



INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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CERTIFICATE

**WATKINS HOLDING S.À.R.L, WATKINS (NED) B.V., WATKINS SPAIN S.L.,
REDPIER S.L., NORTHSEA SPAIN S. L, PARQUE EÓLICO MARMELLAR S.L., AND
PARQUE EÓLICO LA BOGA S.L.**

v.

THE KINGDOM OF SPAIN

(ICSID CASE NO. ARB/15/44)

I hereby certify that the attached document is a true copy of the English version of the Tribunal's Decision on Spain's Request for Rectification of the Award dated 13 July 2020, which was issued in the English and Spanish languages.


Meg Kinnear
Secretary-General



Washington, D.C., 13 July 2020

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

In the arbitration proceeding between

**WATKINS HOLDING S.À.R.L, WATKINS (NED) B.V., WATKINS SPAIN S.L.,
REDPIER S.L., NORTHSEA SPAIN S. L, PARQUE EÓLICO MARMELLAR S.L., AND
PARQUE EÓLICO LA BOGA S.L.**

(Claimants)

v.

THE KINGDOM OF SPAIN

(Respondent)

ICSID Case No. ARB/15/44

**DECISION ON SPAIN'S REQUEST FOR
RECTIFICATION OF THE AWARD**

Members of the Tribunal

Tan Sri Dato' Cecil W.M. Abraham, President of the Tribunal
Dr. Michael C. Pryles AO PBM, Arbitrator
Prof. Dr. Hélène Ruiz Fabri, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

Date of Dispatch to the Parties: 13 July 2020

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I. PROCEDURAL HISTORY

1. On 21 January 2020, an Arbitral Tribunal comprising of Tan Sri Dato' Cecil W.M. Abraham, Dr. Michael C. Pryles AO PBM, and Prof. Dr. Hélène Ruiz Fabri rendered an award and attached to the award, the dissenting opinion by Prof. Dr. Hélène Ruiz Fabri in *Watkins Holdings S.à r.l. and others v. Kingdom of Spain* (ICSID Case No. ARB/15/44) (the “**Award**”).
2. On 6 March 2020, the Kingdom of Spain (“**Spain**” or “**Respondent**”) submitted a Request for Rectification of the Award rendered by the Tribunal on 21 January 2020, together with Annexes 1 and 2 (the “**Request**”) and a request for stay of enforcement pending the decision on the Request.
3. The Request was submitted to the Secretary-General of the International Centre for Settlement of Investment Disputes (“**ICSID**”) pursuant to Article 49(2) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“**ICSID Convention**”) and Rule 49 of the Rules of Procedure for Arbitration Proceedings (“**ICSID Arbitration Rules**”). In accordance with Rule 49(1)(d) of the ICSID Arbitration Rules, the Request was accompanied by the required lodging fee.
4. On 11 March 2020, the Secretary-General of ICSID registered the Request and notified the Parties and the Tribunal of its registration pursuant to Rule 49(2) of the ICSID Arbitration Rules.
5. On 12 March 2020, pursuant to Rule 49(3) of the ICSID Arbitration Rules, the Tribunal established the following timetable:
 1. The Claimants may submit a response to the Request by **Monday, 13 April 2020**;
 2. The Respondent may then, if it chooses, submit a reply to the Claimants’ response no later than **Wednesday, 13 May 2020**;
 3. In the event that the Respondent avail itself of the opportunity to submit a reply under paragraph 2 above, the Claimants may submit a rejoinder not later than 14 calendar days from the date of submission of the Respondent’s reply.

4. Any filings submitted pursuant to paragraphs 2 to 3 will be subject to a strict length limit of 10 pages.
6. On 13 April 2020, Watkins Holdings S.à r.l. and others (the “**Claimants**”) submitted their response to the Request, together with Appendix 1 and legal authorities CL-0179 through CL-0191 (“**Claimants’ Response**”).
7. On 29 April 2020, the Tribunal invited the Parties to submit their respective submissions on costs.
8. On 13 May 2020, the Respondent filed a reply to the Claimants’ Response, together with Annexes 3 to 6 (“**Respondent’s Reply**”). As invited by the Tribunal, the Respondent also filed its submission on costs.
9. On 27 May 2020, the Claimants filed a rejoinder to Respondent’s Reply, together with legal authorities CL-192 and CL-193 (“**Claimants’ Rejoinder**”). The Claimants also filed its submission on costs together with legal authority CL-194.
10. In accordance with Rule 49(3) of the ICSID Arbitration Rules, the members of the Tribunal have agreed that it would not be necessary for them to meet in order to consider the Request. The present Decision has been deliberated through exchanges of written communications among the members of the Tribunal.
11. The present Decision constitutes an integral part of the Award in accordance with Article 49(2) of the ICSID Convention.

II. INTRODUCTION

12. The Respondent submitted the Request with the purpose of rectifying as soon as possible “two very specific and obvious clerical errors in the Award’s compensation determination.”
13. On 21 January 2020, the Tribunal rendered its Award in this case. The Tribunal granted

the following relief:¹

- (a) Unanimously, the Tribunal has jurisdiction under the ECT and the ICSID Convention over the Claimants' claim;
- (b) Unanimously, the Tribunal has no jurisdiction under the ECT and the ICSID Convention with regard to the claim that the Respondent's tax measures namely the 7% tax on the value of electrical energy production created by Law 15/2012 violates the ECT;
- (c) By Majority, the Respondent has breached Article 10(1) of the ECT by failing to accord fair and equitable treatment to the Claimants;
- (d) By Majority, in the light of the Tribunal's decision in (c), the Tribunal for purposes of judicial economy, does not need to determine the Claimants' claim with regard to the violation of the Umbrella Clause;
- (e) By Majority, the Claimants are awarded damages in the sum of €77 million for violation of the ECT;
- (f) By Majority, the Respondent shall pay interest on the sum awarded in (e) from 20 June 2014 to the date of this Award at 1.16% per annum compounded monthly;
- (g) By Majority, the Respondent shall pay post-award interest at the rate of 2.16% per annum compounded monthly from the date of the Award to the date of payment;
- (h) Unanimously, the Claimants' claim for gross-up tax is dismissed;
- (i) By Majority, the Respondent shall pay the Claimants 75% of the Claimants' cost of the proceedings;
- (j) Any claim, request or defence of the parties that has not been expressly accepted in this section X is hereby dismissed.

III. THE PARTIES' POSITIONS

A. Respondent's Request

14. Pursuant to Article 49(2) of the ICSID Convention, the Respondent requests the Tribunal to rectify two clerical errors contained in the Award that amount to EUR 62.4 million and to reduce the Tribunal's determination of the compensation awarded to the Claimants to this amount.²

15. *First*, the Respondent argues that the Tribunal did not rely on the proper figure in the

¹ *Watkins Holdings S.à r.l. and others v. Kingdom of Spain*, ICSID Case No. ARB/15/44, Award, 21 January 2020, para. 775.

² Request, para. 41(c).

determination of damages. The Tribunal mistakenly used the amount of EUR 77 million in Table 13 of the Second Brattle Quantum Report which only contemplated future damage (i.e. from 20 June 2014 onwards).³ The Respondent states that the Tribunal did not take into account the damages prior to 20 June 2014. According to the Respondent, the correct amount is EUR 97.7 million, which is the first clerical error that should be corrected in the Award.

