

# Briefing

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## Energy Charter Treaty claims: Spain wins first solar case in arbitration

One of the first renewable energy claims filed by an investor against a state as a result of amendments to the incentive framework on the ground that the amendments violate the protection granted to the investor under the Energy Charter Treaty (ECT) has just been decided by an arbitral tribunal in favour of the state.

The claims under the *Charanne and Construction Investments v Kingdom of Spain* case referred to the legislation passed in 2010 which scaled back the incentives offered to the investors in the photovoltaic sector in Spain. The tribunal found that Spain has not made any specific commitments to the investors with respect to the stability of the incentives regime and the investors could not have expected that the renewable incentives regulatory framework established by the Royal Decrees 661/07 and 1578/08 would remain unchanged for the lifetime of a PV plant. Therefore, in the absence of a specific commitment, there was no violation of legitimate expectations of the investors.

Also, in the tribunal's view, the changes were reasonable, proportional, made in the public interest and not retroactive.

One of the arbitrators, Prof. Dr. Guido Santiago Tawil had a dissenting opinion with respect to the creation of legitimate expectations, which should not be limited to the existence of a specific commitment – in a nutshell, in his view *“when an investor complies with all requirements of the legislation in order to be entitled to an expected and determinable benefit, subsequent disregard on the part of the State receiving the investment violates legitimate expectations.”*

As the arbitral tribunal focused its analysis on the legal changes made in 2010 and did not take into consideration further changes brought to the incentives regime, the arbitral award in the Charanne case should not be seen as decisive for the outcome of the other ECT renewable energy cases against Spain.

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