Foreign Direct Investment International Arbitration Moot

2015 Case

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Corrected¹ and Supplemented² 20 February 2015

¹ Missing pages of Annex 9.
² Procedural Order No 2.
C-Lex et Associés SCP
Rue Apolline 24/6, 2403 Ville-de-Ra, Federal Republic of Cogitatia
T +38 1 425 3310 F +38 1 425 3310 6

London Court of International Arbitration, Registrar
70 Fleet Street
London EC4Y 1EU
United Kingdom
Fax: +44 (0) 20 7936 6222

cc: The Republic of Barancasia, Ministry of Foreign Affairs, Ministry of Economics, and Barancasia Energy Authority

2 November 2014

REQUEST FOR ARBITRATION

Claimant

Vasiuki LLC
Helios Boulevard 1100
2401 Ville-de-Ra
Federal Republic of Cogitatia
T +38 1 396 4800 F +38 1 396 4809 E direction@vasiuki.co.ct

Legal Representative of Claimant

Dr Saulė Martinkute
i-Lex et Associés SCP
Rue Apolline 24/6
2403 Ville-de-Ra
Federal Republic of Cogitatia
T +38 1 425 3310 F +38 1 425 3310 6 E s.martinkute@i-lex.co.ct

A power of attorney is attached [intentionally not reproduced here].

Respondent

Republic of Barancasia
c/o Pierre-Maurice Skolil
Procurator of the Treasury, Ministry of Finance
Valhallavegen 2-4
Terms of the Arbitration Agreement

By submitting this Request for Arbitration, Claimant Vasiuki LLC (“Vasiuki”) accepts the standing offer made by the Republic of Barancasia (“Barancasia”) to arbitrate investment disputes with investors from Cogitatia, which is expressed in Article 8 of the Barancasia–Cogitatia Bilateral Investment Treaty dated 31 December 1998 (the “BIT”), as set forth below:

Article 8
Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be settled, if possible, by negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months from the written notification of a claim, the investor shall be entitled to submit the case, at his choice, for settlement to:
   (a) a court [...], or
   (b) the International Centre for Settlement of Investment Disputes [...], or
   (c) an arbitrator or international ad hoc arbitral tribunal [...] or
   (d) the London Court of International Arbitration for arbitration under its Rules.

3. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.

Vasiuki is an “investor” in Barancasia within the meaning of Article 1.1 of the BIT. The BIT may be accessed on the Barancasia Ministry of Foreign Affairs, Online Treaty Archive at http://www.mofa.gov.bc/treaties/archive/19981231ct-iiia.pdf [dummy link; BIT actually to be found in Annex 1 of the Statement of Uncontested Facts].

On 20 April 2014, Vasiuki notified Barancasia’s Ministry of Foreign Affairs (with copies to its Ministry of Economics and to the Barancasia Energy Authority) of its dispute with Barancasia and of Vasiuki’s intention to pursue legal remedies under the BIT if this dispute was not resolved to Vasiuki’s satisfaction. Barancasia has declined negotiations.
**Summary of the Dispute**

*Circumstances*

Claimant Vasiuki, an LLC incorporated under the laws of Cogitatia in 2002, has been engaged in the development, construction and operation of renewable energy facilities in Cogitatia and elsewhere in the region, including Barancasia, since 2002.

Claimant’s operations have included investments in photovoltaic projects in Barancasia commencing from 2009 and operating under Barancasia’s 2010 Law on Renewable Energy (“LRE”). Claimant first launched an experimental solar project called “Alfa” in 2009, which was connected to the grid and operational as of 1 January 2010.

Under the LRE and its implementing Regulation, the Barancasia Energy Authority (“BEA”) calculated a guaranteed feed-in tariff of EUR 0.44/kWh for renewable energy producers, such as Claimant. Article 4 of the LRE provided that the feed-in tariff announced by the BEA and applicable at the time of issuance of a license to the renewable power producer would apply for twelve years.

Based on this regime for renewable energy, Claimant significantly expanded its photovoltaic investments in Barancasia. This included applying for a license for its “Alfa” project, and then subsequently investing in its second photovoltaic project, Beta, and then 12 more photovoltaic projects using a new technology.

On 25 August 2010, Claimant’s application for a license for the Alfa project was rejected. However, on that same date, Claimant’s application for a license for project Beta was approved. The Beta project became operational on 30 January 2011, while Claimant’s 12 remaining projects received their licenses on 1 July 2012, thereby permitting Claimant to invest in necessary equipment and commence construction.

On 3 January 2013, Barancasia amended Article 4 LRE to provide for annual review of the feed-in tariff. Barancasia did so without adequate justification and consultations with concerned stakeholders. The BEA subsequently reviewed and adjusted the feed-in tariff, imposing a draconian reduction to the tariff of EUR 0.15/kWh, with retroactive effect from 1 January 2013.

*Claims*

Barancasia’s effective destruction of Vasiuki’s business in Barancasia, through its arbitrary denial of a license to Vasiuki for the Alpha project and subsequent changes to Barancasia’s renewable energy laws which harmed Vasiuki’s other projects, violates the protections that Vasiuki is entitled to under the BIT. In particular, Barancasia’s treatment of Vasiuki is neither fair nor equitable. It disregards the legitimate expectations that Barancasia established for investors such as Vasiuki (and other photovoltaic investors).

*Prayers for Relief*

Claimant Vasiuki requests the Tribunal:

1. Declare that Respondent is liable for violations of the BIT, including failure to accord Vasiuki fair equitable treatment.
2. Order Respondent a) to repeal the amendment to Article 4 of the LRE or b) to continue to pay Vasiuki the €0.44 feed-in tariff for 12 years.

3. In the alternative to its second claim, order Respondent to pay damages to Vasiuki for its losses, which Vasiuki calculates would equal approximately €2.1 million [see the Report of Claimant’s Expert, Prof. Marko Kovič] over the 12 years during which the tariff should have remained unchanged.

4. To find that Claimant is entitled to restitution by Respondent of all costs related to these proceedings.

**Procedural Matters for the Arbitration**

In light of the complexity of this dispute, Claimant asks the LCIA Court to appoint a tribunal of three arbitrators.

Claimant requests that the proceedings be conducted in English: the English version of the BIT prevails and official versions of the relevant legislation are also available in English.

**Confirmation of Delivery of Request to Respondent**

Copies of this Request for Arbitration have been dispatched by courier to the Republic of Barancasia:

<table>
<thead>
<tr>
<th>Ministry of Foreign Affairs</th>
<th>Ministry of Economics</th>
<th>Barancasia Energy Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valhallavegen 6-10</td>
<td>Valhallavegen 12-14</td>
<td>Lokivegen 125</td>
</tr>
<tr>
<td>1010 Gamla-Uppsala</td>
<td>1010 Gamla-Uppsala</td>
<td>1010 Gamla-Uppsala</td>
</tr>
<tr>
<td>Barancasia</td>
<td>Barancasia</td>
<td>Barancasia</td>
</tr>
</tbody>
</table>

Courier receipts are attached [intentionally not reproduced here].

For and on behalf of Vasiuki LLC

Dr Saulė Martinkute
i-Lex et Associés SCP
CONFIDENTIAL

By Courier and by email

Dr Saulė Martinkute
i-Lex et Associés SCP
Rue Apolline 24/6
2403 Ville-de-Ra
Federal Republic of Cogitatia

Republic of Barancasia
c/o Pierre-Maurice Skolil
Procurator of the Treasury, Ministry of Finance
Valhallavegen 2-4
1010 Gamla-Uppsala
Barancasia

5 November 2014

Dear Sirs

Arbitration No: 00/2014
Vasiuki LLC v Republic of Barancasia

1. I acknowledge receipt, by fax on 2 November 2014, of a Request for Arbitration dated 2 November 2014, from i-Lex et Associés SCP, for the Claimant (the Request), a copy of which i-Lex et Associés SCP advise has been served on the Respondent by courier to the three addresses detailed at page 4 of the Request. I should be grateful if, as soon as possible, the Claimant would provide documentary proof of actual delivery (as required by Article 1.1(vii) of the Rules).

2. I also acknowledge receipt today of a bank transfer for £1,750 in respect of the LCIA’s registration fee, for which a receipted invoice is enclosed with the Claimant’s copy of this letter.

3. For the avoidance of doubt, I confirm that, in accordance with Articles 1.1(vi) and 1.4 of the Rules, the arbitration is therefore treated as having commenced today.

4. I should be grateful if the Respondent would provide full contact details for its legal representative, if any, including postal address, email address, telephone number and fax number. Unless we are instructed otherwise, correspondence will be with
the parties’ legal representatives, where notified, without copy to the parties themselves.

5. In the meantime, and in light of Article 4.3 of the Rules, I should be grateful if the Respondent would confirm that we may send correspondence relating to this arbitration to the email address and / or fax number provided for the Respondent at page 2 of the Request.

6. In filing the Request, the Claimant invokes the provisions of Article 8 of the Barancasia-Cogitatia Bilateral Investment Treaty dated 31 December 1998 (the Arbitration Clause), which provides, in relevant part, as follows:

“Article 8
Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be settled, if possible, by negotiations between the parties to the dispute.

2. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months from the written notification of a claim, the investor shall be entitled to submit the case, at his choice, for settlement to:
   (a) a court […], or
   (b) the International Centre for Settlement of Investment Disputes […], or
   (c) an arbitrator or international ad hoc arbitral tribunal […] or
   (d) the London Court of International Arbitration by arbitration under its Rules.

3. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.”

7. The Arbitration Clause provides that any dispute that arises between an investor of one Contracting Party (namely, Barancasia or Cogitatia), on the one hand, and the other Contracting Party, on the other, shall be settled if possible by negotiations and, failing settlement within a period of six months from the written notification of a claim, may, at the option of the investor, be submitted “…for settlement to…the London Court of International Arbitration”.

8. At page 2 of the Request, the Claimant states it notified the Respondent of the dispute on 20 April 2014 and that the Respondent has declined negotiations.

9. The LCIA rules in force at the date of the commencement of the arbitration are the LCIA Arbitration Rules (2014) (the Rules), a copy of which is enclosed [intentionally not reproduced here]. The parties’ attention is drawn to the Schedule of Arbitration Costs and they are asked to note that the LCIA’s administrative charges are incurred at hourly rates as from the filing of the Request. Further
information about the LCIA and the services we provide are available at www.lcia.org.

10. The Arbitration Clause does not specify the number of arbitrators. At page 4 of the Request, the Claimant asks the LCIA Court, in light of the complexity of this dispute, to appoint a tribunal of three arbitrators, as to which the Respondent’s comments are invited.

