

INTEFWATIONAL COURT OF JUSTICE

CASE CONCERNING PULP MILLS ON THE RIVER
URUGUAY
(ARGENTINA V. URUGUAY)



REQUEST FOR THE INDICATION OF
PROVISIONAL MEASURES

SUBMITTED BY URUGUAY

30 NOVEMBER 2006

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

1 Pursuant to Article 41 of the Statute of the Court and Article 73 of the Rules, I have the honour to submit this Request for the Indication of Provisional Measures on behalf of the Oriental Republic of Uruguay. The provisional measures herein requested are urgently needed to protect the rights of Uruguay that are in issue in these proceedings from imminent and irreparable injury, and to prevent the aggravation of the present dispute.

I. The Reasons for This Request

3 Organized groups of Argentine citizens have blockaded a vital international bridge over the Uruguay River, shutting off commercial and tourist travel from Argentina to Uruguay. They have proclaimed that they will keep it blockaded continuously for at least the next three months, through the end of February 2007. The stated purpose of the blockade is to compel Uruguay to accede to Argentina's demand that it permanently end construction of the Botnia cellulose plant that is the subject of this litigation, and to prevent the plant from ever coming into operation.

3. Because the period from now through February spans the South American summer tourist season, the blockade of vital transportation arteries into Uruguay will deprive Uruguay of hundreds of millions of dollars in foregone trade and tourism revenue. This illegal act is expressly intended to force Uruguay to give in to Argentina's demand that, to avoid the extremely serious harm to its economy and development that is caused by the blockade, Uruguay surrender the right it seeks to vindicate in these proceedings: the right to carry on with the construction and operation of the Botnia plant in conformity with the environmental standards

established under the bi-national agreement known as the Estatuto del Río Uruguay ("Estatuto").¹

4. Exactly as happened in the recent past when similar blockades were imposed, the Government of Argentina has not taken any action against the new blockade, and it appears that it has no intention to use the means at its disposal as a sovereign State to stop it. Such an attitude can only be interpreted as encouragement and support of the illegal behaviour of the groups concerned, and clearly implies an endorsement of that behaviour by Argentina. Uruguay submits that Argentina's conduct constitutes a flagrant violation of its obligations as a Party to proceedings in this Court, which require it to refrain from any action or omission that might irreparably harm the rights claimed by Uruguay that the Court has been called upon to adjudicate, or that might aggravate the existing dispute. Argentina's allowance of a harmful blockade against Uruguay -- for the express purpose of compelling it to accede to the very same demands that Argentina is pursuing in this Court -- will grievously and irreparably harm Uruguay's right under the Estatuto to a judicial resolution of the Parties' conflicting claims with regard to the Botnia plant. Moreover, Argentina's conduct indisputably aggravates the existing dispute, and thus openly disregards the Order issued to the Parties by the Court on 13 July 2006 "to refrain from any actions which might render more difficult the resolution of the present dispute." The indication by the Court of provisional measures is therefore urgently needed "with a view to preventing the aggravation or extension of the dispute" (*Land and Maritime Boundary between Cameroon and Nigeria - Provisional Measures, Order of 13 March 1996 ICJ Reports 1996, pp 22-23, para 41*).

Annex 1. The Estatuto was included in the documents submitted to the Court by both Parties in connection with Argentina's Request for Provisional Measures. It was Uruguay's Exhibit No. 5 and Argentina's Exhibit No. 1.

5. Argentina filed its Application initiating this case in May 2005 claiming that Uruguay has no right under the Estatuto to permit the construction or operation of two cellulose plants: the Botnia plant and another that was being built by ENCE. The Application sought by way of relief a decision from the Court stating that Uruguay shall halt all construction activities and prevent the plants from entering into operation. Together with its Application, Argentina filed a Request for Provisional Measures seeking an immediate suspension of construction pending the Court's final adjudication of the dispute on the merits. In its order of 13 July 2006, the Court rejected Argentina's Request by a vote of 14-1. The Court found that "Argentina has not provided evidence at present that suggests that any pollution resulting from the commissioning of the mills would be of a character to cause irreparable damage to the River Uruguay.² The order left Uruguay free to oversee the construction and operation of the plants in a manner consistent with its obligations under the Estatuto pending the Court's adjudication on the merits.

