Office of the Legal Adviser
International Claims & Investment Disputes
2430 E Street NW
Suite 203, South Building
Washington, DC 20037-2800

(202) 776-8325
FAX: (202) 776-8388

FAX

DATE: May 1, 2008

TO:	Claudia Frutos-Peterson Secretary of the *Ad Hoc* Committee	Fax: 202-522-2615
	Osvaldo César Guglielmino Procurador Del Tesoro de la Nación	Fax: (54 11) 4804-3482
	Guido Santiago Tawil, Esq. M&M Bomchil Abogados	Fax: (54 11) 4321-7555
	Robert B. Zoellick President, ICSID Administrative Council	Fax: 202-522-3031
	Ana Palacio Secretary-General, ICSID	Fax: 202-522-1589
	Nassib G. Ziadé Deputy Secretary-General, ICSID	Fax: 202-522-2615
	Thomas Miller CMS Gas Transmission Company	Fax: 517-788-0113
FROM:	Lisa J. Grosh Acting Assistant Legal Adviser	
RE:	*Siemens AG v. Argentine Republic* (ICSID Case No. ARB/02/8)	
PAGES:	4 (including this cover page)	

Please see the attached.

RECIBIDO
NANCI
DIA: 02/05/08
HORA: 9:06

United States Department of State

Washington, D.C. 20520

May 1, 2008

Ms. Claudia Frutos-Peterson
Secretary of the *Ad Hoc* Committee
International Centre for Settlement
of Investment Disputes
1818 H Street, N.W.
Washington, D.C. 20433

RE: *Siemens AG v. Argentine Republic* (ICSID Case No. ARB/02/8) Annulment Proceeding

Dear Ms. Frutos-Peterson:

The United States is in receipt of the April 7, 2008 letter in the above-referenced case from Mr. Osvaldo Guglielmino, Procurador Del Tesoro de la Nación of the Government of Argentina. The United States was among several parties copied on the letter to the *Ad Hoc* Annulment Committee. In that letter, the Government of Argentina sets out its interpretation of Articles 53 and 54 of the ICSID Convention regarding Contracting States' obligations with respect to ICSID awards, and suggests that the United States shares that interpretation.

The United States wishes to clarify its position regarding a Contracting State party's obligation to abide by and comply with adverse ICSID awards, and hereby respectfully requests that the Tribunal accept the present submission, pursuant to Article 37(2) of the ICSID Arbitration Rules, for that purpose.[1] While the United States would not normally seek to make an unsolicited submission in an ICSID proceeding in which it is not a party, we feel compelled to do so in this case. First, we believe that it is important to correct the record in this case, in which the United States' interpretation of key provisions of the ICSID Convention has been inaccurately characterized. Second, the interpretation of these provisions is of fundamental importance as they relate directly to the value of ICSID arbitration as a meaningful mechanism for the resolution of investment disputes. Their interpretation has repercussions for cases well beyond the present one, including a number of disputes by U.S. investors against Argentina.

[1] In the event that the parties have not agreed to accept the 2006 revisions to the ICSID Rules for purposes of this arbitration or those revisions do not otherwise apply, the United States requests that the Committee accept this submission pursuant to its authority under Article 44 of the ICSID Convention, consistent with prior ICSID practice. *See, e.g., Suez, Sociedad General de Aguas de Barcelona, S.A., and Vivendi Universal S.A. v. The Argentine Republic*, ICSID Case No ARB/03/19, Order in Response to a Petition for Transparency and Participation as *Amicus Curiae* ¶ 10 (May 19, 2005) (finding that Article 44 of the ICSID Convention "is a grant of residual power to the Tribunal to decide procedural questions not treated in the Convention itself or the rules applicable to a given dispute" and concluding that it could accept *amicus curiae* submissions pursuant to this power).

RECIBIDO
Nanci
DIA: 02/05/08
HORA: 9:06

The United States' submission meets the standard articulated in ICSID Arbitration Rule 37(2). Specifically: (a) the submission will assist the Tribunal in the determination of a legal issue related to the proceeding by bringing particular knowledge that is different from that of the disputing parties; (b) the submission addresses a "matter within the scope of the dispute," *i.e.*, the interpretation of Articles 53 and 54 of the ICSID Convention; and (c) the United States has a significant interest in the proceeding, as Argentina, through its April, 7, 2008 letter, has placed the United States' interpretation of those provisions at the center of the dispute.

In its letter, Argentina rejects Siemens's position that Article 54 of the Convention "only comes into play once an award debtor has failed to comply with its obligation under Article 53 and is in default," and asserts that "an investor seeking recognition or enforcement of an ICSID award against Argentina has to follow the procedures provided for in the laws concerning the enforcement of judgments in force in Argentina."[2] Argentina concludes its letter by asserting that "[t]he United States Government has not objected to that interpretation of the ICSID Convention,"[3] thereby suggesting that the United States agrees with its position. The United States does not agree with Argentina's position.

Article 53(1) of the ICSID Convention addresses a Contracting State party's unequivocal and unconditional obligation to "abide by and comply with the terms of the award," subject to a stay of the award pursuant to other relevant provisions of the Convention. Accordingly, Article 53(1) requires a Contracting State party against which an ICSID award has been entered to satisfy the award once it has been rendered by the Tribunal.

Article 54 does not supersede or condition a Contracting State party's obligation under Article 53 in any way. Rather, Article 54 only applies after the losing State fails to pay an award pursuant to Article 53. In other words, Article 54 simply addresses the obligation of Contracting States to enforce an award in their territories – including where the losing Contracting State has not complied with its Article 53 obligations. The procedural requirements outlined in Article 54 – including enforcement of an award "as if it were a final judgment of a court in that State" and execution as "governed by the laws concerning the execution of judgments in force in the State" – certainly do not allow a losing State to avoid its obligation under Article 53 to satisfy an ICSID award in full.[4]

---

[2] Letter of April 7, 2008 from Osvaldo Guglielmino, Procurador Del Tesoro de la Nación Government of Argentina, to Claudia Frutos-Peterson, Secretary of the ICSID *Ad Hoc* Committee at 4.

[3] *Id.* at 5.

[4] As Professor Schreuer notes, "[t]he [Article 53] obligation is independent of any procedural obstacles that may arise in the course of enforcement. Article 54 refers to the law of the State in which recognition and enforcement are sought. But any difficulties that may arise under that law in no way affect the obligation of a party to comply with the award." CHRISTOPH H. SCHREUER, THE ICSID CONVENTION: A COMMENTARY 1087 (2001). *See also* Aron Broches, *Awards Rendered Pursuant to the ICSID Convention: Binding Force, Finality, Recognition, Enforcement, Execution*, 2 ICSID REV.—FOR. INV. L.J. 287, 302

Thus, a State is obligated to abide by and comply with an award rendered against it, irrespective of an investor's enforcement efforts under Article 54. Argentina's position to the contrary is an incorrect interpretation of Articles 53 and 54 of the ICSID Convention.

Respectfully submitted,

Lisa J. Grosh
Acting Assistant Legal Adviser
Office of International Claims
and Investment Disputes

cc:
Osvaldo César Guglielmino, Procurador Del Tesoro de la Nación, Government of Argentina
Guido Santiago Tawil, M&M Bomchil Abogados
Robert B. Zoellick, President, ICSID Administrative Council
Ana Palacio, ICSID Secretary-General
Nassib G. Ziadé, ICSID Deputy Secretary-General
Thomas Miller, CMS Gas Transmission Co.

(1987) ("Article 53 of the Convention is the primary provision and that while Article 54 is important ... that provision should not be permitted to obscure or weaken the importance of Article 53.").