11. The Claimant further requests, at page 4 of the Request, that the proceedings be conducted in English, noting that the English version of the BIT prevails and official versions of the relevant legislation are also available in English, as to which the Respondent’s comments are also invited. In the meantime, in the absence of agreement otherwise, the initial language of the arbitration (until the formation of the Arbitral Tribunal) shall be English, in accordance with Article 17.1 of the Rules.

12. The parties are also invited to inform the LCIA of any agreement between them as to the seat of the arbitration. In the absence of any agreement, the seat of the arbitration shall be London unless and until the Arbitral Tribunal orders, once appointed, that another arbitral seat is more appropriate, pursuant to Article 16.2 of the Rules.

13. In accordance with Article 2 of the LCIA Rules, the Respondent may submit a Response within 28 days of the date of receipt by the Registrar of the Request. Failure to deliver any or any part of a Response shall not (by itself), however, preclude the Respondent from denying any claim, or from advancing any defence or cross-claim in the arbitration.

14. Article 6.1 of the Rules provides that, where the parties are of different nationalities, sole arbitrators or chairmen are not to be appointed if they have the same nationality as any party (the nationality of the parties being understood to include that of controlling shareholders or interests (Article 6.2)), unless the party who is not of the same nationality as the sole arbitrator or chairman has agreed in writing otherwise.

15. For the purposes of Article 6.1, I understand the Claimant to be a company incorporated in Cogitatia and the Respondent to be the Republic of Barancasia. Would the parties please advise, at their earliest opportunity, whether we should be considering any other nationalities in light of the provisions referred to above, concerning controlling shareholders or interests, and, if so, briefly state the reason we should do so.

16. I look forward to hearing from the parties in response to the matters raised above.

Yours faithfully

Sarah Lancaster
Registrar

encs. [intentionally not reproduced here]
REPUBLIC OF BARANCASIA
Procurator of the Treasury, Ministry of Finance
Valhallavegen 2-4, 1010 Gamla-Uppsala, Barancasia T +29 1 8675309 F +29 1 8675300

London Court of International Arbitration, Registrar
70 Fleet Street
London EC4Y 1EU
United Kingdom
Fax: +44 (0) 20 7936 6222
cc: Vasiuki LLC

21 November 2014

RESPONSE TO REQUEST FOR ARBITRATION

Name and contact details of the Respondent
Republic of Barancasia
c/o Pierre-Maurice Skolil
Procurator of the Treasury, Ministry of Finance
Valhallavegen 2-4
1010 Gamla-Uppsala
Barancasia
T +29 1 8675309
F +29 1 8675300
E j.skolil@mof.gov.bc

Denial of all Claims
The Republic of Barancasia (“Barancasia” or the “Respondent”) denies all claims advanced by the Claimant, Vasiuki LLC, in its Request for Arbitration dated 2 November 2014.

Circumstances of the Dispute
Circumstances
Barancasia observes that the arguments and circumstances as set forth in the Claimant’s Request for Arbitration are not accepted. While some of the circumstances set forth in the Request might not be factually false in all cases, they are incomplete and coloured by the Claimant’s objectives in these proceedings. A closer examination of all of the facts in context will reveal that Claimant’s legal arguments and conclusions are unsupported.
Objections

Barancasia respectfully submits that this Tribunal lacks jurisdiction and the Claimant’s claims are inadmissible because they are based on the Barancasia–Cogitatia Bilateral Investment Treaty dated 31 December 1998 (the “BIT”), which a) has become obsolete due to the accession of both Cogitatia and Barancasia to the European Union; the BIT is therefore materially inconsistent with the European Union legal order (in particular Article 207 TFEU), and b) has been terminated according to the BIT Article 13.

The Respondent has not violated the substantive protections of the BIT. Respondent has regulated its renewable energy sector responsibly and fairly. Regulatory adjustments and changes to rates, fees and tariffs are to be anticipated by any business, including (foreign) investors, and especially investors coming from jurisdictions subject to the same supranational regulatory frameworks as Barancasia. A provision guaranteeing fair and equitable treatment may not be conflated with a stabilisation clause in an investment agreement. It is unreasonable to expect that rates calculated with regard to profitability will remain unaltered despite technological advances and other circumstances affecting profitability. Such an expectation is not legitimate. Barancasia’s course of action was dictated by external factors, which excuse it from responsibility in any case. It has regulated the photovoltaic sector in compliance with its international obligations, in particular the laws of the European Union, which bind Barancasia, Vasiuki and its home-State, Cogitatia, equally.

Even if this Tribunal were to find the Respondent had violated substantive protections of the BIT, Claimant’s compensation calculations are ill-supported and make false and incorrect legal and factual assumptions. For example, no specific projections for land or other asset acquisitions for Claimant’s alleged potential developments are documented [See the Report of Respondent’s Damages Expert, Ms. Juanita Priemo].

Finally, the Claimant’s requested remedy of specific performance is wholly inconsistent with Respondent’s sovereignty and beyond the powers of any arbitration tribunal.

Procedural matters

Barancasia agrees that the LCIA should appoint a three-member tribunal.

Prayers for Relief

Barancasia requests that the Tribunal:

1. Find that it has no jurisdiction and/or that the claims asserted by the Claimant are not admissible.

2. In the event that the Tribunal does not grant Barancasia’s first prayer for relief, find that Barancasia has not violated the protections of the BIT.

3. In the event that the Tribunal does not grant Barancasia’s first or second prayer for relief, deny Claimant’s request for specific performance.

4. In the event that the Tribunal does not grant Barancasia’s first or second prayer for relief, find that Claimant’s calculations for damages are ill-supported and based on false and incorrect legal and factual assumptions.
5. Find that Barancasia is entitled to restitution by Claimant of all costs related to these proceedings.

For the Republic of Barancasia

Pierre-Maurice Skolil
Procurator of the Treasury, Ministry of Finance
Valhallavegen 2-4
1010 Gamla-Uppsala
Barancasia
From: casework@lcia.org
Sent: 24 November 2014 10:17
To: s.martinkute@i-lex.co.ct; i.skolil@mof.gov.bc
Cc: casework@lcia.org
Subject: LCIA Arbitration No: 00/2014 – Vasiuki LLC v Republic of Barancasia

Dear Sirs

I acknowledge receipt, by fax on Friday evening, of the Respondent’s Response.

I am grateful to the Respondent for confirming its email address and note, in particular, the Respondent’s agreement to the appointment of a three-member tribunal in this arbitration.

I shall now invite the LCIA Court to proceed with the selection and appointment of the tribunal.

Yours faithfully

Sarah Lancaster
Registrar

LCIA
70 Fleet Street
LONDON
EC4Y 1EU

Tel: +44 (0)20 7936 6200
Fax: +44 (0)20 7936 6222
www.lcia.org
Dear Sirs

In light of the pending appointment of a tribunal in this arbitration, and mindful of the requirements of:

(a) Article 14.1 of the Rules (which encourages the parties and the Tribunal to make contact as soon as practicable, but no later than 21 days from appointment); and

(b) 24.3 of the Rules (which states that the Tribunal should generally not proceed with the arbitration without checking that the LCIA is or will be in requisite funds as regards the costs of the arbitration);

the Claimant and the Respondent are hereby each directed to lodge, by no later than 17 December 2014, the sum of £10,000 (that is £20,000 in total) by way of a preliminary advance on account of the Arbitration Costs.

The deposit may be transferred direct to the following account.

Account Name: London Court of International Arbitration
IBAN Account No: GB567X72Z
Swift Code: 12ABC
Account No: XXXXXXXX
Ref: 00/2014

The parties are asked to note that this is not a fixed amount for the costs of the arbitration, but is a preliminary advance only. The LCIA will consult the Tribunal, once appointed, to determine the appropriate timing and amount of any further deposit(s).

Deposits filed by the parties are held by the LCIA to the order of the LCIA Court. Sums lodged with the LCIA and expended during the course of the proceedings will form part of the costs of the arbitration and will be subject to such award on costs as the Tribunal deems appropriate, pursuant to Article 28.2.

If, at the end of the arbitration, sums held exceed actual expenditure, any surplus will be returned to the parties, as appropriate.

Yours faithfully

Sarah Lancaster
Registrar

LCIA
70 Fleet Street
LONDON
EC4Y 1EU

Tel: +44 (0)20 7936 6200
Fax: +44 (0)20 7936 6222
www.lcia.org
CONFIDENTIAL

By courier & by email

Dr Saulé Martinkute
i-Lex et Associés SCP
Rue Apolline 24/6
2403 Ville-de-Ra
Federal Republic of Cogitatia

Republic of Barancasia
c/o Pierre-Maurice Skolil
Procurator of the Treasury, Ministry of Finance
Valhallavegen 2-4
1010 Gamla-Uppsala
Barancasia

28 December 2014

Dear Sirs

Arbitration No: 00/2014
Vasiuki LLC v Republic of Barancasia

The parties are hereby notified that, pursuant to Article 5 of the LCIA Rules, the LCIA Court has appointed:

PROFESSOR YUTAKA TAKAHASHI
[address intentionally omitted]

ANDREA COLE
[address intentionally omitted]

DR SOPHIE MILES
[address intentionally omitted]
to be the Tribunal in this arbitration, with Dr Miles presiding.

I enclose a copy of the form of appointment, the arbitrators’ curricula vitae, and their statements of independence and availability [intentionally not reproduced here].

Each arbitrator will charge for his or her time at £450 per hour, which rate is permitted by the LCIA’s Schedule of Costs.

In accordance with Article 14.1 of the Rules, the parties and the Tribunal are now encouraged to make contact as soon as practicable, but no later than 21 days from receipt of this letter.

Unless otherwise agreed between or jointly proposed by the parties in writing, or directed by the Tribunal, within 28 days of receipt of this notice, the Claimant shall deliver to the Tribunal and all other parties (copied to the Registrar, in accordance with Article 13.3 of the Rules): (a) its written election to have its Request treated as its Statement of Case; or (b) its written Statement of Case pursuant to Article 15.2.

I remind the parties that, under Article 24.3 of the LCIA Rules, save for exceptional circumstances, the Tribunal shall not proceed with the arbitration (including making contact under Article 14.1) without first ascertaining that the LCIA is or will be in requisite funds. The parties have now each paid to the LCIA an initial deposit of £10,000, in accordance with my direction of 10 December 2014.