6. Unwilling to wait that long to stop construction of the plants, or to trust in the Court's judgment, Argentina resorted to defacto measures to achieve the same relief it asked for in its Application and Request for Provisional Measures, by allowing and encouraging its citizens to implement and maintain more blockades of commercial and non-commercial travel into Uruguay until Uruguay surrenders to its demand that construction of the plants be terminated without waiting for the dispute to be resolved by the Court. In the face of Argentina's pressure, ENCE decided not to complete construction of its plant. Thus, only the Botnia plant remains under construction.

² Order of 13 July 2006, para. 75.

7. The blockade that is now in effect and that is planned to continue without interruption for at least the next three months is not the first one allowed or encouraged by Argentina. One year ago, Argentina allowed a similar blockade by the same Argentine citizen groups, and for the same stated purpose -- to force Uruguay to terminate construction of the cellulose plants. That blockade was imposed during and beyond the last summer tourist season, between 8 December 2005 and 20 March 2006, and again from 5 April to 2 May. It resulted in severe economic losses to Uruguay, including lost trade, lost tourism and lost jobs associated with these activities. Despite repeated protests from Uruguay, Argentina took no action to stop the blockade and refused to deploy its law enforcement authorities to end it.

Argentina's International Responsibility for the Blockades

8. Argentina's international responsibility for these blockades -- resulting from its allowance of them, its acquiescence in them, and its failure to act against them -- is manifest. On 6 September 2006, an international arbitral tribunal convened under the auspices of Mercosur unanimously found that Argentina's refusal to prevent or relieve the blockades against Uruguay between December 2005 and May 2006 was a violation of its obligations under the Treaty of Asunción to guarantee the freedom of transport and commerce between Mercosur countries. The arbitral tribunal held in its *Dispositif*:

The absence of due diligence that the Respondent [Argentina] should have adopted to prevent, control or, as appropriate, correct the blockades of the routes that connect the Argentine Republic with the Oriental Republic of Uruguay...is not compatible with the commitment assumed by the States

Parties in the foundational treaty of MERCOSUR [*i.e.*, the Treaty of Asunción],...³

9. The Dispositifaddressed only the blockades that were carried out prior to the filing of Argentina's Application in this Court on 4 May 2006. However, in its written opinion the Mercosur arbitral tribunal expressed its concern that, given what it found to be Argentina's "policy of tolerance" toward the blockades, there would be more of them:

The truth is that the permissive attitude exhibited by the Respondent [Argentina] cannot be considered to have been abandoned, in spite of the plea of the Complainant [Uruguay] that it reestablish the transit routes. The repeated and continuing character of the Respondent's complaisant attitude conforms to a standard of behaviour toward the problem that *leaves* open the *expectation* that it would be repeated in the *future if the same* or similar circumstances occur.⁴

10. Fulfilling the prediction of the Mercosur tribunal, Argentina allowed and encouraged subsequent blockades that cut off transportation to Uruguay from 13-15 October and again from 3-5 November, leading up to the current blockade which began on 20 November. Argentina's actions and omissions with respect to these blockades not only violate its obligations under the Treaty of Asunción, but also its obligations as a litigant in this Court not to act in a manner that irreparably prejudices the rights of Uruguay that will be adjudicated in these proceedings or that aggravates the present dispute.

11. The blockade condemned by the Mercosur tribunal was lifted only when Argentina filed its Application in this Court. Argentina hoped that its Request for Provisional Measures, especially for the immediate suspension of construction work on the plants, would

³ Annex 2 (Arbitral Award of Mercosur Ad Hoc Tribunal, p. 39 (6 Sept. 2006)).

