

World Arbitration & Mediation Report



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HIGHLIGHTS

SPECIAL EDITION: LATIN AMERICAN ARBITRATION

In May 2005, an **ICSID Tribunal** rendered the first final award in an arbitration involving **Argentina's liability under a BIT**. The disputes involved the controversial economic measures taken by the Argentine government in 2001-2002 in regard to **foreign investment**. The award was for US \$133 million plus interest; it was rendered in favor of a U.S. company that had claimed that Argentina violated its obligation to treat investors fairly and equitably under the BIT. (The story begins on page 72.)

In *Gas Natural SDG, S.A. v. Republic of Argentina*, an **ICSID Tribunal** found that the **Most-Favored-Nation clause** in the Spain-Argentina BIT allowed a claimant to avoid the obligation in the treaty to exhaust domestic remedies prior to arbitration given the more favorable provision in the U.S.-Argentina BIT. The ruling represents an emerging trend in ICSID cases to allow claimants to "**treaty-shop**" for better treaty protections when the relevant BIT contains a Most-Favored-Nation Clause. (The story begins on page 75.)

In May 2005, an **ICSID Tribunal** rendered an arbitral award against **Chile** for US \$5.87 million plus interest in

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favor MTD Equity. The claimant alleged a violation of the **Malaysia-Chile BIT**. According to Chilean government officials, it was the first international arbitral award rendered against Chile in modern history. (The story begins on page 75.)

In *Bear Service S.A. v. Cerveceria Modelo S.A. de C.V.*, the **Supreme Court of Argentina** recognized the **lack of jurisdiction** of the **local courts** to decide a commercial claim based on the breach of a purchase of goods contract which contained an arbitration clause. (The story begins on page 78.)

In *L'Aiglon S.A. v. Textil União S.A.*, the **Brazilian Superior Court of Justice** enforced a **foreign arbitral award** against a Brazilian company for the first time since Brazil ratified the New York Arbitration Convention in 2002. The award was for US \$900 million. It involved a Swiss company and a Brazilian company and the purchase of 1500 metric tons of crude cotton. (The story begins on page 79.)

Philip Dunham and **Simon Greenberg** of **Dechert LLP, Paris** provide a comprehensive account of the developments in Brazilian arbitration law. (The article begins on page 80.)

Nigel Blackaby and **Sylvia Noury** provide an overview of arbitration in Latin America. (The article begins on page 90.)

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SPECIAL EDITION

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