Yours faithfully

Sarah Lancaster
Registrar

encs.

cc: Professor Yutaka Takahashi, by email only
Ms Andrea Cole, by email only
Dr Sophie Miles, by email only
LONDON COURT OF INTERNATIONAL ARBITRATION

Vasiuki LLC
v.
Republic of Barancasia

LCIA Arbitration No 00/2014

Procedural Order No 1

Adopted on 20 February 2015

Members of the Tribunal:
Chairperson: Dr Sophie Miles
Prof Yutaka. Takahashi
Ms Andrea Cole

For the Claimant
Counsel for Vasiuki LLC

For the Respondent
Counsel for the Federal Republic of Barancasia LLP

The Claimant is Vasiuki LLC and the Respondent is the Republic of Barancasia (together, the “Parties”). After consultation with the Parties inter alia by conference call held on 15 January 2015, in accordance with Article 14 of the LCIA Rules, the Tribunal adopts the following Order governing the Proceedings:

1. In view of the circumstances of this arbitration, and having given the parties a reasonable opportunity to make written comments, the Tribunal has determined, pursuant to Article 16.2 of the LCIA Rules, that the seat of the Arbitration shall be Dunedin, Caledonia.

2. The proceedings shall be governed by the LCIA Rules 2014 and the Official Rules of the Foreign Direct Investment International Arbitration Moot, as agreed between the Parties. In case there is an inconsistency between the two, the latter shall prevail to the extent of the inconsistency.
3. The language of the Proceedings shall be English.

4. The Tribunal and the Parties have agreed that although the issues that Claimant and Respondent have raised might typically be addressed in two or more stages (jurisdiction/admissibility, merits, remedies, costs) of these proceedings, they shall be addressed in a “main stage” followed by a “costs stage”. The main stage will address:

- Whether the tribunal has jurisdiction over the dispute concerning Claimant’s photovoltaic projects under the Cogitatia-Barancasia BIT and the claims asserted by Claimant are admissible;

- Whether Respondent’s administrative and regulatory measures in respect of the LRE amount to a breach of the Cogitatia-Barancasia BIT, in particular, the fair and equitable treatment standard;

- Whether Respondent’s actions are exempted on the basis that they were necessary for Barancasia in order to meet its economic and renewable energy objectives and to adhere to its EU obligations;

- Whether Respondent can be ordered to rescind the LRE amended Art 4 or to continue to pay the pre-2013 feed-in tariff to Claimant; and

- Whether Claimant’s basis for claiming and quantifying compensation is appropriate.

During the main stage the Tribunal will hold a hearing on the issues of Jurisdiction, Liability, and Remedies, and subsequently render an Award.

The subsequent costs stage will address the costs of the proceedings and their allocation among the parties. On its conclusion the Tribunal will then issue a Separate Award on Costs.

5. As agreed between the Parties and the Tribunal, the evidence that may be relied on in this arbitration will be limited to (i) facts and assertions contained in the Request for Arbitration and the Response to it, the “Statement of Uncontested Facts” appended to this Order and its annexes (with no admission being made by either of the Parties as to correctness of the inferences from facts asserted by the other Party in its respective submission); (ii) publicly available information; and (iii) responses to the questions presented by the Parties’ counsel in accordance with the procedure described below:

- By 6 June 2015 factual questions that require clarification shall be posted in accordance with the procedure described at http://fdimoot.org/teams/clareqs.php

- The Parties shall then confer and seek to agree as soon as practicable on the responses to those questions. The Parties’ agreed responses shall be appended to the case file at http://fdimoot.org/problem.pdf

- By 15 August 2015 another set of factual questions may be posted in accordance with the same procedure referenced above. The responses to those questions shall be appended as described above.

6. The provisional timetable for the Proceedings shall be the following:
Main Stage of the Proceedings:

- Only one round of written submissions shall be made by the Parties (the Statement of Reply envisaged by LCIA Rules, Art 15.5 will be omitted). The Statement of Case is to be submitted to the Tribunal no later than 19 September 2015 (extending the 28-day time-limit of LCIA Rules, Art 15.3); the Statement of Defence is to be submitted to the Tribunal no later than 26 September 2015 (extending the 28-day time-limit of LCIA Rules, Art 15.4). The Tribunal may direct the Parties to submit Skeleton Briefs if it finds them necessary for the proper consideration of the issues in dispute.

- Considering that it is appropriate to hold hearings in the present case, both Parties are invited to attend the hearings scheduled for 29 October to 1 November 2015 at King’s College London, United Kingdom.

Costs Stage of the Proceedings: The Tribunal will schedule the costs stage of the proceedings and set the provisional timetable for its conduct in consultation with the Parties after the Tribunal issues the Award on Jurisdiction, Liability and Remedies.

7. In accordance with Article 15.10 of the LCIA Rules, the Tribunal has set aside the following dates for deliberation in respect of the issues to be canvassed at the Main Stage of the Proceedings: [dates intentionally omitted]

20 February 2015

/s/
Dr Sophie Miles
(Chairperson)

/s/                        /s/
Prof Yutaka Takahashi      Ms Andrea Cole
STATEMENT OF UNCONTESTED FACTS


2. Both Barancasia and Cogitatia were developing rapidly and implementing wide ranging social and economic reforms.

3. In 2002, Vasiuki LLC was incorporated under the laws of Cogitatia. Vasiuki has been engaged in the development, construction and operation of small scale fossil fuel and wind turbine generation facilities in Cogitatia and elsewhere in the region, including Barancasia.

4. Vasiuki’s operations were initially focused on small (generally 30-100kW) gas turbine and wind turbine installations, often used in remote applications not well served by conventional generation and transmission resources (offshore oil platforms, fish hatcheries, remote industrial facilities, etc.)⁴ For the first four years of its operations, it worked as a “turnkey” provider of engineering and plant construction. As it expanded its renewable energy activities, Vasiuki then sought to take advantage of various “green power” subsidies offered by governments to promote the development of renewable energy sources and to minimize carbon and NO₅ emissions. In late 2006, Vasiuki began operating its own wind farm properties.⁵

5. On 1 May 2004, Barancasia and Cogitatia joined the European Union (the “EU”). After this, Barancasia’s Government reviewed its Intra-European Union bilateral investment treaties (“BITs”) and concluded that they had become obsolete.

6. On 15 November 2006, Barancasia announced its intention to terminate its Intra-European BITs.⁶ On 11 December 2006, the Government of Barancasia formally resolved to terminate all its Intra-EU BITs.⁷

7. Since 2007, Barancasia has endeavoured to meet ambitious EU climate and energy targets,⁸ which have coincided with worries over security of energy supplies.

³ Annex No 1.
⁴ A listing of Vasiuki’s projects, including fuel source, project type, size, cost and selling price is found in the Vasiuki LLC Dataset. See Annex No. 9, pp. 1-3.
⁵ Projected capacity and tariffs are updated annually based on prior years’ experience and any known or expected tariff changes. Vasiuki’s actual results of operations, including both turnkey sales and wind farm operation, are in the Vasiuki LLC Dataset. See Annex No. 9, p. 5.
⁶ Annex No 5.
⁷ Annex No 6.
8. In 2007, aware that Barancasia was making strides in promoting renewable energy sources, Vasiuki began monitoring the Barancasian legislative process and researching photovoltaic solar vendors, technologies and suitable land plots in Barancasia.

9. On 29 June 2007, Barancasia notified the Federal Republic of Cogitatia of its intention to immediately terminate the Cogitatia-Barancasia BIT.9

10. On 28 September 2007, the Minister of Foreign Affairs of Cogitatia replied to Barancasia’s notification to terminate the BIT.10

11. On 28 November 2008, Barancasia removed the BIT with Cogitatia from its Ministry of Finance website, in particular, the section of the website listing valid and binding international agreements.

12. In May 2009, Vasiuki purchased land plots in Barancasia and decided to launch an experimental solar project, calling it “Alfa”.

13. On 1 January 2010, solar panels of the Alfa project were connected to the grid and became operational, but the project was operating at a heavy loss due to defects in the installation, delays and huge budget overruns.11 There appeared to be no future for the Alfa project, but Vasiuki managers became aware of the Barancasia’s proposed Law on Renewable Energy (“LRE”) in early 2010 and realized that government-backed green subsidies provided some hope for the Alfa project to survive.

14. In May 2010, Barancasia adopted the LRE, which aimed at encouraging the development of renewable energy technology, improving security and diversification of energy supply, as well as protecting the environment:

“The aim of this Law shall be to ensure sustainable development of the use of renewable energy sources, promote further development and introduction of innovative technologies, taking particular account of the international commitments of the Republic of Barancasia, the objectives of environmental protection, the reduction of dependence on fossil energy sources and energy imports, and other objectives of the state energy policy, subject to evaluation of the requirements of security and reliability of energy supply, also taking into account the principles of consumer protection and legitimate interests.

This Law shall establish a common system for the promotion of the consumption of energy from renewable sources in the Republic of Barancasia.”12

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9 Annex No 7.1.
10 Annex No 7.2.
11 Vasiuki’s projections for Alfa are included in of the Vasiuki LLC Dataset. See Annex No. 9, p. 5. A summary of the principal problems Vasiuki encountered once Alfa became operational is in that dataset, as well. See Annex No. 9, p. 6.
12 Article 1 of LRE, Annex No 2.
15. The LRE provided that the production of energy from renewable sources will be encouraged by state measures until the share of electricity generated from renewable sources amounts to no less than 20 percent as compared with the country’s gross consumption of energy.  

16. The LRE provided that the development of renewable energy sources, including photovoltaic power plants, would be encouraged by fixing general “feed-in tariffs” for renewable energy providers who receive a license from the national regulator – the Barancasia Energy Authority (“BEA”).

17. The law further guaranteed that the feed-in tariff announced and applicable at the time of the issuance of a license would apply for twelve years.

18. The LRE was implemented through the Regulation on the Support of Photovoltaic Sector adopted by the Government of Barancasia (“Photovoltaic Support Regulation”), which provided detailed procedures for licensing, calculation and applicability of the feed-in tariff.

19. The Photovoltaic Support Regulation provided that the feed-in tariff for photovoltaic power plants whose installed capacity does not exceed 30 kW was to be calculated and announced publicly by the BEA.

20. Pursuant to the Photovoltaic Support Regulation, the fixed feed-in tariff should be calculated taking into account a variety of factors.

21. On 1 July 2010 the BEA announced publicly the fixed feed-in tariff: 0.44 EUR/kWh. The calculations of the BEA were based on the premise that the average annual return on investment for licensed renewable projects should be 8%.