⁴ Ibid. at p. 35, para. 172.

achieve the same result as that sought by the blockades. But after Argentina's provisional measures request was denied by the Court on 13 July, it lost faith in shutting down the plants by legal means, and allowed its citizens to threaten and plan new blockades to compel Uruguay to halt construction of the plants. When construction continued, the threats were carried out and new blockades were imposed with the acquiescence of the Argentine government. As predicted by the Mercosur tribunal, Argentina's "policy of tolerance" and its "complaisant attitude" encouraged new blockades of the international bridges, with the result that traffic to Uruguay was cut off from 13-15 October 2006, from 3-5 November 2006, and since 20 November.

12. On all occasions the Government of Argentina allowed the blockades to take place. Argentina took no action to prevent or relieve these blockades even though (i) they were announced in advance and widely publicized; (ii) they violated Argentine domestic law; (iii) the Mercosur tribunal had already ruled that Argentina's "policy of tolerance" and failure to prevent the earlier blockade violated its obligations under the Treaty of Asunción; (iv) in the past Argentina regularly used its law enforcement powers to prevent or terminate other illegal blockades of roads and bridges; (v) Uruguay protested the blockades and insisted that Argentina prevent them; and (vi) Argentina is obliged as a litigant in this Court not to cause irreparable prejudice to the rights of Uruguay that are at issue in this case or to aggravate the present dispute.

Uruguay's Repeated Protests and Argentina's Rejection of Them

13. Uruguay has repeatedly protested the blockades in public statements and diplomatic correspondence. Argentina's responses have been either to ignore or reject Uruguay's protests. In no case did Argentina respond by deploying, or at least giving assurances

that it would deploy, the means at its disposal to prevent or relieve any of these blockades by its citizens.

14. Uruguay's recent protests to Argentina include the following Diplomatic Notes to Argentina: (i) 11 October 2006, insisting that Argentina prevent the bridge seizure and blockade planned for 13-15 October;⁵ (ii) 30 October 2006, protesting Argentina's failure to prevent or relieve the blockade carried out on 13-15 October;⁶ (iii) 31 October 2006, insisting that Argentina prevent the bridge seizure and blockade planned for 3-5 November 2006;⁷ (iv) 9 November 2006, protesting Argentina's failure to prevent or relieve the blockade carried out on 3-5 November 2006;⁸ and (v) 20 November 2006 insisting that Argentina prevent or remove the blockade that began on that date and which is still in effect.⁹

15. In these Diplomatic Notes, Uruguay repeatedly pointed out that Argentina was required by its international treaty obligations, by general international law, and by its status as a litigant in this Court to take all necessary measures, including appropriate police action, to maintain freedom of transit across the international bridges, to refrain from acts or omissions that prejudice the rights of Uruguay at issue in this lawsuit, and to avoid any acts or omissions that might aggravate the pending dispute between the Parties. Uruguay's Diplomatic Note of 30 October 2006 said, in pertinent part:

⁵ Annex 3 (Diplomatic Note from Uruguay to Argentina (11 Oct. 2006)).

⁶ Annex 4 (Diplomatic Note from Uruguay to Argentina (30 Oct. 2006)).

⁷ Annex 5 (Diplomatic Note from Uruguay to Argentina (31 Oct. 2006)).

⁸ Annex 6 (Diplomatic Note from Uruguay to Argentina (9 Nov. 2006)).

⁹ Annex 7 (Diplomatic Note from Uruguay to Argentina (20 Nov. 2006)).

The Ministry of Foreign Affairs presents its highest compliments to the Embassy of the Republic of Argentina with the purpose of making reference to Note no. 1020/2006, dated 11 October 2006, in which it manifested its concerns about the announcement, by Argentine citizens, that road blockades would take place during the weekend of 13 to 15 October.