16. In its Reply, the Respondent noted that this correction was requested for reasons of honesty and in good faith as it was in favor of Claimants. In this regard, the Respondent noted that it had nothing to add and clarified that this requested correction was separate from the second.⁴
17. **Second**, the Respondent alleges that the Tribunal, after deciding that it had no jurisdiction to decide the Claimants' TVPEE claim, failed to neutralize the damages attributed to the TVPEE.⁵ To calculate the amount, the Respondent says, the Tribunal may use the Second Brattle Quantum Report, Table O - Updated Financial Model, Table 18. The Respondent explains that by running the sensitivity of the amount provided by Bridgepoint under 25-year plant lifetime, the adjusted amount for the "Tax sensitivity" would total an amount of EUR 62.4 million.⁶
18. The Respondent concludes that the amount to be deducted as the result of the exclusion of the TVPEE amounts to EUR 35.3 million (difference between EUR 97.7 million and EUR 62.4 million).⁷ Therefore, Spain requests that the Tribunal make the necessary calculations to deduct from the damages awarded the amount of EUR 14.6 million and to declare the final damages with these rectifications to be EUR 62.4 million instead of EUR 77 million.⁸
19. In its Reply, the Respondent argued that the type of correction is within the scope of Article 49(2) of the ICSID Convention as the provision covers errors that favor

³ Request, paras. 16, 21.

⁴ Respondent's Reply, paras. 2-4.

⁵ Request, paras. 12, 23.

⁶ Request, para. 26.

⁷ Request, para. 27.

⁸ Request, para. 30.

claimants as well as respondent.⁹ The Respondent says that it is not seeking to reargue or reopen the merits of the arbitration but rather to rectify the damages calculation such that it is applied consistently with the Tribunal's decision on jurisdiction and the merits.¹⁰ In response to the Claimants' argument regarding whether this request is outside of the scope of Article 49(2) of the ICSID Convention, the Respondent argues, citing other tribunals, that damages awards have been rectified¹¹ and that the error is clearly identifiable in the Award.¹²

20. The Respondent states again in its Reply that when the Tribunal decided that it did not have jurisdiction over the TVPEE claim, it should have deducted, or neutralized, the effect when calculating the damages.¹³ For Spain, "once [the TVPEE was] found to be outside of the scope of the Tribunal's jurisdiction, the adequate implementation of this tax in the but-for scenario should go [sic] from the date it came into application (pursuant to the enactment of Law 15/2012) until the end of the lifespan of the Claimant's plants."¹⁴ Respondent argues that the calculation in the Award actually "limits the effects of the tax to the period between the date it came into force and the valuation date (June 20th 2014)."¹⁵ The Respondent also argues that it is not proposing a recalculation but rather that the evidence has already been presented by the Parties to the Tribunal during the proceeding.¹⁶
21. As part of Respondent's argument to separate the first clerical correction from the present one, in its Reply the Respondent requests "to make the necessary rectification of this Award as indicated above, in order to correct the damages awarded in amount of EUR 28.6 million, and to declare the final damages with this correction to be EUR 48.4

⁹ Respondent's Reply, para. 6.

¹⁰ Respondent's Reply, para. 7.

¹¹ Respondent's Reply, paras. 9-11, citing *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Decision Regarding Claimant's and Respondent's Requests for corrections, 15 December 2014, **Annex-005**, and *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Decision on Rectification, 13 July 2017, **Annex-006** and **Exhibit CL-186**.

¹² Respondent's Reply, para. 13.

¹³ Respondent's Reply, paras. 14, 22.

¹⁴ Respondent's Reply, para. 15.

¹⁵ Respondent's Reply, para 15.

¹⁶ Respondent's Reply, paras. 16-20.

million instead of EUR 77 million.”¹⁷

22. The Respondent also requests that the Tribunal stay the enforcement of the Award pending the decision on the rectification pursuant to Articles 44 to 47 of the Convention.¹⁸ Spain further argues that “ICSID [Arbitration] Rule 54, pertaining to stay of enforcement of the award in the context of annulment proceedings, has been interpreted in a flexible manner, including for instance requests for supplementary decisions and rectification after conclusion of an annulment, even if not referred to specifically in the ICSID [Arbitration] Rules.”¹⁹ In its Reply, Spain provides further support to its argument by saying that the stay of enforcement is regulated in the same section devoted to the award itself and the decision on rectification is regarded as part of the Award.²⁰
23. The Respondent argues that the Tribunal has full powers granted by the ICSID Convention to decide all issues that may arise under exceptional circumstances.²¹ In its request, the Respondent notes that a stay of enforcement is required as an exceptional circumstance pending Spain’s notification of the Award to the European Union (“EU”) Commission in compliance with EU law.²² The EU Commission would then decide pursuant to Article 108 of the TFEU whether Spain can comply with the Award.²³

B. Claimants’ Response

24. The Claimants argue that Spain is in effect requesting a reconsideration of the Tribunal’s reasoning and evaluation of evidence, which falls outside of the scope of Article 49(2).²⁴

¹⁷ Respondent’s Reply, para. 23. The figure that the Respondent refers to in paragraph 23 of the Respondent’s Reply, is different from the Respondent’s figure in paragraph 30 of its Request.

¹⁸ Request, paras. 31-40. *See also* Respondent’s Reply, para. 25.

¹⁹ Request, para 34, citing *Victor Pey Casado and Foundation Presidente Allende v. Republic of Chile*, ICSID Case No. ARB/98/2, Annulment Proceeding - Supplementary Decision, Decision on the Republic of Chile’s Request for a Stay of Enforcement of the unannulled portion of the award, 16 May 2013, para. 32, **Annex 002** and **Exhibit CL-184**.

²⁰ Respondent’s Reply, para. 26. The Respondent further argues on the “systematic of the ICSID Convention (sic)” that “if in the post award remedies forseen (sic) in articles 50, 51 and 52 of the ICSID Convention the possibility of stay of enforcement is admitted, a fortiori it should be admitted in the rectification of awards, due to the fact that it is regulated in the same Section devoted to the award itself.”

²¹ Request, para 40.

²² Request, para. 35, citing Directive 2001/77/EC of the European Parliament and of the Council, 27 September 2001, **Exhibit RL-0015**.

²³ Request, para. 39.

²⁴ Claimants’ Response, para. 3, citing *İçkale İnşaat Ltd. Şirketi v Turkmenistan*, ICSID Case No. ARB/10/24, Decision on Claimant’s Request for Supplementary Decision and Rectification of the Award, 4 October 2016, para. 143, **Exhibit CL-179**.

Therefore, the Claimants conclude, the Tribunal should dismiss the Respondent's Request in its entirety.