22. Vasiuki applied for a license for the Alfa project, but the BEA denied this request on 25 August 2010 because a fixed feed-in tariff would only be available for new projects, not for existing ones; nothing in LRE itself stated this limitation. Vasiuki assumed, based on its reading of the LRE and Regulations, that it should have been entitled to the fixed feed-in tariff.

23. On that same date, Vasiuki successfully obtained a license with a guaranteed 0.44 EUR/kWh tariff for its second photovoltaic project, Beta, which became operational on 30 January 2011. The tremendous know-how acquired by Vasiuki during the Alpha project allowed the Beta project to be implemented much faster and more efficiently.

24. On 21 November 2010, a Barancasian Foreign Ministry spokesperson responded to a press question about Barancasia’s approach for its Intra-EU BITs: “We have informally...”

13 Article 2 of LRE Annex No 2.
14 Article 3 of LRE Annex No 2.
15 Article 4 of LRE, Annex No 2.
16 Article 1 of Regulation, Annex No 3.
17 Article 2 of Regulation Annex No 3.
18 Project Beta performed in line with Vasiuki’s projections, which are set out in the Vasiuki LLC Dataset. See Annex No. 9, p. 4. The actual results are included in Vasiuki’s profit & loss summary in the Vasiuki LLC Dataset. See Annex No. 9, p. 5.
contacted the Ministry of Foreign Affairs of the Federal Republic of Cogitatia several times, most recently on 3 November 2010, in order to confirm the termination of the BIT, but have had no official response from Cogitatia.”

25. During 2011, a ground-breaking technology was developed making solar panels substantially cheaper to manufacture and dramatically reducing the costs of development. Substantial reduction of development costs meant that the profitability of investments made under the 0.44 EUR/kWh tariff increased dramatically.

26. The profitable opportunity presented by this development was not lost on the domestic and international business communities. The BEA received over 7000 applications for licenses to develop new photovoltaic power plants.

27. Vasiuki also decided, building on its efforts from the Alpha and Beta projects, to launch 12 more photovoltaic projects using the new and cheaper technology. Each separate 30 kW project was named after letters of Greek alphabet – Chi, Delta, Digama, Dzeta, Epsilon, Eta, Fi, Gama, Ipsilon, Jota, Kapa, Kopa. Vasiuki borrowed substantial sums of money from banks, acquired several land plots suitable for the development of photovoltaic power plants, and obtained construction permits. Vasiuki expected that it could replicate its “clustered wind farm” concept – a dozen separate generators feeding a single transmission interconnection – through this project and elsewhere in the future.

28. From the beginning of 2012, it became apparent to the Government of Barancasia that the LRE was a mistake and had created a “solar bubble”. The local media regularly highlighted the excessive profits of the solar developers and abundant possibilities for the abuse of the green subsidies scheme.

29. Barancasian public officials admitted that guaranteed profits for 12 years amounted to unfair windfall and that the whole renewable energy support scheme was unsustainable. They determined that it was not even physically possible to connect 7000 new users to the national electricity grid. Moreover, the renewable energy support system was financed from the state budget. If all applications for feed-in tariff were approved, up to 15% of state revenues would be diverted to finance solar feed-in tariffs, a higher share than public financial allocations to Barancasia’s educational system.

30. Furthermore, Barancasia could not borrow the necessary amounts for the maintenance of the existing renewable energy support system and the guaranteed feed-in tariffs, because that would require it to exceed its EU-mandated borrowing limits for the relevant years.

31. In an interview dated 5 May 2012, the Prime Minister of Barancasia discussed the government’s success terminating Intra-EU BITs. There is no record of any Cogitaitian Government response or comment to the interview.

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20 Vasiuki’s projections for the 12 follow-on solar projects are set out in the Vasiuki LLC Dataset. See Annex No. 9, p. 7.
21 Annex No 8.
32. In June 2012, outraged teachers of Barancasia organized national strikes demanding an increase of salaries and educational funding. Opinion polls suggested that the protesters’ argument that the teachers deserve better treatment than solar panels enjoyed overwhelming public support. The Government of Barancasia promised to review its legislation.

33. On 1 July 2012, Vasiuki obtained licenses from the BEA for the development of all 12 photovoltaic power plants with an approved 0.44 EUR/kWh feed-in tariff. It ordered solar panels from the producers and started the construction of photovoltaic power plants based on the new technology.

34. On 3 January 2013, following private hearings that had taken place in November 2012 before the Barancasian Parliamentary Energy Committee, in which only specially invited representatives of industry and certain stakeholder groups were called to present testimony, the Barancasian Parliament adopted an amendment to Article 4 of LRE:

“*The feed-in tariffs set by the Barancasia Energy Authority may be reviewed annually for adjustment taking into account the costs of the best available technology.*”

35. Subsequently, the BEA calculated and announced the new fixed feed-in tariffs: 0.15 EUR/kWh, applicable from 1 January 2013.

36. By that time Vasiuki had made considerable investments of its own and borrowed money into the 12 new solar power plant projects: bought land plots, hired personnel and paid considerable advances for equipment, which was supposed to be shipped on 31 January 2013.

[An important date is missing in the facts. There will be bonus points for the *first* team to ask for it in a clarification request]

22 Amendment of Article 4 of LRE, Annex No 4.
23 Vasiuki’s spending on the plan is set out in the *report of its damages expert, Prof. Marko Ković*. This report is challenged by the *report of Barancasia’s damages expert Ms. Juanita Priemo*, a Chartered Accountant in Barancasia.
ANNEX NO. 1

AGREEMENT BETWEEN THE REPUBLIC OF BARANCASIA AND THE FEDERAL REPUBLIC COGITATIA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Republic of Barancasia and the Federal Republic of Cogitatia (hereinafter referred to as the “Contracting Parties”),

Desiring to develop economic co-operation to the mutual benefit of both Contracting Parties,

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party, and

Conscious that the promotion and reciprocal protection of investments in terms of the present Agreements stimulates the business initiatives in this field,

Have agreed as follows:

Article 1
Definitions

For the purposes of this Agreement:

1. The term “investment” shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include, in particular, though not exclusively:

(a) movable and immovable property as well as any other property rights, such as mortgages, liens or pledges;

(b) shares, stocks and debentures of companies or any other form of participation in a company;

(c) claims to money or to any performance under contract having a financial value associated with an investment;

(d) intellectual property rights, such as trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill associated with an investment;

(e) any right conferred by laws or under contract and any licenses and permits pursuant to laws, including the concessions to search for, extract, cultivate or exploit natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investment.
2. The term “**investor**” shall mean any natural or legal person of one Contracting Party who invests in the territory of the other Contracting Party, and for the purpose of this definition:
   (a) The term “natural person” shall mean any natural person having the nationality of either Contracting Party in accordance with its laws.
   (b) The term “legal person” shall mean, with respect to either Contracting Party, any entity incorporated or constituted in accordance with, and recognized as legal person by its laws, having the permanent seat in the territory of that Contracting Party.
3. The term “**returns**” shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest related to loans, capital gains, shares, dividends, royalties or fees.
4. The term “**territory**” shall mean:
   (a) in respect of the Republic of Barancasia, the territory of the Republic of Barancasia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.
   (b) in respect of the Federal Republic of Cogitatia, the territory of the Federal Republic of Cogitatia over which it exercises sovereignty, sovereign rights and jurisdiction in accordance with international law.

**Article 2**

**Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.
2. Investments of investors of either Contracting Party shall at all times be accorded fair equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party.
3. Each Contracting Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Contracting Party

**Article 3**

**National and Most-Favoured-Nation Treatment**

1. Once a Contracting Party has admitted an investment in its territory, in accordance with its laws and regulations, it shall accord to investments and returns of investors of the other Contracting Party treatment which is fair and equitable and not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is more favourable.
2. Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their
investment, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable.

3. The provisions of paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) any customs union or free trade area or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional cooperation to which either of the Contracting Parties is or may become a party;

(b) any international agreement or arrangement relating wholly or mainly to taxation.

4. The treatment referred to in paragraphs 1 and 2 of this Article will be granted on the basis of reciprocity.

Article 4
Compensation for Losses

1. Where investments of investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events attributable to authorities in the territory of the other Contracting Party, such investors shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

2. Without prejudice to paragraph 1 of this Article investors of one Contracting Party who in any of the events referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by the forces or authorities of the latter Contracting Party,

(b) the state of necessity of the latter Contracting Party, or

(c) destruction of their property by the forces or authorities of the latter Contracting Party which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payment shall be freely transferable in a freely convertible currency without delay.

Article 5
Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated of subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”) in the territory of the other Contracting Party.
except for a public purpose. The expropriation shall be carried out under due process of law, on a non-discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, whichever is the earlier. The compensation shall carry interest (based on the 6-month LIBOR rate applicable on the date of expropriation) from the date of expropriation until the date of payment, be made without undue delay, be effectively realizable and be freely transferable in a freely convertible currency.

2. The investor affected shall have a right to prompt review by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

**Article 6**

**Transfers**

1. The Contracting Party shall guarantee the transfer of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular, though not exclusively:

   (a) capital and additional amounts to maintain or increase the investment;
   
   (b) profits, interest, dividends and other current income;
   
   (c) funds in repayment of loans connected with an investment;
   
   (d) royalties and other fees resulting from license rights and from commercial, administrative or technical assistance;
   
   (e) proceeds from the partial or total sale or liquidation of the investments;
   
   (f) compensation as provided in Articles 4 and 5 of this Agreement;
   
   (g) wages and other kind of remuneration accruing to nationals of the other Contracting Party who were permitted to work in connection with an investment in the territory of the other Contracting Party.

2. For the purpose of this Agreement, exchange rate shall be the prevailing exchange rate for current transaction applicable at the date of transfer, unless otherwise agreed by the parties to the transaction.

3. Transfers shall be considered to have been made without any “undue delay” in the sense of paragraph (1) of this Article when they have been made within the period normally necessary for the completion of the transfer. Such period shall under no circumstances exceed three months.

**Article 7**

**Subrogation**
1. If a Contracting Party or its authorised agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its authorised agency, as well as, that the former Contracting Party or its authorised agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

Article 8
Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

4. Any dispute which may arise between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of that other Contracting Party shall be settled, if possible, by negotiations between the parties to the dispute.

5. If any dispute between an investor of one Contracting Party and the other Contracting Party cannot be thus settled within a period of six months from the written notification of a claim, the investor shall be entitled to submit the case, at his choice, for settlement to:
   (a) a court of competent jurisdiction or an administrative tribunal of the Contracting Party which is the party to the dispute, or
   (b) the International Centre for Settlement of Investment Disputes (ICSID) having regard to the applicable provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington D.C. on 18 March 1965, or
   (c) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules, or
   (d) the London Court of International Arbitration for arbitration under its Rules.

