

Heiskanen, Born and Thomas see some investment treaty breach in Czech solar case, but debate over remedies is held over for separate phase

Published: Jan 26, 2018 | By: Luke Eric Peterson

Czech media reports disclosed this week that a still-confidential interim award has been rendered in one of six treaty-based arbitrations that remain pending against the Czech Republic.

*IAR*porter have determined that the interim award arises out of a claim brought by three entities: Natland Investment Group N.V., Natland Group Limited, G.I.H.G. Limited, and Radiance Energy Holding S.A.R.L.

The claimants are investors in a Czech solar company, [Energy 21](#), with more than 30 solar power production installations in the country.

The various solar claims arise out of various measures* taken by the Czech authorities that were alleged to have made the investments less profitable in contravention of investment treaty commitments.

Arbitrators in the Natland case are Veijo Heiskanen, Gary Born (claimant's nominee), and J. Christopher Thomas (respondent's nominee)

The Czech finance Ministry, through its counsel, have confirmed that the interim award was rendered in late 2017. While accepting certain jurisdictional objections, the tribunal dismissed certain others. On the merits, some claims were dismissed, while others were upheld. Questions of relief will be assessed in a forthcoming phase. No other details have been disclosed as yet.

Counsel for the claimants in the Natland case is the Italian firm Arblit. The respondent are represented by Weil Gotshal (Prague) and Arnold & Porter (London and D.C.).

Decisions loom in two more sets of proceedings (encompassing five groups of investors)

Decisions still loom in several parallel arbitrations, including the Antaris & Michael Gode v. Czech Republic case (before a tribunal of Lawrence Collins, Gary Born and Peter Tomka), and a further [quartet of claims](#) that are all being heard by the same three arbitrators (Hans Van Houtte, Gary Born and Toby Landau).

While the latter group of claims are not formally consolidated, they were heard on successive days by the arbitrators.

Czech Republic had prevailed in first of the solar cases, and award and dissent have now been obtained by *IAR*porter

As readers will recall, in October of last year, a separate tribunal dismissed all claims mounted by a group of German investors** in the Czech solar industry. We have since learned that the majority of Gabrielle Kaufmann-Kohler and Peter Tomka dismissed all claims, while Gary Born issued a dissent.

*IAR*porter have obtained a copy of that October 2017 arbitral ruling and will be posting an in-depth summary and analysis of its holdings shortly.

* The measures included a solar levy adopted at end of 2010 on the electricity generated by certain solar producers that had commissioned their plants/facilities during 2009 and 2010. That was a three year levy, at a rate of 26%. Then after three years, in 2013, there was a further extension of the levy for 2010 plants (but not 2009 plants, at the lower rate of 10%. Additionally, the investors complained of the abolition in 2010 of a temporary tax holiday from income tax that had previously applied to all renewable energy producers.

Furthermore, the claimants also complained about a change in the depreciation period for certain solar equipment. Previously, the investors enjoyed a more accelerated timetable for depreciation of certain assets. However, these timetables were stretched to 20 years, to match the expected lifetime of generating plants.

** The claim was styled as: Mr Jürgen Wirtgen, Mr Stefan Wirtgen, and JSW Solar (zwei) GmbH & Co.KG v. Czech Republic.

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