25. The Claimants argue that a request for rectification pursuant to Article 49(2) of the ICSID Convention has a limited scope and is designed to rectify inadvertent omissions and minor technical errors. The Claimants say that their position is supported by practice of ICSID tribunals and the leading commentary of the ICSID Convention.²⁵ In its Rejoinder, the Claimants distinguish the rectification request in this case from the cases cited by Spain by identifying that the Tribunal's decision is not an error but rather a "deliberate and considered decision"²⁶ and indicating that Spain's request does not contain any obvious error.²⁷
26. In other words, the Claimants note, the rectification process "in no way consists of means of appealing or otherwise revising the merits of a decision."²⁸ The Claimants contend that Rule 49 of the ICSID Arbitration Rules does not provide for a threshold, contrary to Spain's approach saying that this Rule contains a broad scope to apply to "any error in the award which the requesting party seeks to have rectified."²⁹
27. The Claimants' case is that they have shown that the Tribunal's finding of damages in the Award was consistent with its findings of liability and jurisdiction. In particular, the Claimants say, they have explained how the "Tribunal's damages adjustments were consistent with the findings that (a) only the 'wholesale dismantlement' of the Original Regime by the new Regime constituted a breach of the ECT; (b) Spain's breach of the

²⁵ Claimants' Response, para. 5, citing *İçkale İnşaat Ltd. Şirketi v Turkmenistan*, ICSID Case No. ARB/10/24, Decision on Claimant's Request for Supplementary Decision and Rectification of the Award, 4 October 2016, para. 103, **Exhibit CL-179**, see also Claimants' Rejoinder, para. 7, citing C. Scheuer et al., *The ICSID Convention: a Commentary* (2nd edition, OUP), 2009, p. 849, **Exhibit CL-192** and Dong, W., *Module 2.8 ICSID: Post-Award Remedies and Procedures*, Course on Dispute Settlement in International Trade, Investment and Intellectual Property, UNCTAD, New York and Geneva, 2003, p. 7, **Exhibit CL-180**.

²⁶ Claimants' Rejoinder, paras. 8-9, differentiating *Gold Reserve Inc. v Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Decision Regarding Claimant's and Respondent's Requests for corrections, 15 December 2014, para. 42, **Annex-005**.

²⁷ Claimants' Rejoinder, para. 10, citing *Railroad Development Corporation v Republic of Guatemala*, ICSID Case No. ARB/07/23, Decision on Claimant Request for Supplementation and Rectification of the Award, 18 January 2013, paras. 43, 47, **Annex 007** and **Exhibit CL-185**; and *Marco Gavazzi and Stefano Gavazzi v Romania*, ICSID Case No. ARB/12/25, Decision on Rectification, 13 July 2017, para. 63, **Annex-006** and **Exhibit CL-186**.

²⁸ Claimants' Response, para. 8, citing *Vivendi v Argentine Republic*, ICSID Case No. ARB/97/3, Decision of the *Ad Hoc* Committee on the Request for Supplementation and Rectification of its Decision Concerning Annulment of the Award, 28 May 2003, para. 11, **Exhibit CL-189**; see also Claimants' Rejoinder, paras. 3, 7-10.

²⁹ Claimants' Rejoinder, para. 6, see also Respondent's Reply, para. 9.

ECT crystallised on 20 June 2014; (c) the Tribunal does not have jurisdiction over the 7% Levy, and (d) the operating life of the Claimants' wind installations is 25 years."³⁰ Consequently, the Claimants add, the Tribunal made the corresponding adjustments in the damages calculations that were intentional and consistent with these findings.

28. **First**, the Claimants note that Spain's reading of the Award is wrong and that the Tribunal did reject the claim for past damages.³¹ Thus, the Claimants say, the first of the clerical errors identified by Spain is not an error. The Claimants point that the Tribunal's decision to take EUR 77 million from Table 13 rather than EUR 97.7 million "was intentional and the obvious consequence of the Tribunal's findings that only the 'wholesale dismantlement' of the Original Regime as from 20 June 2014 constituted a breach of the ECT."³² The Claimants point out that Spain "appears to withdraw its first request for rectification" and, therefore, do not address this first request in the Claimants' Rejoinder.³³
29. **Second**, the Claimants counter Spain's argument regarding the TVPEE by noting that the Tribunal purposefully removed the impact of the TVPEE when it rejected the Claimants' claim for damages before 20 June 2014.³⁴ In its Rejoinder, the Claimants say that "(a) the request is nothing more than a thinly veiled attempt to appeal the Tribunal's damages assessment; and (b) implementing Spain's request involves a 'complex exercise to retrace or clarify the parties' arguments and evidence on the text to be rectified.'"³⁵ The Claimants further argue that the Tribunal's decision was even consistent with Spain's position that "the New Regime 'neutralised' the effect of the [TVPEE] by 'enable[ing] them to recover the TVPEE.'"³⁶
30. Additionally, the Claimants note that Spain's allegation that the adjustments proposed in its Request were raised by Accuracy is inaccurate and is now seeking to introduce new calculations and change its quantum case which is beyond the Tribunal's power in

³⁰ Claimants' Rejoinder, para. 13 (citations omitted).

³¹ Award, para. 688.

³² Claimants' Response, para. 18.

³³ Claimants' Rejoinder, para. 14.

³⁴ Claimants' Response, para. 23.

³⁵ Claimants' Rejoinder, para. 15.

³⁶ Claimants' Response, para. 25, citing Respondent's Counter-Memorial, para 662.

a rectification pursuant to Article 49(2) of the ICSID Convention.³⁷ According to the Claimants, this would involve reviewing evidence and figures filed by the Claimants' experts and adjusting financial models and not by the sole application of simple arithmetic. As such, it involves changes in the Tribunal's determinations in the Award through a complex exercise. The Claimants conclude by citing the *Marco Gavazzi* case that says that "the rectification must not affect the merits of the decision, and must not lead to a complex exercise to retrace or clarify the parties' arguments and evidence on the text to be rectified."³⁸ In its Rejoinder, the Claimants point out that Spain has failed to explain the new calculations to reach the EUR 48.4 million figure.³⁹

31. Finally, regarding the stay of enforcement, the Claimants respond to Spain's argument by saying that neither the ICSID Convention nor the ICSID Rules grant the Tribunal the power to stay the enforcement in a rectification proceeding. The stay of enforcement is addressed in Article 54 of the ICSID Convention in reference to a stay in an application for interpretation, revision or annulment of the award but not for a request for rectification under Article 49 and even leading commentary on the ICSID Convention explains it in that form.⁴⁰ The Claimants find support for their argument in a decision taken by the tribunal in the *Masdar* case.⁴¹ In its Rejoinder, the Claimants further this argument indicating that it was precisely the arguments that Spain raised before the *Masdar* tribunal that were rejected because they were wholly unsupported by law and "for those reasons, those arguments should also fail here."⁴²
32. Spain's argument maintaining that Article 44 and 46 of the ICSID Convention gives power to the Tribunal in regard to the stay of enforcement is countered by the Claimants by saying that Spain failed to point to a single 'question of procedure' that would not be governed by Section 3 of the ICSID Convention or the Arbitration Rules and that it is Rule 54(1) of the ICSID Arbitration Rules "that expressly governs the stay of

³⁷ Claimants' Response, para 26.

³⁸ Claimants' Response, para. 27, citing *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Decision on Rectification, 13 July 2017, para. 67, **Annex-006** and **Exhibit CL-186**.

³⁹ Claimants' Rejoinder, para. 19.

⁴⁰ Claimants' Rejoinder, para 27.