6. The arbitral awards shall be final and binding on both parties to the dispute and shall be enforceable in accordance with the domestic legislation.

Article 9
Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultations or negotiations.

2. If the dispute cannot be thus settled within six months, it shall upon the request of either Contracting Party be submitted to an Arbitral Tribunal in accordance with the provisions of this Article.
3. The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration each Contracting Party shall appoint one member of the Tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the “Chairman”). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If the President of the Court is a national of any Party to the dispute or of a State with which one of the Contracting Parties does not maintain diplomatic relations or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointments. If the Vice-President also happens to be a national of either Contracting Party or of a State with which one of the Contracting Parties does not maintain diplomatic relations or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party or of a State with which one of the Contracting Parties does not maintain diplomatic relations shall be invited to make the appointments.

5. The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

**Article 10**

**Application of Other Rules and Special Commitments**

1. When a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

2. If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of a contract is more favourable than that accorded by the Agreement, the latter shall be accorded.

**Article 11**

**Essential Security Interests**

Nothing in this Agreement shall be construed to prevent either Contracting Party from taking measures to fulfil its obligations with respect to the maintenance of international peace or security.
Article 12
Applicability of this Agreement

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the investments existing in accordance with the laws of the Contracting Parties on the date this Agreement came into force. However, the provisions of this Agreement shall not apply to claims arising out of events which occurred, or to claims which had been settled, prior to its entry into force.

Article 13
Entry into Force, Duration and Termination

1. This Agreement shall enter into force on the date of the last written notification through diplomatic channels of the fulfilment by the Contracting Parties of all the necessary internal procedures for bringing this Agreement into force.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of its termination.

IN WITNESS THEREOF, the undersigned duly authorised have signed this Agreement.

DONE in duplicate at Barancasia this day of December 31, 1998, in Barancasian, Cogitatian and English languages, all texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

For the Republic of Barancasia

[intentionally omitted]
Minister of Finance

For the Federal Republic of Cogitatia

[intentionally omitted]
Minister of Finance
Article 1. Purpose and Aim of the Law

1. The aim of this Law on Renewable Energy (the “LRE”) shall be to ensure sustainable development of the use of renewable energy sources, promote further development and introduction of innovative technologies, taking particular account of the international commitments of the Republic of Barancasia, the objectives of environmental protection, reduction of dependence on fossil energy sources and energy imports, and other objectives of the state energy policy, subject to evaluation of the requirements of security and reliability of energy supply, also taking into account the principles of consumer protection and legitimate interests.

2. This LRE shall establish a common system for the promotion of the consumption of energy from renewable sources in the Republic of Barancasia.

3. Development of renewable energy sources for electricity production shall be among the strategic goals of state energy policy.

Article 2. Target Share of the Renewable Energy Sources in Energy Mix

The production of energy from renewable sources shall be incentivized by state measures until the share of electricity generated from renewable sources amounts to no less than 20 percent as compared with the country’s gross consumption of energy. An assessment shall be made each year as of December 31st to determine the percentage of electricity generated from renewable sources.


The development of renewable energy sources, including photovoltaic power plants, shall be encouraged by fixing general feed-in tariffs to be provided for the purchase of energy from licensed renewable energy producers.

Article 4. Duration of Support Measures

The feed-in tariff announced by the Barancasia Energy Authority (“BEA”) and applicable at the time of issuance of a license will apply for twelve years.

Article 5. Issuance of Licenses for the Development of Capacity of Electricity Production from Photovoltaic Power Plants

Existing capacity of electricity production from renewable energy sources may be developed or new capacity of electricity production from renewable energy sources at a new facility may be installed only upon obtaining a license from the BEA.
Article 55. Implementation of the Law

This LRE shall be implemented through the Regulation on the Support of Photovoltaic Sector adopted by the Government of Barancasia.
ANNEX NO. 3
THE REPUBLIC OF BARANCIASIA
REGULATION ON
THE SUPPORT OF PHOTOVOLTAIC SECTOR
1 May 2010 No. XI-1375

Article 1. Competence of the National Regulator
The feed-in tariffs for photovoltaic power plants whose installed capacity does not exceed 30 kW are calculated and announced publicly by the national regulator: the Barancasia Energy Authority.

Article 2. Calculation of the Fixed Feed-in Tariff
The general fixed feed-in tariff should be calculated taking into account:
1) average investment in equipment of power plants and their connection to electricity grids;
2) average annual quantity of electricity produced at power plants and submitted to electricity grids per one unit of the installed capacity of a power plant;
3) the useful life of power plants;
4) the period of commissioning of power plants and allocation of investment during this period;
5) the forecasted variable costs of operation of power plants, their variation over the useful life of the power plants;
6) the duration of fixed feed-in tariffs specified by the Law;
7) annual average capital costs per one unit of the installed capacity of a power plant, calculated on the basis of the necessary investment per one unit of the installed capacity of the power plant;
8) the discount rate;
9) the ratio of a project’s own funds to borrowed funds;
10) return on investment of the producer’s own funds;
11) the interest on loans to be imposed by banks;
12) other expected income over the useful life of power plants, directly related to the operation of a power plant;
13) the costs of balancing the production of electricity, if such costs are provided for.

Article 3. The Application of the Feed-in Tariff
A renewable energy provider, upon obtaining a license for the development of existing or new photovoltaic capacity, is entitled to the feed-in tariff calculated and announced by the Barancasia Energy Authority for the duration of the period specified by the Law on Renewable Energy.

<...>
ANNEX NO. 4
THE REPUBLIC OF BARANCASIA
LAW ON THE AMENDMENT OF ARTICLE 4 OF THE LAW ON RENEWABLE ENERGY
2013 January 3 No. XIII-1987

Article 1. Amendment of Article 4 of the Law on Renewable Energy

Article 4 of the Law on Renewable Energy is amended as follows:

“The feed-in tariffs set by the Barancasia Energy Authority may be reviewed annually for adjustment taking into account the costs of the best available technology.”

<…>
(UN)EXPECTED SHIFT WITHIN THE FOREIGN DIRECT INVESTMENT POLICY OF THE REPUBLIC OF BARANCASIA

Q: “Ms. Prime Minister, could you confirm whether investors can expect any shifts within the foreign direct investment policy of the Republic of Barancasia?”

A: “The issue of foreign direct investment policy was highly debated within our government. At this point I can confirm that the Republic of Barancasia is ready to reconsider its foreign direct investment policy. As the first step in the modification of policy, our government will terminate all its currently effective Intra-European BITs as there is no more necessity for these instruments of public international law within the legal framework of the new European Union.”

Q: [intentionally omitted]
ANNEX NO. 6

Government Decision dated December 11, 2006

GOVERNMENT OF THE REPUBLIC OF BARANCASIA

RESOLUTION

OF THE GOVERNMENT OF THE REPUBLIC OF BARANCASIA
dated December 11, 2006 No. 1800

Regarding the proposal for approval of the procedure of the Republic of Barancasia concerning
the termination of the bilateral investment treaties concluded by the Republic of Barancasia
with members of the European Union

The Government:

I. Agrees with the procedure of the Republic of Barancasia for the termination of the bilateral
investment treaties concluded between the Republic of Barancasia and members of the European
Union, mentioned in the appendix below;

II. Assigns

1. To the Minister of Foreign Affairs to commence in cooperation with the Ministry of Finance
and respective parties of particular bilateral investment treaties meetings regarding the
termination of agreements mentioned in the appendix below, preferably by reaching agreement
on termination.

2. To the Ministers of Finance and Foreign Affairs the duty to notify the government about
outcomes of meetings with respective parties of particular bilateral investment treaties on these
terminations and to submit to the government by [intentionally omitted] proposal for further
procedure of the Republic of Barancasia for the unilateral termination of particular bilateral
investment treaties which cannot be terminated by the agreement.

Prime Minister

[intentionally omitted]
GOVERNMENT OF THE REPUBLIC OF BARANCASIA

Appendix to the Government Resolution
dated December 11, 2006 No. 1800

Bilateral Investment Treaties concluded by the Republic of Barancasia with Members of the European Union and Indicated for Termination

1. Agreement for the Promotion and Reciprocal Protection of Investments concluded between the Federal Republic of Cogitatia and the Republic of Barancasia on December 31, 1998;

2. Agreement for the Promotion and Reciprocal Protection of Investments concluded between the Republic of Barancasia and Federal Republic of Germany on July 1, 1995;

3. Agreement for the Promotion and Reciprocal Protection of Investments concluded between the Republic of Barancasia and the French Republic on May 15, 2001;

4. Agreement for the Promotion and Reciprocal Protection of Investments concluded between the Republic of Barancasia and the Republic of Austria on March 20, 1997; and

5. Agreement for the Promotion and Reciprocal Protection of Investments concluded between the Republic of Barancasia and the Kingdom of the Netherlands on June 15, 1996.
The Government:


Prime Minister

[intentionally omitted]
MINISTRY OF FOREIGN AFFAIRS OF THE FEDERAL REPUBLIC OF COGITATIA

NOTIFICATION

OF MINISTRY OF FOREIGN AFFAIRS OF THE FEDERAL REPUBLIC OF COGITATIA

dated September 28, 2007 No. 154

Regarding the notification of the Republic of Barancasia dated June 29, 2007 No. 53 on termination of the Agreement for the Promotion and Reciprocal Protection of Investments concluded between the Republic of Barancasia and the Federal Republic of Cogitatia from December 31, 1998,

The Ministry of Foreign Affairs:

I. **Confirms** that it received on July 10, 2007 the notification of the Republic of Barancasia dated June 29, 2007 on termination of the Agreement for the Promotion and Reciprocal Protection of Investments concluded between the Republic of Barancasia and the Federal Republic of Cogitatia on December 31, 1998.

Minister of Foreign Affairs

[intentionally omitted]
IS OUR FOREIGN DIRECT INVESTMENT POLICY CALLING FOR CHANGE?

Q: “Ms. Prime Minister, how would you describe outcomes of the foreign direct investment policy which was strongly influenced by actions taken by your government since 2006?”

A: “Our foreign direct investment policy has been a tremendous success, which undeniably promoted the economic growth of the country. Our country was able to attract various types of foreign direct investment. Nevertheless, I would like mention another aspect and that is our success within the diplomatic field. We stated late in 2006 that all Intra-European BITs would be terminated. Today I can confirm that we have successfully reached this threshold.”

