



International Trade and Investment Renewable Energy-Disputes: Trends and Prospects

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Outline of the Presentation



- International Trade and Investment Law & Renewable Energy;
- Trade and Investment Disputes in Energy;
- Concluding remarks.

Setting the stage...

- WTO and Trade Law:
 - Trade in Goods (GATT 1994 & FTAs)
 - Trade in Services (GATS & FTAs)
 - Intellectual Property (TRIPS & FTAs)

...What is “energy”?

...What international law rules and agreements do we apply?

Setting the stage...



- International Investment Law:

→ FCNs, BITs & FTAs;

→ International Arbitration (ICSID, PCA, SCC, etc.);

...investment in energy and energy-related sectors!

An Integrated Approach for Trade & Investment in Renewable Energy?

- Trade nowadays: different product parts in different countries.
- Tariffs and foreign investment may be strongly related.
- Trade in services go together with trade in goods and investment.
- IP as a fundamental tool for trade & investment in renewable energy sectors?

Trade & Investment Framework For Energy

- There is no energy-specific WTO agreement → calls for it have been unsuccessful!
- General rules of trade & investment law may apply.
- Energy Charter Treaty!

Energy-Related Trade Disputes

WTO Energy-Related Disputes - 5 in total according to WTO sources:

- WT/DS412 Canada — Certain Measures Affecting the Renewable Energy Generation Sector;
- WT/DS419 China - Measures Concerning Wind Power Equipment;
- WT/DS 426 Canada — Measures Relating to the Feed-in Tariff Program;
- DS449 US - Countervailing and Anti-Dumping Measures on Certain Products from China;
- DS473 EU - Anti-Dumping Measures on Biodiesel from Argentina

Energy-Related Trade Disputes

Main claims:

- Subsidy allegations;
- Local content allegations;
- Trade remedies (anti-dumping duties and countervailing measures);

But other types of claims, such as IP-related claims, may affect the energy sector → alleged cases of forced transfer of technology.

Energy-Related Trade Disputes

What are the trends and prospects of energy-related cases at the WTO and under FTAs?

Energy-Related Investments



The ECT features a wide notion of protected investment:

Article 1 of the ECT

“Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor [...].’

Energy-Related Investment Disputes

Several energy-related disputes and, with regard to renewable energy, several cases such as:

- *Charanne and Construction Investments v Spain* – SCC under the ECT (Award, January 2016).
- *Isolux Netherlands BV v Spain* – SCC under the ECT – (Award, July 2016).
- *Blusun v Italy* – ICSID under the ECT – (Award, December 2016).
- *Eiser Infrastructure Limited and Energia Solar Luxembourg v Spain* – ICSID under the ECT – (Award, May 2017).
- *Wirtgen v Czech Republic* – ad hoc arbitration under the Czech Republic/Germany BIT – (Award, October 2017).
- *Novenergia v Spain* – SCC under the ECT – (Award, February 2018).
- *Masdar v Spain* – ICSID under the ECT – (Award, May 2018).

Energy-Related Investment Disputes

Main claims:

- Alleged violation of the Fair and Equitable Treatment (FET) obligation;
 - Alleged violation of legitimate expectations;
- Alleged (indirect) expropriation.

Strong connection between international law negotiations and advances on climate change and national legislations and regulations in the renewable energy sector.

Energy-Related Trade Disputes

What are the trends and prospects of energy-related investment disputes?

Concluding Remarks



- Harnessing international trade and investment law to foster production renewable energy.
- Using international trade and investment law to protect energy-related economic activities.
- Integrating IP in trade and investment energy-related strategies.



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