⁴¹ Claimants' Response, para. 30, citing *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Decision on the Respondent's Application to Stay Enforcement of the Award, 24 August 2018, para. 1, **Exhibit CL-191**.

⁴² Claimants' Rejoinder, para. 26.

enforcement question.”⁴³ The Claimants say that this rule unambiguously provides that stay of enforcement is applicable for interpretation, revision or annulment of an award.⁴⁴ No such provision is warranted under Article 49(2) of the ICSID Convention.⁴⁵ In addressing Spain’s argument on the “systemic of the ICSID Convention (sic)” supports having stay of enforcement also in the rectification, the Claimants say that the reference is misplaced because Article 49(2) does not provide for a stay of enforcement.⁴⁶ The Claimants responded to Spain’s argument that Articles 50 and 52 grant the Tribunal power to stay the enforcement by saying that they “fail[ed] to understand why the position of Article 49(2) within Section 4 of the ICSID Convention would allow derogating from the plain meaning out of that provision.”⁴⁷

33. The Claimants conclude that the Tribunal manifestly lacks the authority to grant Respondent’s requested relief related to the stay of enforcement.⁴⁸ As per this conclusion, the Claimants do not address the other grounds alleged by Spain.⁴⁹

IV. THE TRIBUNAL’S ANALYSIS

A. Tribunal’s Decision on Respondent’s Request for Rectification

34. This analysis represents the majority view of the Tribunal and the reference to the word “Tribunal” in the analysis is the majority view.⁵⁰

i. Applicable Legal Standard

35. Article 49(2) of the ICSID Convention governs an application for rectification of errors in an Award. Article 49(2) of the ICSID Convention reads as follows:

The Tribunal upon the request of a party made within 45 days after the date

⁴³ Claimants’ Rejoinder, paras. 31-32.

⁴⁴ Claimants’ Rejoinder, para. 32.

⁴⁵ Claimants’ Rejoinder, paras. 32-33.

⁴⁶ Claimants’ Rejoinder, paras. 40-42.

⁴⁷ Claimants’ Rejoinder, para 43.

⁴⁸ Claimants’ Response, para. 33.

⁴⁹ Claimants’ Response, para. 33.

⁵⁰ Consistently with her disagreement with the reasoning on the merits and the way the method of calculation chosen by the majority was implemented in the Award, Professor Dr. Hélène Ruiz Fabri cannot support the present Decision.

on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

36. The procedure which governs the submission, receipt and processing of a request for rectification of an award is relevantly set out in Rule 49 of the ICSID Arbitration Rules which reads as follows:

(1) Within 45 days of the date on which the award was rendered, either party may request, pursuant to Article 49(2) of the Convention, a supplementary decision on, or rectification of, the award. Such a request shall be addressed in writing to the Secretary-General. The request shall:

- (a) identify the award to which it relates;
- (b) indicate the date of the request;
- (c) state in detail:
 - (i) any question which, in the opinion of the requesting party, the Tribunal omitted to decide in the award; and
 - (ii) any error in the award which the requesting party seeks to have rectified; and
- (d) be accompanied by a fee for lodging the request.

(2) Upon receipt of the request and of the lodging fee, the Secretary-General shall forthwith:

- (a) register the request;
- (b) notify the parties of the registration;
- (c) transmit to the other party a copy of the request and of any accompanying documentation; and
- (d) transmit to each member of the Tribunal a copy of the notice of registration, together with a copy of the request and of any accompanying documentation.

(3) The President of the Tribunal shall consult the members on whether it is necessary for the Tribunal to meet in order to consider the request. The Tribunal shall fix a time limit for the parties to file their observations on the request and shall determine the procedure for its consideration.

(4) Rule 46-48 shall apply mutatis mutandis, to any decision for the Tribunal pursuant to this Rule.

(5) If a request is received by the Secretary-General more than 45 days after the award was rendered, he shall refuse to register the request and so inform forthwith the requesting party.

37. The scope of Article 49(2) of the ICSID Convention is limited in that the power of the Tribunal is to “rectify any clerical, arithmetical or similar error in the award.” The request for rectification is intended to be utilized to correct “inadvertent omissions and minor technical errors”⁵¹ but “[i]t is not designed to afford a substantive review or reconsideration of the decision.” Its purpose is to “enable the tribunal to correct mistakes that may have occurred in the award’s drafting in a non-bureaucratic and expeditious manner.”⁵²
38. The request for rectification is not an appeal and is merely a correction of clerical or arithmetical errors and this is exemplified in the decision of the *ad hoc* Committee in *Vivendi v. Argentina*, ICSID Case No. ARB/97/3, which held as follows:

In this regard, it is important to state that that procedure, and any supplementary decision or rectification as may result, in no way consists of a means of appealing or otherwise revising the merits of the decision subject to supplementation or rectification.⁵³

And also:

A review of pertinent arbitral awards illustrates that the availability of the rectification remedy afforded by Article 49(2) depends upon the existence of two factual conditions. First, a clerical, arithmetical or similar error in an award or decision must be found to exist. Second, the requested rectification must concern an aspect of the impugned award or decision that is purely accessory to its merits. Simply stated (and contrary to Respondent’s assertion at paragraph 26 of its Request), Article 49(2) does not permit the “rectification” of substantive findings made by a tribunal or committee or of the weight or credence accorded by the tribunal or committee to the

⁵¹ Dong, W., Module 2.8 ICSID: Post-Award Remedies and Procedures, Course on Dispute Settlement in International Trade, Investment and Intellectual Property, UNCTAD, New York and Geneva, 2003, p. 7, **Exhibit CL-180** (“[T]his remedy is designed for inadvertent omissions and minor technical errors. It is not designed for a substantive review of the decision. Rather, it enables the tribunal to correct mistakes that may have occurred in the award’s drafting in a simple way”).

⁵² Christoph Schreuer, with Loretta Malintoppi, August Reinisch and Anthony Sinclair, *THE ICSID CONVENTION: A COMMENTARY* (Cambridge University Press, 2d ed. 2009), pp.849-850.

⁵³ *Vivendi v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision of the *ad hoc* Committee on the Request for Supplementation and Rectification of its Decision Concerning Annulment of the Award, 28 May 2003, para. 11, **Exhibit CL-189**, citing Christoph Schreuer, with Loretta Malintoppi, August Reinisch and Anthony Sinclair, *THE ICSID CONVENTION: A COMMENTARY* (Cambridge University Press, 2d ed. 2009), Art. 49, para. 47.

claims, arguments and evidence presented by the parties. The sole purpose of a rectification is to correct clerical, arithmetical or similar errors, not to reconsider the merits of issues already decided.⁵⁴

39. The Tribunal is of the view that a request for rectification is not intended to address complex errors. The Tribunal relies on the decision in *Victor Pey Casado v. Chile*, which states as follows: “It follows that, as is already implicit in the notion of ‘rectification’, the procedure does not encompass any alleged mistake of law by the tribunal or any factual determination or discretionary assessment by it. The procedure is not an appeal, and this in turn illuminates why Article 49 of the Convention makes the rectification of any duly established ‘clerical, arithmetical or similar error’ into a duty of the tribunal.”⁵⁵
40. The Tribunal also refers to the decision in *RDC v. Guatemala*, where the ICSID tribunal held “that the powers of the tribunal to rectify the award is limited and that the threshold question is whether the rectification requested falls within the parameters of Article 49(2) of the ICSID Convention.”⁵⁶
41. ICSID tribunals have, for instance, rectified errors which contain a mathematical miscalculation which is based on an evident error in the application of a discount rate⁵⁷ or recalculating a damages award where the tribunal failed to account for a sum that it obviously intended to include.⁵⁸
42. The Tribunal is of the view that, pursuant to Article 49(2) of the ICSID Convention, the request for rectification is not intended to change the methodological approach in the calculation of quantum as opposed to amending a pure mathematical calculation.
43. The Tribunal, in the light of the ICSID jurisprudence that has been referred to above,

⁵⁴ *Vivendi v. Argentine Republic*, ICSID Case No. ARB/97/3, Decision of the *ad hoc* Committee on the Request for Supplementation and Rectification of its Decision Concerning Annulment of the Award, 28 May 2003, para. 25, footnotes omitted, **Exhibit CL-189**.