On this topic, with the blockades having occurred on the announced date without the Argentine Government adopting the necessary measures to avoid them or to make them stop, the Oriental Republic of Uruguay desires to manifest that these actions, in addition to constituting a violation of the principle of free circulation established in the Treaty of Asunción and other norms of International Law, fail to comply with the Arbitral Award of the MERCOSUR Ad Hoc Tribunal of 6 September 2006.

Furthermore, the Oriental Republic of Uruguay would like to emphasize that the omission of the Argentine Government in taking necessary measures constitutes an aggravation of the dispute today pending before the International Court of Justice, in violation of paragraph 82 of the Order on provisional measures of 13 July past, and the obligations imposed on all the litigants before the Court, and consequently, considers that its rights are being threatened by the omission of Argentina of compliance with its international obligations.

16. Argentina responded to this Note, as well as Uruguay's Note of 9 November 2006, by rejecting Uruguay's contentions and its request for preventive action to deter future blockades. Specifically, Argentina responded to Uruguay's Note of 30 October, quoted above, by dismissing Uruguay's contention that Argentina's allowance of the 13 to 15 October blockade violated the Mercosur arbitral award or the Treaty of Asunción because, in Argentina's view, the September 2006 arbitral award only found Argentina responsible for the blockades that took place prior to the Award and not any future blockades: " Argentina also rejected Uruguay's contention that its allowance of the blockades aggravates the dispute before the Court, in

¹⁰ Annex 8 (Diplomatic Note from Argentina to Uruguay (1 Nov. 2006)): "In that context, the Republic of Argentina allows itself to remind the Government of Uruguay that the Arbitral Award of the Ad Hoc Mercosur Tribunal of 6 September past, mentioned in the referred to note, expressly states, at numeral 3 of its *Dispositif*, that 'in the circumstances of this case, it is not legally appropriate for the Ad Hoc Tribunal to adopt or promote determinations about the future conduct of the Respondent' (Argentina)."

contradiction of the Court's Order of 13 July 2006, on the ground that (according to Argentina) the blockades are *irrelevant* to the dispute." Argentina responded in similar fashion to Uruguay's Diplomatic Note of 9 November 2006, protesting Argentina's allowance of the blockade that took place on 3-5 November. Argentina again dismissed Uruguay's complaint as "irrelevant" in its Note to Uruguay dated 15 November 2006:

Argentina reiterates and affirms its note of 1 November past, in full. Specifically, it rejects once again as irrelevant the allusions in Note 598106 [Uruguay's Note of 9 November] to the Order dictated by the International Court of Justice on 13 July past. Further, it recalls that the proceedings before the International Court of Justice, from which the Order of 13 July past arose, concerns exclusively the controversy of both countries over the construction of two pulp mills and their associated installations.¹²

17. Five days later, on 20 November, Argentina allowed the current blockade to commence without making any effort to prevent it. Argentina's inaction led Uruguay to send another protest, on 20 November, insisting that Argentina honour its obligations as a litigant before this Court by ending the blockade taking action to avoid the grave and irreparable injury the blockade causes to the rights of Uruguay that the Court has been called upon to adjudicate. Uruguay wrote:

[T]he Oriental Republic of Uruguay would like to emphasize one more time that the omission of the Government of Argentina in taking necessary measures to avoid or stop the blockades constitutes an aggravation of the dispute today pending before the International Court of Justice.

¹¹ *Ibid.* "Argentina rejects as irrelevant the reference in the Note to the International Court of Justice's Order of 13 July past, which concerns exclusively the controversy that both countries have because of the construction projects of two industrial pulp mills and their connected installations. The aggravation in this controversy, that is discouraged by paragraph 82 of said Order, are being perpetrated by Uruguay, in continuing to take unilateral actions with respect to the cited projects, in flagrant violation of the 1975 Statute."

¹² Annex 9 (Diplomatic Note from Argentina to Uruguay (15 Nov. 2006)).

