

SHORT SUMMARY OF THE FDI MOOT COURT CASE 2015

Full case available at <http://fdimoot.org/problem.pdf>

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 **Barancasia**, since 2002.

In 2004 Barancasia and Cogitatia joined the European Union (EU). After this, Barancasia's government reviewed its Intra-EU BITs and concluded that they had become obsolete. In June 2007, Barancasia notified Cogitatia of its intention to immediately terminate the **Cogitatia-Barancasia BIT**.

The BIT was signed in December 1998. The BIT automatically renews every 10 years, but has the possibility for unilateral termination in the ninth year of each period. The termination would be effective 12 months after notification. The confirmation of notification was received from Cogitatia in September 2007. In 2008 the BIT was removed from official websites of Barancasia. Barancasia made public statements about the successful termination of the BIT in 2010 and 2012, but no comments concerning the termination were ever made by Cogitatia. The BIT *survival clause* provides protection to investments made prior to the termination date of the BIT for 10 years after the termination date.

In May 2010, Barancasia adopted the **Law on Renewable Energy (LRE)**, which encouraged the production of energy from renewable sources through a feed-in tariff (FIT) support scheme. To benefit from the FIT scheme, all eligible producers must receive licenses from the national regulator (the **Barancasia Energy Authority (BEA)**). The government determined the tariff rate in the amount of **0.44 EUR/kWh**. The law guaranteed that the tariff amount was fixed for **12 years** for each issued license.

Vasiuki has closely monitored the legislative process in Barancasia since 2007. In May 2009, Vasiuki purchased land plots in Barancasia and decided to launch a photovoltaic (PV) solar project (**Alfa**). Vasiuki applied for a license for the Alfa project, but the BEA denied this request stating that the tariff was only be available for new projects and not for existing ones (though nothing in the law itself stated this limitation). On that same date, Vasiuki successfully obtained a license with a guaranteed tariff for its second PV solar project, **Beta**.

During 2011, a ground-breaking technology was developed dramatically reducing the costs of development of energy projects. The BEA received over 7000 applications for licenses to develop new PV solar facilities. Vasiuki also decided to launch 12 more PV solar projects using this new and cheaper technology. Vasiuki borrowed substantial sums of money, acquired land and obtained construction permits.

In 2012 the government discovered that the approval of all 7000 licenses could undermine state financial and social stability. Furthermore, the government held that the guaranteed profits under the 12 year FIT scheme was unsustainable. In January 2013 the law was amended with a provision allowing the **annual revision** of tariff rates. Later, the BEA calculated the new FIT rates in the amount of **0.15 EUR/kWh**, retroactively applicable from 1 January 2013.

The arbitration was brought by the Claimant before the London Court of International Arbitration in accordance with the ISDS provisions in the BIT. The pre-dispute requirement of 6 month cooling-off period of negotiations was fulfilled by the Claimant, although the Respondent declined negotiations.

Prayer for relief	
Claimant (Vasiuki LLC)	Respondent (The Government of Barancasia)
<ol style="list-style-type: none">1. Declare that Respondent is liable for violations of the BIT, including failure to accord Vasiuki fair and 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 FIT rate 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 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.	<ol style="list-style-type: none">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 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.