⁵⁵ *Victor Pey Casado and Foundation “Presidente Allende” v. the Republic of Chile*, ICSID Case No. ARB/98/2, Decision on Rectification of the Award, 6 October 2017, para. 49, footnotes omitted, **Annex 002** and **Exhibit CL-184**.

⁵⁶ *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Decision on Claimant’s Request for Supplementation and Rectification of Award, 18 January 2013, Ex. CA-4, para. 46, **Annex 007** and **Exhibit CL-185**.

⁵⁷ *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Decision on Claimant Request for Supplementation and Rectification of the Award, 18 January 2013, para. 43, **Annex 007** and **Exhibit CL-185**.

⁵⁸ *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Decision on Rectification, 13 July 2017, paras. 61-62, **Annex-006** and **Exhibit CL-186**.

will now address the two issues which are raised by the Respondent.

44. **First Issue**: The Tribunal erred in its assessment of damages by failing to take into account, damages caused to the Claimants prior to the date of valuation, namely, 20 June 2014.
45. **Second Issue**: The Tribunal erred in not excluding an impact of the 7% levy over which the Tribunal had declined jurisdiction.

ii. First Issue

46. The first issue is the Respondent's request to correct the Tribunal's award of damages to reflect "lost historical cash flows."
47. Spain contends that the Tribunal made a mistake when it applied the adjustment for the operational life to Brattle's DCF valuation⁵⁹ in setting out damages at EUR 77 million as at 20 June 2014. Spain contends that the Tribunal relied on Table 13 of the Second Brattle Report to determine the quantum of compensation due to the Claimants. The Respondent contends, *inter alia*, that:
 - (a) the Tribunal did not rely on the proper figure in Table 13 of the Second Brattle Report. The Respondent contends that the figure of EUR 77 million was taken from Appendix B to the Second Brattle Report and in so doing the Tribunal made a mistake in relying on this figure;⁶⁰
 - (b) the Tribunal did not reject the request for past damages and that the correct figure that should have been taken from Table 13 is EUR 97.7 million and hence this is a clerical error which should be corrected. Table 13, according to the Respondent, was a sensitivity analysis, allowing adjustments to the damages calculation which were presented by the Claimants;⁶¹ and
 - (c) the Tribunal had failed to consider the damages that were caused prior to the date

⁵⁹ Award, para. 744.

⁶⁰ Request, para. 16.

⁶¹ Request, para. 22.

of valuation, namely, the “lost historical cash flows.”⁶²

48. The Claimants in reply contend that the “lost historical cash flows” comprised of the Claimants’ damages calculations, which was the difference from the following dates, namely, 27 December 2012 to June 2014, which comprised the following:

- (a) the Wind Farm’s cash flows that would have accrued “But for” the measures; and
- (b) the Wind Farm’s “Actual” cash flows.⁶³

49. The Claimants also contend that these were the losses that had accrued from the day when the first Disputed Measure, Law 15/2012 creating the 7% Levy, was enacted, to the Government publication of the June 2014 Order, setting out the specific economic parameters which implemented the New Regime and fixing the date of Spain’s “irreversible deprivation.”⁶⁴

50. The Tribunal refers to the Majority Award, in particular to paragraphs 687 and 688, which read as follows:

687. As discussed above at paragraph 642a, the Claimants claim the lost historical cash flows of the Claimants’ investments resulting from the Disputed Measures from December 2012 to June 2015 by comparing the Actual cash flows with the But-For scenario cash flows assuming the Disputed Measures were never implemented.

688. Similar to the tribunal in Antin, this Tribunal has found that Spain violated the ECT by its wholesale dismantlement of the Original Regime but not from modifying certain of the elements of the regime. **As the course of conduct constituting the breach of the ECT reached “watershed” on 20 June 2014 as set out in paragraph 570 above, the Tribunal rejects the Claimants’ claim for losses prior to the breach.**⁶⁵

51. The Tribunal is of the view that paragraph 642 of the Majority Award which deals with Brattle’s three-step damage valuation is relevant. The said paragraph reads as follows:

⁶² Request, para. 21.

⁶³ Claimants’ Response, para. 13.

⁶⁴ Claimants’ Response, para. 13.

⁶⁵ Award, paras. 687-688, omitted citations (emphasis added).

Brattle conducts a three-step damage valuation.

a. First, Brattle measures the lost historical cash flows of the Claimants' investments resulting from the Disputed Measures by comparing the cash flows from 27 December 2012 (the commencement of the Disputed Measures) to June 2014 (the Valuation Date) under two scenarios: "Actual" based on the actual historical financial data for the Claimants' investments; and "But-for" calculated on the assumption that the Disputed Measures were never implemented.

b. Secondly, Brattle estimates the loss in the fair market value of the Claimants' investments as at June 2014 under the But-for and Actual scenarios using a DCF method. Brattle develops two versions of DCF model. The Actual model which calculates the projected future cash flows in the Actual scenario. The But-for model, which is identical to the Actual model save for two differences: (i) it assumes the continued application of FITs as specified under RD 661/2007 starting in January 2013; and (ii) it assumes less regulatory risk than exists under the Actual scenario. For each DCF model, Brattle projects future cash flows and then discounts those cash flows to reflect risk.

c. Thirdly, Brattle calculates the pre-award interest owing from June 2014 to the notional award date of November 2018 and the tax gross-up.⁶⁶

52. The Tribunal is of the view that in the light of the aforesaid paragraph and paragraph 688 of the Majority Award, it is manifestly clear that the Respondent's contention is without merit as the Tribunal did reject the claim for past damages. The Tribunal also found that the breach of the ECT reached a watershed on 20 June 2014 and hence expressly rejected the Claimants' claim for losses prior to the breach. In the Tribunal's view, there was no error. Nor could the purported error be categorized as clerical, arithmetical or similar error in the Award. The Tribunal is of the view that the decision to award EUR 77 million rather than EUR 97.7 million was a deliberate decision of the majority, in its construction of Table 13, especially in the light of the majority's finding that there was a "wholesale dismantlement of the Original Regime from 20 June 2014 which constituted a breach of the ECT."⁶⁷

53. The Tribunal is therefore of the view that it decided this issue on the evidence, the pleadings, the expert reports and the extensive submissions of the Parties and it is of the

⁶⁶ Award, para. 642, citing First Brattle Quantum Report, paras. 15-17, 23-24.