Should these new blockades take place without the adoption of necessary measures to avoid them or make them stop, the Oriental Republic of Uruguay will suffer irreparable harm to its rights that are currently subject to the jurisdiction of the Court, and it will constitute a violation of the part of the Republic of Argentina of the obligations imposed on litigants before the Court under its jurisdiction.

18. Again, Argentina took no action, allowing the current blockade to begin and to continue. This blockade, like the prior ones on 13-15 October 2006 and 3-5 November 2006, is specifically intended to accomplish through coercive action what Argentina could not achieve through legal means in this Court at the provisional measures phase -- to force Uruguay to halt construction of the Botnia plant and terminate the project. By its failure to deter or relieve these blockades, and by its rejection of Uruguay's request for preventive action in the face of them, Argentina has made it clear that, absent the provisional measures that Uruguay is requesting from the Court, it will continue to allow, encourage and facilitate the illegal actions of its citizens.

***The Independent Experts' Report That the Botnia Plant
Will Not Harm the River or Argentina***

19. The blockades of October and November 2006 followed the publication by the International Finance Corporation (IFC) of a comprehensive Cumulative Impact Study (CIS) produced by its independent experts on the environmental impact of the Botnia plant. The independent experts and their terms of reference were approved by Argentina prior to the initiation of their study. Their final report, published by the IFC on 12 October 2006, demonstrated conclusively that "neither its [the Botnia mill's] construction nor its operation will

cause appreciable harm to Argentina through water deprivation or pollution or otherwise.”¹³ The experts' report emphasized that the Botnia plant "will employ state-of-the-art process technologies in every respect;”¹⁴ that it will "perform at or better in almost all cases, than the IPPC-BAT (2001) and Tasmanian-AMT (2004) standards, and will perform at world-class levels with regards to water and air emissions rates;”¹⁵ that its effluent flows "comply with IPPC-BAT (2001) range and are among the best in the world;”¹⁶ that "bleaching, effluent flow, COD content and color will be among the best in the world;”¹⁷ and that “[t]he mill operations will comply with the water quality standards provided by CARU" (the agency established by Uruguay and Argentina pursuant to the Estatuto "for the oversight of the protection and monitoring of water quality within the Río Uruguay”).¹⁸ The experts' report also concluded that Uruguay's commitment and capacity to regulate and monitor the operation of the Botnia plant are sufficient to assure that it will be operated in an environmentally safe and responsible manner:

The permit-setting process used by DINAMA [the Uruguayan environmental protection agency] was evaluated and found to be practical and rigorous and, through DINAMA's receiving environment monitoring program and permit renewal process, it will be ensured that the proposed pulp mills will have a minimum impact on the receiving environment. *When benchmarked against*

¹³ Annex 10 (Letter from Lars H. Thunell, Executive Vice President of the IFC, and Yukiko Omura, Executive Vice President of the Multilateral Investment Guarantee Agency, to the Ambassadors of Argentina and Uruguay (16 Oct. 2006)).

¹⁴ Annex 11 (Cumulative Impact Study, Executive Summary, p. ES.v.)

¹⁵ *Ibid.*, p. 2.30.

¹⁶ *Ibid.*, p. 2.21.

¹⁷ *Ibid.*, p. ES.v.

¹⁸ *Ibid.*, p. 4.56.

*other jurisdictions, DINAMA's standards were found to be amongst the world's most stringent.*¹⁹

20. Not just in spite of, but actually *because* of these conclusions confirming that the Botnia plant poses no risk of harm to Argentina or the Río Uruguay, the Argentine blockade was resumed on 13 October, one day after the report was published. Instead of expressing relief and satisfaction that the independent study determined that construction and operation of the plant posed no danger of environmental harm, Argentina criticised the IFC for publishing the report, and even tried to place responsibility on the World Bank (the IFC's parent organization) for the resulting blockade that took place on 13-15 October. Although it was Argentina, not the Bank, that allowed and encouraged the blockade, Argentina's Secretary for the Environment complained that the principal responsible party for the new blockade is the World Bank, calling the Bank's publication of the report "negligent."²⁰ The following month, after the IFC's senior management recommended, based on the experts' report, that financing for the Botnia plant should be approved by the Board of Directors,²¹ the Argentines imposed another blockade, on 3-

