 2008, the Centre informed the parties that the Arbitral Tribunal was constituted by (i) Professor Karl-Heinz Böckstiegel, a national of Germany (appointed by Claimants), (ii) Dr. Santiago Torres Bernárdez, a national of Spain (appointed by Respondent), and (iii) Judge Bruno Simma, a national of Austria and Germany (appointed by agreement of the parties), President of the Tribunal.
4. On 8 February 2013, the Tribunal issued a Decision upholding jurisdiction and taking note of the discontinuance of the proceeding of 29 Claimants, which are listed in paragraph 343 of that Decision. In light of this, the Tribunal decided to rename the case as "*Ambiente Ufficio S.p.A. and others v. Argentine Republic*". On 2 May 2013, Dr. Santiago Torres Bernárdez issued a Dissenting Opinion to the Decision.
5. In accordance with Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations, on 14 February 2013, the Centre requested the parties to make a seventh advance payment of USD 250,000 (two hundred and fifty thousand United States dollars) each to meet expenses in connection with the proceeding.

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<sup>1</sup> Agreement between the Argentine Republic and the Italian Republic on the Reciprocal Promotion and Protection of Investments signed on May 22, 1990 and in force from October 14, 1993 (Ex. C-1).

6. On 19 March 2013, in accordance with Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations, the Secretary of the Tribunal notified the parties that the Centre had not received the payment that had been requested from the parties in February 2013 and invited either party to pay the full amount of USD 500,000 within 15 days.
7. On 9 April 2013, as the requested payment was still outstanding, the Secretary-General moved that the Tribunal stay the proceeding pursuant to Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations.
8. On 15 April 2013, counsel for the Claimants requested a two-month extension to make the requested payment. On 24 April 2013, the Tribunal informed the parties that it would grant the requested extension.
9. On 27 June 2013, counsel for the Claimants requested a further ninety-day extension to make the required payment. On 1 July 2013, the Tribunal informed the parties that it would grant the extension and requested that counsel for the Claimants provide with an update on the payment by 30 September 2013.
10. On 11 November 2013, counsel for the Claimants requested that the deadline for the payment of the outstanding advances be extended until thirty days after the findings were issued in the ICSID Case No. ARB/07/8, because the two cases were “intended to run in parallel.”
11. On 29 January 2014, as the requested payment was still outstanding, the Secretary-General again moved that the Tribunal stay the proceeding pursuant to Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations. On 30 January 2014, the Tribunal suspended the proceeding.
12. On 18 June 2014, the Secretary of the Tribunal informed the parties that nearly six months had elapsed since the suspension of the proceeding for lack of payment. The parties were further informed that, as no payment had been received in the six month-period following the suspension, the Secretary-General was considering moving that the Tribunal discontinue the proceeding pursuant to Regulation

- 14(3)(d) of the ICSID Administrative and Financial Regulations. The parties were invited to submit any observations by 23 June 2014.
13. On 24 June 2014, counsel for the Claimants referred to their letter of 11 November 2013, and reiterated their request that the matter of the outstanding payments be left open until the tribunal in ICSID Case No. ARB/07/8 issued its findings on jurisdiction. On 21 July 2014, the Centre reminded the parties that both cases were brought and registered as separate cases, and therefore could not be held dependent on each other.
  14. On 28 July 2014, counsel for the Claimants reiterated their previous letter and, *inter alia*, requested that the Secretary-General suspend the motion to discontinue the proceeding until 120 days after the tribunal in ICSID Case No. ARB/07/8 issued its findings. On 30 July 2014, the Secretary-General again referred to the separate nature of the cases and informed the parties that if no payments were received by 31 July 2014, she would move the Tribunal to discontinue the proceeding.
  15. By letter of 1 August 2014, as the requested payment was still outstanding, the Secretary-General moved that the Tribunal discontinue the proceeding pursuant to Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations. On that same date counsel for the Claimants requested the Secretary-General to reconsider the motion.
  16. By letter of 12 August 2014, the majority of the Tribunal invited the parties to submit arguments as to the state of the proceeding in the case and their intentions concerning the merits phase. The Tribunal also invited the parties to make submissions on the issue of costs. Dr. Torres Bernárdez dissented.
  17. By letters of 29 September and 3 November 2014, counsel for the Claimants requested the Tribunal to postpone any decision on the discontinuance of the proceeding until January 2015 and asked the Tribunal to order the Respondent to bear the costs of the arbitration.

18. By letters of 17 October and 19 December, 2014, the Respondent reiterated its request for discontinuance of the proceeding and asked that the costs be borne equally by the parties.
19. On 30 March 2015, counsel for the Claimants requested a 70-day extension to determine the number of Claimants who wished to continue the proceeding. On 31 March 2015, the Respondent opposed, once again, counsel for the Claimants' request. On 3 April 2015, counsel for the Claimants reiterated the request for an extension and asked that, before considering discontinuance, the Tribunal decide on the matter of the costs already accrued in this proceeding.

### **Discussion**

20. Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations provides that the Secretary-General may, after notice to and as far as possible in consultation with the parties, move that the competent body (the Tribunal in this case) discontinue the proceeding, when the proceeding has been stayed for non-payment for a consecutive period in excess of six months.
21. By letter of 18 June 2014, the ICSID Secretariat gave notice to and consulted the parties about the discontinuance of the proceeding. More than six months have elapsed since the stay of the proceeding and more than two years have elapsed since the funds were requested. On 1 August 2014, the Secretary-General accordingly moved that the Tribunal discontinue the proceeding.
22. The Tribunal, given the above-mentioned circumstances, and after due deliberation, has decided to discontinue the proceeding in accordance with Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations.

## ORDER

The Tribunal discontinues the proceeding in accordance with Regulation 14(3)(d) of the ICSID Administrative and Financial Regulations.

*Dr. Torres Bernárdez has issued a separate 'Individual Statement,' which is appended hereto.*

[signed]

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Judge Bruno Simma  
President of the Tribunal  
Date: 05/11/2015

[signed]

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Prof. Karl-Heinz Böckstiegel  
Arbitrator  
Date: 04/27/2015

[signed]

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Dr. Santiago Torres Bernárdez  
Arbitrator  
Date: 05/04/2015