⁶⁷ Award, para. 688.

view that there is no clerical, arithmetical or similar error in the quantification of the damages in the Majority Award which requires rectification.

54. The Respondent contends that it drew the alleged correction with regard to past damages, for the sake of honesty and good faith. The Respondent concedes that paragraph 688 of the Award did reject the claim for past damages and is of the view that if the Claimants consider the Respondent to be wrong, then the Respondent has nothing further to add. This concession on the part of the Respondent is only with regard to the first request for rectification. This, in the Tribunal's view, supports its view that the first request has no merit and hence the Respondent's request for rectification of this purported error is misconceived and must be rejected.

iii. Second Issue

55. The Respondent's contention with respect of the second issue is that "[d]espite having established the Tribunal's lack of jurisdiction" in respect of the 7% Levy, "the impact of this tax has not been neutralized when calculating the damages."⁶⁸ The Respondent further alleges that certain adjustments should have been made to the financial model submitted by the Claimants' experts.⁶⁹
56. The Tribunal is of the view that the adjustments that are proposed by the Respondent with regard to the second issue, are novel. The Tribunal is of the view that this issue was not raised in the pleadings and in the submissions of the Respondent. The Respondent contends that if the TVPEE amounts were deducted out as a result of the exclusion of the TVPEE, the quantum of damages would be reduced to EUR 62.4 million in accordance with the First Brattle Report.
57. The Tribunal, in the Majority Award, in its analysis of quantum, took the view that the Claimants were not entitled to past damages and this is provided for in paragraph 688 of the Majority Award; that having held that Spain had violated the ECT with effect from 20 June 2014, rejected the claim for damages claimed by the Claimants, prior to

⁶⁸ Request, para. 24.

⁶⁹ Request, paras 25-26.

20 June 2014 and awarded compensation in the sum of EUR 77 million. The Tribunal notes that the 7% Levy was introduced by Spain on 27 December 2012 and hence the Tribunal in the Majority Award in its analysis pertaining to the issue of damages, rightly excluded the 7% Levy.

58. As cited by the Claimants, the Tribunal refers to Spain's arguments which are contained in its Counter-Memorial with regard to the 7% Levy, which reads as follows:

[t]he impact of the TVPEE on renewable producers such as those subject to this arbitration has been neutralized, given that the TVPEE is one of the costs remunerated to those producers through the specific remuneration they receive, as analysed in this Counter-Memorial when examining the current remuneration regime of renewable energy producers. In other words, the specific remuneration received by renewable producers enables them to recover certain costs that, unlike conventional technologies, cannot be recovered in the market, and, also, to obtain a reasonable return. Among those costs is precisely the TVPEE.⁷⁰

59. The Tribunal notes that it was the Respondent's own case that the 7% Levy did not cause any harm to the Claimants after the implementation of the New Regime. The Respondent's argument was referred to and addressed in paragraph 115 of the Award.
60. The Tribunal is of the view that the Respondent's proposed correction is not just a simple mathematical operation, as it requires the Tribunal accepting an argument of the Respondent, which was not specifically pleaded, nor was it raised in the Respondent's submissions or evidence. This, in the context of a rectification request, is "impermissible".⁷¹
61. The Respondent contends that the Tribunal "refers to several adjustment raised by Accuracy."⁷² However, none of the adjustments raised by Accuracy includes the adjustment that the Respondent is now proposing with regard to the 7% Levy.⁷³ There was no submission by Accuracy of any calculations with regard to the economic impact of the 7% Levy. The Respondent is now attempting in this application for rectification,

⁷⁰ Claimants' Response, para. 24, citing Respondent's Counter-Memorial, para. 662.

⁷¹ *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Decision on Claimant Request for Supplementation and Rectification, 18 January 2013, para. 47, **Annex 007** and **Exhibit CL-185**.

⁷² Request, para. 15.

⁷³ Award, para. 743.

to raise novel arguments regarding the proposed adjustments, which, in the Tribunal's view, is not permissible.

62. The Tribunal is of the view that Article 49(2) of the ICSID Convention does not enable the Respondent to introduce new calculations so that the quantum which has been assessed by the Tribunal can be reviewed and adjusted. This is beyond the jurisdiction of the Tribunal in an application for rectification. The Tribunal refers to the tribunal's decision in *LG&E Energy Corp. et al. v. Argentina* and relies on the passage which adopts the passage of Professor Schreuer, which was quoted in the *ad hoc* Committee's decision in *Vivendi v. Argentina*, which reads as follows:

In addition, the Claimants misconceive the function of the recourse to a supplementary decision by asserting that it allows Argentina to respond to their new arguments and evidence. The supplementation process is not a mechanism by which parties can continue proceedings on the merits or seek a remedy that calls into question the validity of the Tribunal's decision. Referring to Professor Schreuer, the *ad hoc* Committee in the *Vivendi* case noted:

[...] it is important to state that that procedure [by which ICSID awards and decisions may be supplemented and rectified], and any supplementary decision or rectification as may result, in no way consist of a means of appealing or otherwise revising the merits of the decision subject to supplementation or rectification.⁷⁴

63. The Tribunal refers and relies on the tribunal's decision in *Marco Gavazzi and Stefano Gavazzi v. Romania*, which held that, "the rectification must not affect the merits of the [d]ecision, and must not lead to a complex exercise to retrace or clarify the parties' arguments and evidence on the text to be rectified."⁷⁵
64. The Tribunal is of the view that if the Respondent's proposed correction is adhered to, it would involve a review of the evidence, the submissions and the expert reports that have been filed in the arbitration proceedings. The Tribunal is of the view that this is

⁷⁴ *LG&E Energy Corp. et al. v. Argentina*, ICSID Case No. ARB/02/1, Decision on Claimants' Request for Supplementary Decision, 8 July 2008, para. 16, footnotes omitted, **Exhibit CL-188**.

⁷⁵ *Marco Gavazzi and Stefano Gavazzi v. Romania*, ICSID Case No. ARB/12/25, Decision on Rectification, 13 July 2017, para. 56, **Annex 006** and **Exhibit CL-186**.

not permissible in an application for rectification.

65. The Tribunal wishes to reiterate that with regard to the second issue in respect of quantification of damages, which also relates to the Majority Award, the Tribunal had considered all the evidence, the pleadings, the expert reports and the extensive submissions of the parties and finds that there is no clerical, arithmetical or similar error that needs to be corrected and therefore, for the reasons set out above, the request for rectification by the Respondent has no merit and is therefore, rejected.

B. Tribunal's Decision on Respondent's Request for Stay of Enforcement

66. The Respondent makes an application for stay of enforcement pending rectification and relies on Articles 44 to 47 of the ICSID Convention, which read as follows:

Article 44

Any arbitration proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Arbitration Rules in effect on the date on which the parties consented to arbitration. If any question of procedure arises which is not covered by this Section or the Arbitration Rules or any rules agreed by the parties, the Tribunal shall decide the question.

