

ICSID Case No. ARB/07/5

**ABACLAT AND OTHERS
(CLAIMANTS)**

and

**THE ARGENTINE REPUBLIC
(RESPONDENT)**

PROCEDURAL ORDER NO. 16

11 JANUARY 2013

IN VIEW OF

- A. Procedural Order No. 14 dated 1 November 2012, in which the Arbitral Tribunal decided on issues of translation of documents issued in the present proceedings;
- B. Claimants' letter of 3 January 2013, in which Claimants complained about not having received the English translation or hard copies of Respondent's Counter-Memorial on Phase 2 and therefore requested the Tribunal to issue an order (i) directing Respondent to immediately provide English translations and hard copies of its Counter-Memorial; and (ii) suspending the document request deadline until seven days after the English version is received;
- C. The Arbitral Tribunal's communication of 8 January 2013, in which the Arbitral Tribunal invited Respondent to file the English translation of its Counter-Memorial on Phase 2 within 48 hours, or otherwise immediately provide the Arbitral Tribunal with explanations for the delay incurred in submitting the English version of its Counter-Memorial on Phase 2 and to commit to a date on which it would be in a position to do so;
- D. Respondent's letter dated 4 January 2013 and received by the Arbitral Tribunal on 8 January 2013, in which Respondent stated that it duly submitted its Counter-Memorial on 26 December 2012 and justified the non-submission of the English translation of its Counter-Memorial on Phase 2 as follows:

“As for the translation of the Counter-Memorial, witness statements, and expert reports, it should be recalled that when Argentina pointed out that Claimants had failed to submit their Memorial, Expert Reports and Witness Statements in Spanish on 1 October 2012 [reference omitted], Claimants responded at the 9 May 2012 hearing, the parties had agreed to modify the deadline for filing the translations of their main submissions and established that the translations would be filed two weeks after the due date [footnote reference to Claimants' letter to the Tribunal dated 8 October 2012, n.1]”

- E. Respondent's submission of 9 January 2013 (received by the Arbitral Tribunal in the night from 10 to 11 January 2013) including the English translation of Respondent's Counter-Memorial on Phase 2 and a cover letter dated 9 January 2013;

CONSIDERING FURTHER

- F. That, in its letters of 4 and 9 January 2013, Respondent justifies its non-submission of the English translation of its Counter-Memorial on Phase 2 by reference to (i) an alleged agreement reached between the Parties at the hearing of 9 May 2012 according to which translations of memorials would be submitted two weeks after the filing of the memorial in its original language, and (ii) Claimants' letter of 8 October 2012 addressed to the Arbitral Tribunal which allegedly confirms such agreement;
- G. That Respondent's reliance on an alleged “agreement” is misplaced and inaccurate for the following reasons:
 - (i) While a discussion was indeed held during the hearing of 9 May 2012 concerning the timeframe for submitting translations, the transcripts of the hearing evidence that no final agreement was reached and that the decision was left with the Arbitral Tribunal (transcripts p. 259 l. 10 to p. 262 l. 16);

- (ii) This is further confirmed by the following facts:
- While Respondent refers to an agreement to submit translations within “*two weeks*” after the filing of the memorial in its original language, Claimants in their letter of 8 October 2012 (on which Respondent relies) refer to an agreement to file the translations “*one week after the filing date*” of the version in the original language;
 - In its letter of 4 October 2012, in which Respondent complained about Claimants’ delay in submitting the Spanish version of its Memorial on Phase 2, Respondent did not make any reference to any agreement allegedly reached at the hearing of 9 May 2012 and instead based its complaints on paragraph 7(d) of the Minutes of the First as follows:

“On account of the fact that on 1 October 2012 Claimants sent their Memorial by email, together with the relevant expert reports and witness’ testimonies, and failed to submit the relevant translations into Spanish, in spite of the provisions contained in paragraph 7(d) of the Minutes of the First Session, The Argentine Republic requests that the running of the term thereof for the filing of its Counter-Memorial commence as from the moment in which it receives the relevant memorials in Spanish” (emphasis as in original)
 - In its letter of 12 October 2012, Respondent again did not make any reference to any alleged agreement reached between the Parties;

H. That, consequently, no agreement can be said to exist between the Parties with regard to the timeframe for filing the translation of memorials;

CONSIDERING FURTHER

- I. That in its Procedural Order No. 14 the Arbitral Tribunal relied on paragraph 7(d) of the Minutes of the First Session according to which “[a]ll translations will be filed together with the memorials”;
- J. That in its Procedural Order No. 14 the Arbitral Tribunal nevertheless gave due consideration to the difficulty encountered by Respondent with regard to the language and therefore granted Respondent’s request, deciding that the deadline for filing by Respondent of its Counter-Memorial on Phase 2 shall commence as from the date of receipt of the Spanish translation of Claimants’ Memorial on Phase 2;
- K. That there is no reason to treat the Parties differently.
- L. That the deadline for the exchange of the Parties’ requests for document production shall commence as from the date of receipt of the English translation of Respondent’s Counter-Memorial on Phase 2.

CONSEQUENTLY THE ARBITRAL TRIBUNAL DECIDES AS FOLLOWS:

- 1. The standard applicable to the submission of translations of the Parties' Memorial is the standard set out in paragraph 7(d) of the Minutes of the First Session unless and until the Parties reach a different and unequivocal agreement;**
- 2. The deadline for the exchange of the Parties' requests for document production is postponed to 16 January 2013;**
- 3. The Arbitral Tribunal will in due time circulate an updated version of the Timetable. However, deadlines not related to the document production process shall in the meantime remain in force;**
- 4. All other requests are rejected.**

[signed]

Pierre Tercier,

President