¹⁹ *Ibid.*, p. 2.30 (emphasis added). As indicated above, in its Order of 13 July 2006, the Court found that Argentina failed to produce any evidence "that suggests that any pollution resulting from the commissioning of the mills would be of a character to cause irreparable damage to the River Uruguay..." The report of the independent experts confirms that there is, in fact, no evidence that the Botnia plant will have any adverse effect on human health or welfare or the Rio Uruguay. See *ibid.*, p. 4.57. So too does the final Hatfield report, submitted to the International Finance Corporation on 14 October 2006, which reviewed the CIS. An earlier Hatfield report, dated 27 March 2006, was submitted in evidence by both Parties at the June hearing on provisional measures. Like the CIS itself, the final Hatfield report concluded that "that the mills are designed in accordance with modern, environmentally sustainable practices, in conformity with BAT, as defined by IPPC and other regulatory agencies experienced with pulp industry issues. The current design and planning process is appropriate for sustainable, environmentally sound operations, with no impacts on the health of the people in the area, on either side of the Rio Uruguay." See Annex 12 (Letter from L. Wayne Dwernychuk, Ph.D., R.P.Bio and Neil McCubbin BSc., ARCST, P. Eng. to Mr. Dimitris Tsitsiragos and Ms. Rachel Kyte, IFC Directors, p. 2 (14 Oct. 2006)).

²⁰ Annex 13 ("Picolotti responsabilizó al Banco Mundial por nuevos cortes de ruta" (11 Oct. 2006)).

²¹ Annex 10 (Letter from Lars H. Thunell, Executive Vice President of the IFC, and Yukiko Omura, Executive Vice President of the Multilateral Investment Guarantee Agency to the Ambassadors of Argentina and Uruguay (16 Oct. 2006)).

5 November. In the wake of that blockade, between 6 and 10 November, the Argentine Secretary for the Environment went to Washington personally to lobby members of the Board of Directors not to finance the project, and the President of Argentina wrote to the President of the World Bank demanding that the project not be approved. This was followed by the current blockade, commencing on 20 November, the day before the Bank's Board of Directors met to give final consideration to the project. The blockade coordinator said: "If, as it appears, the World Bank approves the financing, the people will want to live on the route...we are going to stay there all summer and whatever time it takes" to shut down the Botnia plant.²²

21. On 21 November, the Board of Directors voted 23-1 to approve the financing for the Botnia project. Only the Argentine board member dissented. The public statement announcing the Board's decision emphasized that the World Bank Group,

after completing a thorough review of the facts, [is] convinced that the mill will generate significant economic benefits for Uruguay and cause no environmental harm.

The Orion mill, majority owned by Finnish company Oy Metsa-Botnia Ab, will be operated to the highest global standards and comply with IFC and MIGA's respective environmental and social standards. A recently issued independent report provided conclusive evidence that the local area, including the Argentine city of Gualeguaychu, will not experience adverse environmental impacts.²³

22. Argentina responded the same day by publicly denouncing the Bank. The statement released by the Argentine Ministry of Foreign Affairs condemned the Bank for its

²² Annex 18 (statement by Gustavo Rivollier, "Los créditos del Banco Mundial amenazan con elevar la tensión," *La Nacion* (21 Nov. 2006)).

²³ Annex 19 (Press Release, International Finance Corporation (21 Nov. 2006)).