Q: [intentionally omitted]

ANNEX NO. 9

VASIUKI LLC DATASET

link to xls file: [http://fdimoot.org/VasiukiLLCDataset.xlsx](http://fdimoot.org/VasiukiLLCDataset.xlsx)

<table>
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<td>Turnkey Sale</td>
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<td>€79.650</td>
<td>€99.100</td>
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<tr>
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**2004 TOTAL**

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**2005 TOTAL**

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**2006 TOTAL**

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**2007**

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2007 TOTAL: €2,688,625 - €1,692,499

2008 TOTAL: €847,253 - €428,346

2009 TOTAL: €1,435,768 - €649,735
2010 Wind Turnkey Sale Mistral 1 60 kW €245.122 €289.900
2010 Wind Turnkey Sale Mistral 1 60 kW €247.360 €289.900
2010 Wind Turnkey Sale Mistral 1 60 kW €232.990 €289.900
2010 Gas Turnkey Sale Livorno 75 kW €83.309 €94.244

2010 TOTAL

€808.781 €963.944

2010 Wind Turnkey Sale Viento Constante-1 80 kW €363.789 €422.344
2010 Solar Operated Beta 30 kW €128.965
2010 Gas Turnkey Sale Livorno - 2 75 kW €85.299 €96.505
2010 Wind Turnkey Sale Viento Constante-2 80 kW €365.873 €422.677

2011 TOTAL

€943.926 €941.526

Annual Projected Revenue From Vasiuki LLC Owned/Operated Generating Projects

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<td>90</td>
<td>€380.529</td>
<td>44,1%</td>
<td>€0,1951</td>
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2015 FDI Moot Problem / 44
<table>
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<tr>
<th>Year</th>
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<td>Alfa</td>
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<td>21,0%</td>
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<td>Wind</td>
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<td>80</td>
<td>€357,833</td>
<td>44,8%</td>
<td>€0,1774</td>
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**Vasiuki LLC Historic Statements of Income (Loss) Before Tax**

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<td>2006</td>
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</tr>
<tr>
<td>2011</td>
<td></td>
<td>€941,526</td>
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<td>2011</td>
<td>Maintenance Contract Revenues</td>
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<td>2011</td>
<td>Electricity Sales</td>
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<td>426,176</td>
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<td>2011</td>
<td></td>
<td>431,583</td>
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<td></td>
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<td>----------------</td>
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<tr>
<td></td>
<td>119</td>
<td>606</td>
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**Total Revenues**

**Expenses**

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<tr>
<th></th>
<th>€159.</th>
<th>€829.</th>
<th>€1.730.</th>
<th>€1.046.</th>
<th>€2.294.</th>
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<th>€559.3</th>
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<tr>
<td>Cost of Turnkey Plants</td>
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<td>436</td>
<td>678</td>
<td>496</td>
<td>398</td>
<td>85</td>
<td>45</td>
<td>81</td>
<td>53</td>
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<tr>
<td>Cost of Maintenance Contracts</td>
<td>45.76</td>
<td>127.93</td>
<td>178.32</td>
<td>286.55</td>
<td>355.10</td>
<td>372.45</td>
<td>398.76</td>
<td>437.80</td>
<td>475.93</td>
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<td>Depreciation Expense on Owned Plants</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>19.004</td>
<td>79.715</td>
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<tr>
<td>Operating Costs of Owned Plants</td>
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<td>-</td>
<td>-</td>
<td>8.362</td>
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<td>44.164</td>
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<td>63.445</td>
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**Total Operating Expenses**

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<th>€875.</th>
<th>€1.858.</th>
<th>€1.224.</th>
<th>€2.608.</th>
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<tr>
<td></td>
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<td>572</td>
<td>368</td>
<td>997</td>
<td>417</td>
<td>290</td>
<td>71</td>
<td>747</td>
<td>223</td>
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**Operating Margin**

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<th>€39.7</th>
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<th>€312.6</th>
<th>€217.2</th>
<th>€433.5</th>
<th>€389.7</th>
<th>€256.8</th>
<th>€353.2</th>
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<tr>
<td></td>
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<td>034</td>
<td>43</td>
<td>67</td>
<td>47</td>
<td>89</td>
<td>59</td>
<td>32</td>
<td>55</td>
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**Other Expenses**

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<th></th>
<th>€78.10</th>
<th>€133.2</th>
<th>€165.57</th>
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<th>€255.52</th>
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<td>Selling, General &amp; Admin Cost</td>
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<td>45</td>
<td>8</td>
<td>4</td>
<td>0</td>
<td>9</td>
<td>1</td>
<td>7</td>
<td>3</td>
<td>8</td>
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<tr>
<td>Interest Expense, net</td>
<td>4.183</td>
<td>9</td>
<td>46.459</td>
<td>30.625</td>
<td>74.712</td>
<td>88.465</td>
<td>72.838</td>
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**Pre-Tax Income**

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<th>€48.1</th>
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<th>€37.89</th>
<th>€116.5</th>
<th>€45.79</th>
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<td>00</td>
<td>05</td>
<td>8</td>
<td>14</td>
<td>5</td>
<td>60</td>
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Project Alfa Problems

Construction Cost Overrun -

Expected Cost/kW Installed €4.100

Project Size 30

Expected Project Cost €123,000

Actual Project Cost €187,550

Delay & Performance Problems -

Expected Capacity 21.0%

Actual Capacity Achieved 12.1%

Tariff Shortfall -

Expected Tariff / kWh €0.4400

Actual Tariff / kWh €0.1989

Vasiuki LLC Projected Photovoltaic Generating Projects

<table>
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<th>Year</th>
<th>Fuel</th>
<th>Project Type</th>
<th>Project Name</th>
<th>Project Size (kW)</th>
<th>Project Cost (€)</th>
<th>Project Capacity</th>
<th>Tariff €/kWh</th>
<th>Projected Rev (€)</th>
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</thead>
<tbody>
<tr>
<td>2012</td>
<td>Solar</td>
<td>Operated Vasiuki</td>
<td>Chi</td>
<td>30</td>
<td>33,000</td>
<td>21.0%</td>
<td>0.4400</td>
<td>24,283</td>
</tr>
<tr>
<td>2012</td>
<td>Solar</td>
<td>Operated Vasiuki</td>
<td>Delta</td>
<td>30</td>
<td>33,000</td>
<td>21.0%</td>
<td>0.4400</td>
<td>24,283</td>
</tr>
<tr>
<td>2012</td>
<td>Solar</td>
<td>Operated Vasiuki</td>
<td>Digama</td>
<td>30</td>
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<td>24,283</td>
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<tr>
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<td>Type</td>
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<tr>
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<td>21,0%</td>
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<td>€24.283</td>
<td></td>
</tr>
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</table>

**TOTAL EXPECTED COST**

€ 405.962

**TOTAL EXPECTED ANNUAL REVENUE**

€ 291.393

---

**Project Financing**

- 50% from debt at 5%
- 50% from equity at 12%

Tax Rate 20%

WACC = 8,00%
EXECUTIVE SUMMARY

1. My name is Marko Kovič. I am a Professor of Economics at the University of Cogitatia, where I teach courses and conduct research on macroeconomics and the economics of utility regulation. I received my Ph.D. in Economics from the University of Cogitatia in 2001.

2. I have been instructed by counsel for the claimant, Vasiuki LLC (“Claimant” or “Vasiuki”) in its arbitral action against the Republic of Barancasia (“Respondent” or “Barancasia”). I have not previously been instructed by either counsel or party to this action, nor do I have any prior relationship with any of the arbitrators hearing the matter. I express opinions herein on matters that are within my expertise, and I expressly disclaim any legal opinions on the matter.

3. I have reviewed the historic performance of Claimant, as well as its projected results from the proposed development of the Barancasia Solar Installation project (the “Project”). I have discussed these data with Claimant’s management, and I have undertaken independent research on the law and regulation of renewable energy in Barancasia. My opinions are taken in my capacity as a regulatory economist.

4. Vasiuki was a successful developer of electric projects spanning multiple modalities, including gas turbines, wind and solar energy. It had a demonstrated track record of profitability and regularly prepared forecasts of its potential results. Claimant’s projected results for the Project represent the best evidence of its expectations, and, accordingly, I have based much of my work on those projections.

5. I have been instructed that Claimant has been harmed by the Respondent’s actions in three distinct ways. First, it developed its first solar plants in Barancasia – the Alfa Project (“Alfa”) and the Beta Project (“Beta”) – only to find that Alfa was denied the €0.44/kWh tariff set under the Barancasia Law on Renewable Energy (the “Energy Law”), and that Beta was allowed the tariff for only two years of the promised twelve. Second, Vasiuki made considerable investment in land and equipment that has been made much less valuable by Barancasia’s 1 January 2013 decrease in the feed-in tariff from
€0.44/kWh to €0.15/kWh, a decrease of nearly two-thirds. Indeed, I am informed by Claimant that it may abandon the currently uncompleted portion of the Project due to the now unattractive economics. Third, Barancasia has caused Vasiuki to lose the profits that it would have earned based on the €0.44/kWh feed-in tariff, as well as any potential profits on further similar developments. I address each of these in detail below.

6. Claimant brought Alfa on line in January 2010. In the first year of operation, the tariff was €0.1989/kWh. Construction difficulties resulted in cost overruns on the construction of Alfa, as well as operational challenges upon start-up. Those problems have been resolved, and Vasiuki has seen Alfa’s capacity improve at a rate of 2.2% per year, which I project will result in it meeting its design operating capacity of 21% by 2013.

7. Pricing of that energy is another matter entirely. When the Energy Law was implemented, a tariff of €0.44/kWh was set for photovoltaic solar installations as of 1 July 2010. Claimant, however, was denied this rate, and has suffered from the implementation of a rate less than half that of other solar providers. I calculate the damages to Vasiuki in Annex 1(A) to this report. Since the operating costs of photovoltaic installations are independent of the price of their electricity, I do not need to consider costs in that calculation. The measure of harm is the difference between the tariff of €0.44/kWh that others have been allowed, and the allowed rate for Alfa. The net present value of that damage totals €120,621.

8. Beta came on stream on 1 January 2011 and enjoyed the €0.44/kWh tariff for the first two years. But effective 1 January 2013, Barancasia slashed the tariff to €0.15/kWh. The costs of Beta continue unabated, but the revenues to cover those costs have been severely impacted. My calculation, set out in Annex 1(B), is that the net present value of Vasiuki’s loss totals €123,261.