Article 45

(1) Failure of a party to appear or to present his case shall not be deemed an admission of the other party's assertions.

(2) If a party fails to appear or to present his case at any stage of the proceedings the other party may request the Tribunal to deal with the questions submitted to it and to render an award. Before rendering an award, the Tribunal shall notify, and grant a period of grace to, the party failing to appear or to present its case, unless it is satisfied that that party does not intend to do so.

Article 46

Except as the parties otherwise agree, the Tribunal shall, if requested by a party, determine any incidental or additional claims or counterclaims arising directly out of the subject-matter of the dispute provided that they are within the scope of the consent of the parties and are otherwise within the jurisdiction of the Centre.

Article 47

Except as the parties otherwise agree, the Tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respectively rights of either party.”

and contends that the Tribunal has the power to grant a stay on the grounds that it has power to decide on any issue which is not decided by the applicable rules to the proceedings.⁷⁶

67. The Respondent also relies on Article 51(2) and Article 52(2) of the ICSID Convention and contends that the rectification decision may become part of the award and hence a stay should be granted so that the Award will not be complete until the Decision regarding the request for rectification is rendered.⁷⁷
68. The Respondent also contends that Rule 54 which relates to interpretation, revision or annulment of an award, should be interpreted in a flexible manner.⁷⁸
69. The request for stay by the Respondent is predicated on, *inter alia*, the following grounds:
- (a) that the Respondent is compelled to notify the Award to the EU Commission in compliance with the decision of the European Union Commission on the S.A. 40348(2015/NN) procedure. The Respondent contends that the binding nature of the EU Commission decision is established in Article 107, 108 and 288 of the TFEU;⁷⁹
 - (b) that the ECT recognizes that member States of the EU are legally bound by decisions of EU institutions;⁸⁰
 - (c) reliance on the *Electrabel* decision;⁸¹

⁷⁶ Request, para. 31.

⁷⁷ Request, para. 33.

⁷⁸ Request, para. 34.

⁷⁹ Request, para. 35.

⁸⁰ Request, para. 36.

⁸¹ Request, para. 37, citing *Electrabel S.A. v. The Republic of Hungary*, ICSID Case No. ARB/07/19, Jurisdiction Award, 25 November 2015, para. 4.142, **Exhibit RL-0048**.

- (d) that the decision of the EU Commission of November 2017 is binding on Arbitral Tribunals when they apply the EU Law and that the exclusive forum of challenging its validity are the European Courts;⁸² and
- (e) the Respondent therefore contends that in the light of the above it must notify the Award to the EU Commission in compliance with EU Law and until the EU Commission makes a decision pursuant to Article 108 of the TFEU, the Respondent cannot comply with the Award as it would be a breach of EU Law.⁸³

70. The Tribunal has considered Articles 44 to 47 of the ICSID Convention and is of the view that these provisions of the ICSID Convention do not confer jurisdiction on the Tribunal to grant a stay of enforcement of the Award. Stay of enforcement of an award is addressed in Article 50 of the ICSID Convention and not in a request for rectification under Article 49(2). Article 50 of the ICSID Convention reads as follows: -

(1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.

(2) The requests shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.⁸⁴

71. The Tribunal refers to the decision in *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*⁸⁵ where Spain sought to stay enforcement of the award on the following grounds:

- (a) that the tribunal had the power to issue a stay of enforcement “by operation of Articles 44 to 47 of the ICSID Convention”;
- (b) a stay was appropriate because the respondent was “compelled to notify the

⁸² Request, para. 38.

⁸³ Request, para. 39.

⁸⁴ ICSID Convention, Article 50.

⁸⁵ *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Decision on the Respondent’s Application to Stay Enforcement of the Award, 24 August 2018, **Exhibit CL-191**.

Masdar Award to the EU Commission”; and

- (c) under Article 49(2), the “periods of time provided for under” Articles 51(2) and 52(2) “run from the date on which the requested decision is rendered”.⁸⁶

72. The *Masdar* tribunal held that it did not have “the power to order a stay of enforcement in connection with a request for [a rectification] decision made pursuant to Article 49(2) of the ICSID Convention.”⁸⁷ The said tribunal held it lacked that authority because “[t]he post-award remedies which allow an ICSID Tribunal to order a stay of enforcement are regulated by Articles 50 to 52 of the ICSID Convention and ICSID Arbitration Rules 50 to 55.”⁸⁸ Accordingly, it held that “a stay of enforcement is not contemplated for supplementation and rectification of an award” under Article 49(2).⁸⁹ This conclusion was “confirmed by many leading commentators.”⁹⁰
73. The Tribunal relies on the persuasive decision of the *Masdar* tribunal and is therefore of the view that Articles 44 to 47 of the ICSID Convention do not confer jurisdiction on the Tribunal to issue a stay of enforcement of an award especially in view of the wording of Rule 54(1) of the Arbitration Rules, which reads as follows:
- (1) The party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which the application relates. The tribunal or committee shall give priority to the consideration of such a request.⁹¹
74. The Tribunal by majority, holds that it does not have jurisdiction to grant the Respondent a stay of enforcement of the Award.

⁸⁶ *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Decision on the Respondent’s Application to Stay Enforcement of the Award, 24 August 2018, paras. 6-8, **Exhibit CL-191**.

⁸⁷ *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Decision on the Respondent’s Application to Stay Enforcement of the Award, 24 August 2018, para. 17, **Exhibit CL-191**.

⁸⁸ *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Decision on the Respondent’s Application to Stay Enforcement of the Award, 24 August 2018, para. 23, **Exhibit CL-191**.

⁸⁹ *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Decision on the Respondent’s Application to Stay Enforcement of the Award, 24 August 2018, para. 23, **Exhibit CL-191**.

⁹⁰ *Masdar Solar & Wind Cooperatief U.A. v. Kingdom of Spain*, ICSID Case No. ARB/14/1, Decision on the Respondent’s Application to Stay Enforcement of the Award, 24 August 2018, para. 17, **Exhibit CL-191**.

⁹¹ ICSID Arbitration Rule 54(1).

C. Tribunal’s Decision on Costs

75. The Respondent submitted that the Request for Rectification derived from causes beyond the conduct of the parties and, thus, should not be attributable to the conduct of either of them. Therefore, the Respondent argues that each party should bear its own costs and expenses and both of them should share equally the cost of the rectification proceeding.⁹² The Respondent indicates that the Tribunal has the authority to apportion the costs of the arbitration between the parties pursuant to Article 61(2) of the ICSID Convention. The Respondent summarized its costs as follows:⁹³

Category	Amount
ICSID fees	EUR 9,227.78
ICSID Advance payments	EUR 46,556.62
Editing services	EUR 66.24
Courier services	EUR 30.71
TOTAL	EUR 55,881.35

76. The Claimants contend that both Parties agree that the applicable standard for the allocation of costs is Article 61(2) of the ICSID Convention.⁹⁴ The Claimants differ from the Respondent on whether the cost allocation is not result of the conduct of the parties and request that the Tribunal “predominantly consider the ‘costs follow the event’ principle when exerting its discretion to allocate costs.”⁹⁵ The Claimants sustain that other tribunals have adopted the “cost follow the event” when allocating costs on rectification proceedings.⁹⁶ The Claimants request that in the event that the Tribunal

⁹² Respondent’s Cost Submission, 13 May 2020, p. 1.