"decision whose environmental effects will be serious for the local riverine population."²⁴

Immediately following this announcement, the "local riverine population" resolved to continue

"indefinitely" the blockade that had been commenced the previous day, on 20 November.²⁵

According to one of the blockade leaders: "the people understand that this struggle is entering a harsher stage. We have been too good, and we are getting angry ... this is going to keep

increasing until they listen to us."²⁶ On 22 November, President Nestor Kirchner of Argentina

attacked the World Bank's decision, calling it "lamentable that they keep saying that the position of Argentina was wrong; the interests of Botnia and the World Bank have won again."²⁷

President Kirchner publicly declared that the Government of Argentina would not take any action to interfere with the blockades: "there will be no restraint against our brothers from Gualeguyachú."²⁸

23. The harsh public criticism of the World Bank by Argentina's President, Foreign Ministry and Secretary for the Environment, among other senior Argentine officials, inevitably encouraged the Argentine citizen groups directly responsible for carrying out these blockades. As one of the blockade leaders said: "Certainly there will be blockades this summer after the

²⁴ Annex 20 (Press Release, Argentine Ministry of Foreign Affairs, quoted in "Papeleras: el Gobierno criticó la decisión del Banco Mundial de aprobar el crédito para Botnia," *Clarín.com* (21 Nov. 2006)).

²⁵ Annex 21 (resolution by the Environmental Assembly of Gualeguyachú, quoted in "Papeleras: los ambientalistas de Gualeguyachú endurecen su postura," *Ciarin.com* (21 Nov. 2006)).

²⁶ Annex 22 (statement by Jorge Fritzler, "Se preven más pérdidas que en el verano pasado," *Ultimas Noticias* (22 Nov. 2006)).

²⁷ Annex 23 (statement by President Nestor Kirchner of Argentina, "Kirchner defendió la postura argentina contra las pasteras," *Diario Epoca* (22 Nov. 2006)).

²⁸ *Ibid.*

perversity from the World Bank, there will be many more measures...²⁹ According to another blockade leader, “the people are ready to take international highway 136 [the principal bridge across the Uruguay River] and never leave. We are not going to leave until the plants are gone.... We have to keep doing things to keep mobilized and keep attacking on all fronts.”³⁰

II. The Consequences of a Denial of This Request

24. There can be no question that the very rights of Uruguay that are at issue in these proceedings are threatened with imminent and irreparable injury by Argentina's allowance of and acquiescence in these coercive actions. At the merits phase, the Court will adjudicate whether Uruguay had the right to authorize construction and operation of the Botnia cellulose plant or whether (as Argentina claims) Uruguay's actions violate environmental or other provisions of the Estatuto. The Argentine blockades are expressly intended to be so painful to Uruguay that it is forced to terminate the Botnia project in advance of the Court's ruling. Accordingly, they indisputably threaten grave and irreparable injury to the right to build and operate the plant that Uruguay seeks to defend in this case.

25. Moreover, the Parties have agreed in Article 60 of the Estatuto that any disputes that they cannot themselves resolve may be submitted to the Court for final resolution.³¹ It is

²⁹ Annex 14 (statement by Juan Veronesi, "Levantán corte de ruta pero aseguran bloqueos en verano," *El País* (14 Oct. 2006)).

³⁰ Annex 15 (statement by Jorge Fritzier, "Gualeduaychú volvió a la ruta por casi cuatro horas," *La Nación* (13 Nov. 2006)). The same spokesperson for the blockades added: "Uruguay expects much from tourism this year, so we are going to have to blockade... for the Uruguayans to react and analyze what is most to their advantage: Argentine tourism or the pulp mills." *Ibid.*

³¹ Annex 1. Article 60 provides: "Any dispute concerning the interpretation or application of the Treaty and the Statute which cannot be settled by direct negotiations may be submitted by either Party to the International Court of Justice."

under Article 60 that Argentina itself invoked the Court's jurisdiction to hear this case. In its provisional measures request, Argentina claimed that the Court was "given a central role by Articles 12 and 60 of the Statute," and argued on this basis that "the Court should be allowed to settle the dispute without final judgment on the merits having **been prejudiced** by Uruguay's unilateral acts..." Thus, it cannot be contested by Argentina that Uruguay has a right to have this dispute resolved by the Court pursuant to Article 60, rather than by Argentina's unilateral acts of an extrajudicial and coercive nature, which are intended to force Uruguay to abandon its right under the Estatuto to a judicial resolution of its claims and defences.