9. Claimant’s second head of damage is the wasted investment in land, photovoltaic panels and related equipment acquired for the project in reliance on the Energy Law fixing tariffs for a period of twelve years. In actuality, the agreed €0.44/kWh tariff was maintained by Barancasia for only six months – hardly enough time for Claimant to recoup its substantial investment or turn a profit. I have summarized Claimant’s out-of-pocket reliance expenditures, which total €690,056, in Annex 2.

10. An alternative to the second head of damage is to assume that Vasiuki completes the Project, but is forced to accept a €0.15/kWh tariff instead of the €0.44/kWh tariff.
provided for in the Energy Law. Again, since in this scenario the plants would be completed and operated, only the revenue calculation is affected. The costs remain constant. I have calculated the harm to Claimant in Annex 3. The net present value of that damage amounts to €1,427,500.

11. In addition to these damages, we should consider the impact of the change to the tariff structure of the Energy Law on Claimant’s future development of solar arrays. I am informed by Claimant’s management that it expected to bring additional developments of a comparable size to the Project on line approximately every two years during the twelve-year duration of the tariff period under the Energy Law. Those future projects, like the Project, will suffer reduced revenues as a result of the change in tariff. I have calculated damages totaling €765,835 for this in Annex 4.

12. Finally, since many of the damages have occurred in the past, interest should be added to make the Claimant whole for its damages. Just as future amounts must be discounted to avoid over-compensation, past amounts must be augmented to avoid the reverse. And since some of those damages might receive both discounting and interest, it is important to use the same rate for both calculations to avoid what has been termed an “Invalid Round Trip.”24 I have used Claimant’s Weighted Average Cost of Capital (“WACC”) of 8% in discounting future amounts, and believe that the same WACC rate should be used by the Tribunal as the interest rate on past sums.

I declare that the foregoing is in accordance with my sincere belief.

[Signed by expert]______________________

ANNEXES TO KOVIČ EXPERT REPORT.XLSX

24 Various citations to supporting literature omitted.
EXECUTIVE SUMMARY

1. My name is Juanita Priemo. I am Chartered Accountant under the laws of the Republic of Barancasia “(Barancasia” or “Respondent”) and a partner in a major accounting and auditing firm in the capital of Barancasia, where my work includes auditing the financial statements of various companies, including firms engaged in the production and distribution of electric energy. I hold a Master of Business Administration degree from the University of Barancasia and have practiced for thirty years as an auditor, consultant and expert in damages analysis and valuation. I serve as an Adjunct Professor of Accounting and Finance at the University of Barancasia.

2. I have been instructed by counsel for the Respondent in connection with an arbitration brought against Barancasia by claimant, Vasiuki LLC (“Claimant” or “Vasiuki”) alleging various losses resulting from alleged violations of the investment treaty between Barancasia and Cogitatia. I have performed my work in accordance with the professional standards of the Barancasia Institute of Chartered Accountants, which include standards for ethical guidance and for acquiring sufficient evidentiary support for my opinions.

3. I have not previously taken instruction from either counsel or party to this action, nor do I have any prior relationship with any of the arbitrators hearing the matter. I express opinions herein on matters that are within my expertise, and I expressly disclaim any legal opinions on the matter.

4. I have reviewed the expert report of Claimant’s expert, Marko Kovič (the “Kovič Report”), as well as the historic performance of Claimant and its projected results from the proposed – but uncompleted – development of the Barancasia Solar Installation project (the “Project”).

5. Vasiuki was a young developer of electric projects, mostly focused on the turnkey sale of gas turbines and wind projects. It had fairly recently begun developing wind energy projects for its own account. Its entry into the solar market in Barancasia was its first attempt to develop solar energy projects. This was a new line of business for Vasiuki. As
such, it is not surprising to me to see that its early projections proved to be substantially over-optimistic.

6. The Kovič Report calculates several heads of damage, and sets out alternative valuation theories for one of them. I have been instructed by Respondent to provide my views on each of those calculations and, where there is sufficient supporting evidence, to provide my own calculations.

7. Claimant’s initial damages claim is for its Alfa Project, which predates the 2010 Barancasia Law on Renewable Energy (“Energy Law”), having been brought on line in 2009. Professor Kovič calculates a loss of €120,621 resulting from Barancasia not allowing Alfa to take advantage of the €0.44/kWh feed-in tariff set by the Energy Law. I have several problems with Professor Kovič’s calculations. The fundamental problem is that Project Alfa was not undertaken in response to the Energy Law, which I am instructed was passed in order to provide incentives for subsequent photovoltaic development, not as a subsidy for pre-existing projects. Second, Vasiuki’s own documents show that it was not able to accurately forecast the performance of the Alfa Project. Vasiuki was unable to control the construction costs, resulting in an overrun of more than 50% of the estimated project cost.\(^\text{25}\) In addition, the solar installation’s performance was poor, resulting in it operating at only 12.1% of design capacity, versus Claimant’s projection of 21%.\(^\text{26}\) In the face of these significant difficulties, it is difficult to see how Professor Kovič supports a calculation that simply assumes the documented problems will go away quickly, and the unit will become a reliably profitable operation, even if the Tribunal were to agree with Claimant that the tariff under the Energy Law should apply retroactively.

8. Professor Kovič makes a similar claim for Project Beta. Project Beta commenced operation on 1 January 2011, and was given a license under the Energy Law. As such, the €0.44/kWh tariff was applied to the project upon entering commercial service. The amendment of the Energy Law as of 1 January 2013 reduced the tariff applicable to Project Beta to €0.15/kWh. I express no opinion regarding whether the application of this new tariff to Project Beta violated any law or treaty provision. For purposes of my

\(^{25}\) See Vasiuki LLC Dataset at tab 4.

\(^{26}\) Ibid.
analysis, I have been instructed to calculate Claimant’s damages as if such a violation were found to have occurred.

9. Professor Kovič’s assumption that the revenue figure would be the only impact is a reasonable one. The annual operating costs of photovoltaic installations are very low and tend to be fixed costs, based on my experience in auditing such companies. However, Professor Kovič has committed a fundamental error in his calculation of net present value in his Annex 1(B). Professor Kovič has discounted the cash flows to equity at the weighted average cost of capital (“WACC”), which is a rate that includes both debt and equity. The correct calculation would discount the cash flows to equity at Claimant’s cost of equity, which its documentation shows is 12%, not 8%.27 I have corrected that error in Annex 1 to this report. If the Tribunal determines that Claimant is entitled to damages for the tariff change on Project Beta, those damages would be no more than €104,402.28

10. Claimant’s next claim is for what Professor Kovič calls “wasted investment” in land, photovoltaic panels and related equipment. The Kovič Report sets out alternative calculations for this head of damages: (a) €690,056 for the cost of land and equipment; or (b) €1,427,500 for lost profits resulting from the change in the feed-in tariff under the Energy Law.

11. Professor Kovič’s first alternative presupposes that there is no use for any of the expenditure – i.e., that the land will be worthless and unsaleable, and the equipment will simply be thrown away. In actuality, it is difficult to imagine that either of these is true. The land had value before Vasiuki acquired it, and it will presumably continue to have value into the future. The equipment can likely be used for another solar venture or sold to someone who wishes to make such investment. In short, there appears to be significant potential mitigation, which Professor Kovič has simply ignored.

12. Professor Kovič’s alternative is to assume that Vasiuki completes the Project with no construction problems, delays or overruns, and then subsequently operates all of the solar arrays without any of the demonstrated operational problems that plagued the Alfa Project. I acknowledge that Vasiuki’s Project Beta performed much better than its Project Alfa, and my research confirms that the 21% capacity assumption is a normal capacity

27 See Vasiuki LLC Dataset at tab 5.
28 I note that Project Beta operated at a higher capacity rate than anticipated in 2011. Damages would be reduced slightly if the design capacity of 21% were used, rather than the actual 2011 operating rate of 21.8%.
rate for photovoltaics. But I remain concerned that Professor Kovič may be extrapolating too far from such a small base of successful operation as is present for Project Beta.

13. In addition, Professor Kovič has again discounted the cash flows to equity at the weighted average cost of capital. I have corrected that error in Annex 2 to this report. If the Tribunal is inclined to award Claimant lost profits on the Project based on the change in the feed-in tariff, those lost profits would be no more than €1,238,697. This figure assumes that Claimant will continue the Project build out on schedule, and that the units will operate through the year 2023 at a capacity of 21%.

14. Finally, Professor Kovič has assumed that several additional installations would be undertaken by Claimant, resulting in an additional €765,835 of damages. I have found no documentation that would support Claimant’s alleged plans for such expansion. Specifically, I have seen nothing in the business plan section of the Vasiuki LLC Dataset, nor have I found evidence that any additional land has been acquired, that any feasibility studies have been performed, that equipment has been sourced and ordered, etc. Under the professional standards of the Barancasia Institute of Chartered Accountants, a Chartered Accountant must have sufficient relevant evidentiary support for his or her opinions. No such supporting evidence has been proffered by Claimant or by its expert, and as a result, I cannot accept Professor Kovič’s calculation as anything other than unsupported speculation.

15. Professor Kovič suggests that interest should be added to any damages that may be awarded, calculated at Claimants WACC of 8%. However, as pointed out above, Professor Kovič should have used a 12% rate for discounting alleged future losses. Presumably, then, he would ask the Tribunal to increase the interest rate on any award to 12%. Counsel for Barancasia has instructed me that argumentation as to the appropriate rate of interest under Barancasian law is not within my remit and, accordingly, I express no further views on this topic.

I declare that the foregoing is in accordance with my sincere belief.

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29 Citation to professional standards omitted.
ANNEXES TO PRIEMO EXPERT REPORT.XLSX
LONDON COURT OF INTERNATIONAL ARBITRATION

Vasiuki LLC
v.
Republic of Barancasia

LCIA Arbitration No 00/2014

Procedural Order No 2

Adopted on 20 June 2015

Members of the Tribunal:
Chairperson: Dr Sophie Miles
Prof Yutaka. Takahashi
Ms Andrea Cole

For the Claimant
Counsel for Vasiuki LLC

For the Respondent
Counsel for the Federal Republic of Barancasia LLP

After consultation of the Parties inter alia by way of conference calls held on 9, 10, 15 and 18 June 2015, the Arbitral Tribunal adopts the following Order to record the responses agreed by the Parties to certain factual questions raised by the arbitrators in the course of the proceedings:

1. When was the last written notification through diplomatic channels of the fulfillment by the Contracting Parties of all the necessary internal procedures for bringing into force the Cogitatia- Barancasia BIT?