⁹³ Respondent’s Cost Submission, 13 May 2020, p. 3.

⁹⁴ Claimants’ Submission on Costs, 27 May 2020, para. 10.

⁹⁵ Claimants’ Submission on Costs, 27 May 2020, para. 12.

⁹⁶ Claimants’ Submission on Costs, 27 May 2020, para. 15, citing *Victor Pey Casado and President Allende Foundation v. Republic of Chile I*, ICSID Case No. ARB/98/2, Annulment Proceeding - Supplementary Decision, Decision on Respondent Request for Supplementation of the Annulment Decision, 11 September 2013, paras. 56-58, **Annex 002** and **Exhibit CL-184**; *Railroad Development Corporation v. Republic of Guatemala*, ICSID Case No. ARB/07/23, Decision on Claimant Request for Supplementation and Rectification, 18 January 2013, para. 51, **Annex 007** and **Exhibit CL-185**; *Philip Morris Brand Sàrl (Switzerland), Philip Morris Products S.A. (Switzerland) and Abal Hermanos S.A. (Uruguay) v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Decision on the Rectification, 26 September 2016, para. 43, **Exhibit CL-183**; and *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v. The Republic of Estonia*, ICSID Case No. ARB/99/2, Decision on Claimant’s Request for Supplementary Decisions and Rectification, 4 April 2002, paras. 19-20, **Exhibit CL-194**.

rejects the Request that the Tribunal order Respondent to pay in full the Claimants' share of ICSID administrative costs, Tribunal expenses and the Claimants' legal costs. Alternatively, the Claimants request that the Tribunal allocate costs between the Parties reflecting the Parties' relative success in the rectification proceeding. The Claimants' total amount of arbitration and legal costs is USD 50,000.00 and EUR 63,293.39, respectively, distributed as follows:

Allen & Overy Legal Fees	EUR	USD
Legal fees – Time-costs up to and including 27 May 2020		
Legal Fees (13 April 2020 to 27 May 2020)	€25,753.14	
Total legal fees	€25,753.14	\$0

Expert fees and disbursements	EUR	USD
The Brattle Group fees - €	€37,540.25	
Total	€37,540.25	\$0

Claimants' payment to ICSID	EUR	USD
Lodging fee ⁹⁷		\$50,000
Total	€0	\$50,000

Grand total	EUR	USD
	€63,293.39	\$50,000

77. Article 61(2) of the ICSID Convention provides:

In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

⁹⁷ The Claimants actually were referring to the advance payment requested by ICSID by letter of 13 March 2020.

78. Rules 47(1)(j) and 49(4) of the ICSID Arbitration Rules read as follows:

Rule 47(1)(j): “any decision of the Tribunal regarding the cost of the proceeding.”

Rule 49(4): “Rules 46-48 shall apply, mutatis mutandis, to any decision of the Tribunal pursuant to this Rule.”

79. The Respondent contends that each party should bear its own costs and expenses and both of them should share equally the costs of this rectification proceedings. The Claimants contend that costs should follow the event.

80. As decided in section IV of this Decision, the Tribunal has found no merit to the Respondent’s application for rectification and no jurisdiction with respect to the Respondent’s request for stay of enforcement of the award.⁹⁸ In exercising its discretion as provided in Article 61(2) of the ICSID Convention, and for purposes of Rules 47(1)(j) and 49(4) of the ICSID Arbitration Rules, the Tribunal decides that costs incurred in relation to Respondent’s application for rectification and stay of enforcement, should follow the event.⁹⁹ Therefore, the Claimants’ legal costs and the costs of rectification proceedings shall be borne by the Respondent.

81. The Claimants’ legal costs and other expenses as stated above amount to EUR 63,293.39.

82. The costs of the rectification proceeding which include the Tribunal’s fees and expenses and ICSID’s administrative fees and expenses amount to (in USD):

Arbitrators’ fees and expenses	
Tan Sri Dato’ Cecil W.M. Abraham	12,012.50
Dr. Michael C. Pryles	12,656.25
Prof. Dr. Hélène Ruiz Fabri	3,637.50
ICSID’s administrative fees	42,000
Direct expenses (estimated)	3,238.00

⁹⁸ See paras. 54, 65 and 74 *supra*.

⁹⁹ The Tribunal also relies on the decision in *Genin v Estonia*, where the tribunal rejected the Claimant’s request for rectification and ordered that the costs of rectification “shall follow the result. See *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v The Republic of Estonia*, ICSID Case No. ARB/99/2, Decision on Claimant’s Request for Supplementary Decision and Rectification, 4 April 2002, paras. 19 and 20, **Exhibit CL-194**.

Total (estimated)

73,544.25

83. The costs of the rectification proceeding have been paid out of the advances of the parties.¹⁰⁰
84. Each Party's share of the costs of the rectification amount to USD 36,772.13. Accordingly, the Tribunal orders the Respondent to pay to the Claimants the costs of the rectification proceeding that amount to USD 36,772.13 which is the expended portion of the Claimants' advance in connection with the Respondent's Request.

V. DISPOSITION OF THE RESPONDENT'S APPLICATION

85. For the foregoing reasons, the Tribunal by majority, makes the following orders:
- 1) The Request of the Respondent for rectification of the Award is denied and dismissed.
 - 2) The Respondent's application for stay of enforcement of the Award is denied and dismissed.
 - 3) The Respondent shall pay the Claimants USD 36,772.13 for the costs of the rectification and EUR 63,293.39 for the Claimants' legal costs.

¹⁰⁰ The remaining balance will be reimbursed to the Parties in proportion to the payments that they advanced to ICSID. Once the case account balance is final, the ICSID Secretariat will provide the Parties with a detailed financial statement; any remaining balance will be reimbursed to the Parties in equal shares.

Dr. Michael C. Pryles AO PBM
Arbitrator

Date: 13/07/2020

Prof. Dr. Hélène Ruiz Fabri
Arbitrator

(Subject to the dissent in paragraph 34 and
footnote 50)

Date:

Tan Sri Dato' Cecil W.M. Abraham
President of the Tribunal

Date:

Dr. Michael C. Pyles AO PBM
Arbitrator

Date:



Prof. Dr. Hélène Ruiz Fabri
Arbitrator

(Subject to the dissent in paragraph 34 and
footnote 50)

Date:

13 July 2020.

Tan Sri Dato' Cecil W.M. Abraham
President of the Tribunal

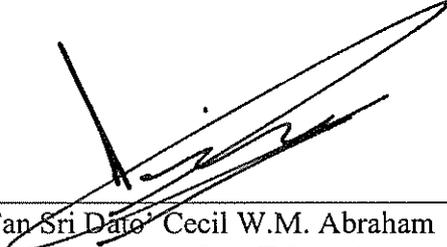
Date:

Dr. Michael C. Pryles AO PBM
Arbitrator

Date:

Prof. Dr. Hélène Ruiz Fabri
Arbitrator
(Subject to the dissent in paragraph 34 and
footnote 50)

Date:



Tan Sri Dato' Cecil W.M. Abraham
President of the Tribunal

Date: 13th July 2020.