26. Nor can there be any question that the Argentine seizures and blockades of the international bridges aggravate the present dispute between the Parties. The economic damage suffered by Uruguay to date as a result of the blockades has **been enormous**, and the **harm will only grow** unless Argentina is required by the Court to take **all** the lawful and reasonable measures to avoid further harm to Uruguay. The blockades that **have taken place** thus far have already raised tensions between the two States, and **have impeded** dialogue and a diplomatic solution to the controversy. Threats from blockade leaders, emboldened by the Argentine government's attitude and statements, are steadily increasing: "Now is the time to intensify the **struggle**, to go into the final battle," to "pressure the Uruguayan government until it understands that it **must choose** between its relationship with Argentina or the cellulose plants."³² According to blockade leaders, they are planning to extend the blockades beyond the bridges to the river itself, "to prevent river traffic with supplies for Botnia The maritime blockade is not far from

³² Annex 16 (statement by Jorge Fritzier, "Comenzó el bloqueo y fueron vanos los intentos para **frenarlo**," *El País* (14 Oct. 2006)).

being realized, since we have studied the different places and alternatives.”³³ It is clear that relations between the two States will only deteriorate further if the current blockade is allowed to continue, and that Argentina's allowance of this and prior blockades contravenes the Court’s 13 July 2006 injunction to the Parties to "refrain from any actions which might render more difficult the resolution of the present dispute."

27. Without a change in attitude and behaviour by Argentina, Uruguay will be forced to endure another prolonged and punitive blockade. Provisional measures are thus urgently required to compel Argentina to abide by its international obligations, including its obligations as a litigant before this Court, and take all lawful and reasonable measures *to* end the current blockade and prevent future blockades from being carried out.

III. The Specific Measures Requested

28. For the foregoing reasons, Uruguay respectfully requests that the Court order the following provisional measures pending final resolution on the merits of this case:

While awaiting the final judgment of the Court, Argentina

- (i) shall take all reasonable and appropriate steps at its disposal to prevent or end the interruption of transit between Uruguay and Argentina, including the blockading of bridges and roads between the two States;
- (ii) shall abstain from any measure that might aggravate, extend or make more difficult the settlement of this dispute; and

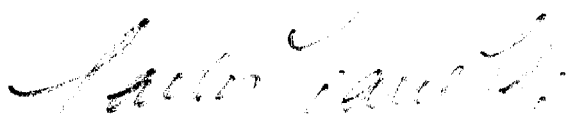
³³ Annex 17 (statement by Martin Alazard, "Cortar el río, la nueva propuesta de los ambientalistas," *El Observador* (19 Oct. 2006)).

(iii) shall abstain from any other measure that might prejudice the rights of Uruguay in dispute before the Court.

IV. Offer of Withdrawal of This Request

29. It is Uruguay's strong preference that this matter be resolved diplomatically and amicably between the two Parties. What Uruguay seeks is Argentina's agreement to end the current blockade and prevent any further blockades, and its fulfillment of that agreement. If Argentina will make such a commitment, Uruguay will accept it in good faith and will no longer have a need for judicial intervention, or for the provisional measures requested herein. In such circumstances, Uruguay would be pleased to withdraw this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carlos Alberto Gianelli', written in a cursive style.

Ambassador Carlos Alberto Gianelli
Agent

The Hague

30 November 2006

CERTIFICATION

I certify that the annexes are true copies of the documents referred to and that the translations provided are accurate.



Ambassador Carlos Alberto Gianelli
Agent

Je soussigné certifie que les annexes sont des copies conformes des documents originaux et que leurs traductions sont exactes.



Ambassadeur Carlos Alberto Gianelli
Agent