

***Beccara v Argentina* (Italy-Argentina BIT) (case pending; summary as of August 2010)**

AREAS OF POLICY AFFECTED: sovereign borrowing (debt restructuring), monetary system (financial crisis).

CASE SUMMARY: The claim arose from Argentina's response to its severe financial crisis of 2001-02. After revaluing its currency as part of a general economic reform, Argentina defaulted on its external debt while offering bondholders a reduced obligation as part of a debt restructuring. The claimants were among the holdout bondholders who refused the offer to restructure. The claimants initiated a claim for compensation under the Italy-Argentina BIT. The case was pending as of August 2010.

In a procedural decision, the *Beccara* tribunal limited the openness of the proceedings. The claimants and respondent state agreed that the tribunal's final award should be public. However, the claimant sought confidentiality of other aspects of the proceedings on the basis of disagreements with Argentina about, among other things, whether Argentina could access a database identifying the various individual claimants. In response, the tribunal restricted publication of written submissions and hearing records, expert evidence from other arbitrations, and specific correspondence between the disputing parties.

COMMENT: The case demonstrates that investment treaty arbitration offers an additional forum, beyond IMF-supervised processes of debt restructuring or litigation in the contractually-agreed forum (such as New York courts), for decision-making on the legal rights of creditors. This could present complications and challenges for the managed restructuring of sovereign debt.

Procedurally, the tribunal's restrictions on publication put significant limits on the public record of the proceedings. The tribunal's main rationale for doing so was the risk of propagating false information and antagonizing the dispute. However, the decision also precluded public scrutiny of the independence, fairness, and quality of the process based on outside review of materials relied on by the tribunal and not otherwise subject to a specific rationale for targeted redaction or non-disclosure. As such, it contradicted the principle of open and accountable judicial decision-making.

Source: www.iiapp.org (May 2011), based on information in publicly-available awards and materials in known investment arbitrations (for texts of awards, see www.italaw.com). This report was produced by a research team coordinated by professor Gus Van Harten (gvanharten@osgoode.yorku.ca) of Osgoode Hall Law School of York University in Toronto, Canada. Please see the disclaimer and statement on terms of use available at www.iiapp.org. © Gus Van Harten 2011. *You may forward or re-publish the information in this report with attribution to www.iiapp.org.*