The last written notification through diplomatic channels of the fulfillment by the Contracting Parties of all the necessary internal procedures for bringing into force the Cogitatia- Barancasia BIT was on August 1, 2002.

2. Did any other EU Member State, named in the Record, confirm or challenge termination of its BIT with Barancasia?

Some EU Member States have officially confirmed the termination of the particular BIT; none have challenged it. No other information is available as to particular terminations.

3. Has Cogitatia already terminated or adopted any resolution on termination of any of its existing Intra-EU BITs?
Cogitatia has not initiated or officially acknowledged termination of any of its existing intra-EU BITs.

4. Has the European Commission interfered in the dispute in any way?
No.

5. Have Barancasia and Cogitatia ratified the Vienna Convention on the Law of Treaties (VCLT) and if so, their respective dates of ratification?
Both Cogitatia and Barancasia had ratified the VCLT prior to December 31, 1998.

6. Are Barancasia and Cogitatia parties to the New York Convention?
Yes.

7. Are Barancasia and Cogitatia contracting parties to the Energy Charter Treaty?
No.

8. Is Caledonia an EU Member State?
No.

9. When did Vasiuki apply for the licenses of the 12 power plants?
The application was made on 1 April 2012.

10. When did Barancasia reach the 20% share of renewable energy on its energy matrix?
Barancasia has not reached the targets to date.

11. When did Vasiuki borrow the mentioned "substantial sums of money" from the banks and acquire several land plots suitable for the development of photovoltaic power plants, and obtain construction permits?
Vasiuki LLC borrowed money from the United Bank of Cogitatia to acquire land plots on 1 September 2011.

12. In para 36 (p.23) it is stated that the equipment was "supposed to be shipped on 31 January 2013". When (if ever) was the equipment shipped?
It was shipped on 31 January 2013.

13. How many licenses had been issued according to the LRE on 3 January 2013?
Out of ca 7000 applications, around 6000 licenses had been issued under the LRE to Barancasian and foreign investors. Most relate to projects of much greater scale and operated by large international companies with extensive experience in solar energy.

14. Has Barancasia issued any LRE license for a photovoltaic power plant installed prior to the enactment of the LRE, allowing it to benefit from the feed-in tariff of 0.44 EUR/kWh?
No.

15. Was Vasiuki present at any of the private hearings held in November 2012?
No.

16. What were the criteria (e.g. provided in a regulation) to accept a project and grant a licence, under which the Alpha project was rejected?
The BEA declines, citing "confidentiality obligations", to disclose any criteria that have been applied in the approval procedure.

17. Were there any violent acts during the strikes?

None have been recorded in connection with the strikes.

18. Were the fixed-in tariffs granted on the basis of the Law on the Renewable Energy found to be an unlawful state aid under the European Union law? Were any complaints of this kind lodged to the Commission?

No complaints of this kind have been lodged.

19. Are there any legislative provisions in Barancasia, specifically allowing retroactive laws?

No.

20. Were there any other occasions when retroactive laws were passed in Barancasia?

Laws that were arguably retroactive have been enacted exceptionally, but none have ever been challenged on that basis in any court proceeding.

21. Should Vasiuki request the Tribunal to order the granting of the Alfa project license and, in the alternative, request damages for a failure to grant such license?

The claimant may apply to amend its prayer for relief in this respect.

22. When did Vasiuki LLC apply for a licence for the Alfa project?

Prior to the LRE, the Alpha project operated at a loss under the legally required licenses. After the LRE was enacted, Vasiuki applied for an LRE license for Alfa not because the old Alfa licenses had expired, but rather because an LRE license provided “some hope for the Alfa project to survive” (paragraph 13, Statement of Uncontested Facts).

23. According to Barancasian domestic law, what remedies were available to Vasiuki to challenge the decision of Barancasia Authority not to grant licence for Project Alfa?

Foreigners are eligible to file claims in Barancasia’s administrative courts, which have jurisdiction to resolve disputes involving a state entity or government agency. However, Vasiuki did not file any such claim.

24. When exactly were the problems with Alfa project resolved?

Please refer to each party’s expert report on this issue.

25. How did the parties compute for the Net Present Value?

Each expert has reviewed the calculations presented by the opposing party’s expert for mathematical errors, and has certified that they agree with the results obtained. However, disagreement between the experts remains on other important issues relating to damages — these are discussed in their respective reports.

26. Did Vasiuki decide to abandon or to continue with the development of its 12 projects?

Vasiuki has continued with its plans regarding the 12 projects.

27. Was the calculation of the new fixed feed-in tariff (0.15 EUR/kWh) made on the original assumption that the average annual return on investment for licensed renewable
projects should be 8% (which was the basis for the calculation of the first tariff)?
The new tariff would still allow energy companies to obtain an annual average return rate on their investment that was at least 8%, since development costs of solar panels were substantially decreased by the ground-breaking 2011 technology.

28. Is there specific evidence for future investments for which Mr. Kovič calculated damages totaling € 765,835?

Vasiuki has produced a witness statement from a local manager who asserted that this was a long-term goal that the company had always aspired to achieve, step by step. No other evidence has been brought forth.

29. Are there any factual or legal impediments preventing the land plots acquired by Vasiuki for development of 12 more photovoltaic projects (Chi, Delta, Digama, Dzeta, Epsilon, Eta, Fi, Gama, Ipsilon, Jota, Kapa, Kopa) from being used for other purposes than development of solar power plant?

The price of the land is now 10% higher than when it was bought. However, during the time of “solar bubble”, the price was 400% the buying price. It is prime “solar power” land, but may be used for other projects.

30. Can the new technology developed in 2011 be applied in already existing projects based on the old technology (such as Project Beta) without necessity of total or substantial replacement of established installations?

The ground-breaking technology that became available in 2011 requires installations that are specifically tailored for its implementation, and is not compatible with older projects.
Members of the Tribunal:
Chairperson: Dr Sophie Miles
Prof Yutaka. Takahashi
Ms Andrea Cole

After consultation of the Parties, inter alia, by way of conference calls held on 1 and 3 September 2015, the Arbitral Tribunal adopts the following Order to record the responses agreed by the Parties to certain questions raised by the arbitrators in the course of the proceedings:

1. **Was any part of the Barancasian budget diverted from education to fund the solar panel program?**
   No, the issue was the future allocations of budget.

2. **What is the prevailing interest rate for commercial loans by banks in Barancasia for 2015?**
   The prevailing interest rate is 0.4%.

3. **When exactly did Barancasian public officials admit that guaranteed profits for 12 years amounted to unfair windfall and that the whole renewable energy support scheme was unsustainable?**
   There was no official government statement making such an admission, but in several media interviews between February and May 2012, Barancasian politicians conceded that the circumstances could be seen as amounting to an unfair windfall.
4. **What is the annual inflation rate in Barancasia for 2015?**
   The inflation rate is 0.2%.

5. **Why were the chosen representatives of industry and certain stakeholder groups invited to the private hearings in November 2012?**
   Barancasian law grants the national parliament broad discretion in consulting the public during the course of legislative procedures. Barancasian parliamentary committees are not bound by any rules regarding their choice of stakeholders to invite to take part in the consultation. In the hearings on amendments to LRE, the Energy Committee invited both national entrepreneurs and foreign investors having in total a significant share of the local market of renewables.

6. **Was Vasiuki aware that the private hearings before the Barancasian Parliamentary Energy Committee would take place?**
   Vasiuki says it was not aware, and no evidence has been adduced to contradict this.

7. **Had Vasiuki known about the hearings, would it have made financial sense for them to stop investing in the 12 projects?**
   Evaluating the risk/return of further investments with the information available at that point in time is a matter of diverging opinions.

8. **Did the amendment of Article 4 of the LRE that was made on 3 January 2013 replace completely the earlier text or just appended a new provision?**
   The new version replaced the previous version completely.

9. **When did the amended Regulation enter into force?**
   The amended Regulation entered into force on 5 January 2013 with retroactive effect as of 1 January 2013.

10. **Can the renewable energy producers sell the energy produced to entities other than the State?**
    Yes.

11. **Did Respondent cease to issue new licenses at some point?**
    All licenses were granted according to the provisions of the LRE that were in force at the moment of each application’s filing.

12. **Can projects in the renewable energy sector only be operated with a license?**
    Yes, a license is necessary to operate in the energy sector.

13. **Does Vasiuki need to purchase land plots for additional installations?**
    Yes.

14. **Were the land plots purchased in May 2009 only for the Alfa Project?**
    2009 land purchases were made only for the Alfa project.

15. **When did Vasiuki LLC buy necessary land plots and equipment for the Beta project?**
    Land plots and equipment for the Beta project were bought sometime after 1 July 2010, when the BEA announced the fixed feed-in tariffs and before 30 January 2011, when the Beta project became operational.
16. Do the land plots cost (original price x 400% x 10%) or (original price x 10%) now when they are owned by Claimant?
   The current (2015) market values for the land plots are approximately acquisition price + 10 percent.

17. What are the characteristics of the land Vasiuki bought for photovoltaic sites plants (such as distance from urban/residential areas, desert type of land or others etc)?
   The land plots are all different and may have different alternative uses.

18. What is Vasiuki’s market share in the Barancasian renewable energy market?
   Vasiuki’s share in Barancasia’s renewable energy market is very small.

19. Did Vasiuki borrow money for Beta project?
   Yes, Vasiuki borrowed money for all projects.

20. Has Vasiuki encountered problems honoring its bank loans as a result of the support scheme amendment?
   Yes, it has encountered difficulties with its financing.

21. Please clarify how the feed in tariff mechanism worked in Barancasia: was such energy price subsidized by the state (i.e. part of the energy price was paid by state) or did the state buy such energy from producers and then re-sell it to the consumers?
   It was subsidized – the state paid the difference between the feed-in tariff and the market price.

22. Were all the 6000 licensees under the pre-amendment tariff entitled to the feed-in tariff?
   All license holders were developing projects with the capacity of 30 kWh or less and were entitled to the feed-in tariff. However, some of the developers were operating clusters of solar power plants.

23. Was the policy of an 8% rate of return from the feed-in-tariff made public?
   Yes.

24. May the Parties invoke the experts’ tables included in the initial case prior to the procedural order no.2?
   All materials may be used in support of arguments. [Please note that the Experts’ Excel files are linked in the case. They were not reprinted in subsequent versions for formatting reasons].

25. The respondent has challenged the basis of computation of damages claimed on the ground of incorrectness of WACC. Is the Claimant only supposed to justify the method used for calculation of NPV?
   Legal arguments on valuation may be made by the parties.