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Renewable Energy Investment Incentives: The Approach of International Investment Agreements

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ABSTRACT

Today the world is tackling climate change and simultaneously needs to overcome growing energy security challenges. The transition to renewable energy is known as the key strategy for reducing carbon emissions and ensuring energy security. However, not all countries access the required finance and technologies to successfully and sustainably deploy renewable energy projects. Therefore, they seek to attract foreign investment and technology. A growing number of governments are adopting incentives to compete in this field and create a more favorable investment atmosphere. The granting of investment incentives lies within the realm of national legislation which is susceptible to revocation by the host States. This exposes foreign investors to several risks as no State is bound by its unilateral commitments and the change or withdrawal of pro-foreign investment policies by the host States is a mere exercise of their sovereignty. As International Investment Agreements (IIAs) were primarily drafted to promote and protect cross-border investments against unfair and discriminatory treatments, it is interesting to know their current approach to investment incentives and assess its implications for renewable energy investments. Adopting a qualitative approach, this research aims to clarify this issue by defining investment incentives and shedding new light on the relevant clauses in IIAs that can better contribute to the protection of renewable energy investors' interests. Findings suggest that harmonizing investment incentives by including them in IIAs has not been on the agenda so far and IIAs seldom contain renewable energy-related incentive provisions. Therefore, this research points out the relevant provisions that can better accommodate the renewable energy investment needs.

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Introduction

The rationales behind governments' support for the transition to renewable energy are multifold. Renewable energy generates no emissions, lowers the country's carbon footprint, and provides a cheaper form of electricity that never runs out. In addition, diversifying the energy sources away from conventional sources helps overcome energy security challenges.[1] However, the non-affordability of renewable energy projects is considered to be the most challenging issue for governments and investors.[2] There is a risk that investors may become reluctant to invest at the scale necessary to fully utilize renewable energy sources if policy actions in favor of such projects are lagging or non-existent.[3] Therefore a growing number of States are adopting several incentives under various circumstances to attract renewable energy investments and increase the production of energy from renewable sources.

Investment incentives may be defined as 'measurable economic advantages that governments provide to specific enterprises or groups of enterprises, with the goal of steering investment into favored sectors or regions or of influencing the character of such investments'.[4] These incentives may generally be categorized into four types: fiscal incentives, financial incentives, regulatory incentives, and technical and business support incentives.[5]

Generally, the granting of investment incentives lies within the realm of national legislation, and therefore governments are adopting specific laws, directives, or ordinances to this end.[6]

1. Hossein Karami Lakeh, 'What Are the Advantages and Disadvantages of Renewable Energy?' (20 May 2022) <https://www.greenmatch.co.uk/blog/2021/09/advantages-and-disadvantages-of-renewable-energy> accessed 25 June 2023. Union of Concerned Scientists, 'Benefits of Renewable Energy Use' (20 December 2017) <https://www.ucsusa.org/resources/benefits-renewable-energy-use> accessed 20 June 2023.
2. S U Zakaria and others, 'Public Awareness Analysis on Renewable Energy in Malaysia' (2019) 268 IOP Conf. Series: Earth and Environmental Science 1, 6-8. International Energy Agency, Perspectives for the Energy Transition – Investment Needs for a Low Carbon Energy System (IEA/IRENA 2017), 8.
3. Pierpaolo Grippa, Jochen Schmittmann and Felix Suntheim, 'Climate Change and Financial Risk: Central banks and financial regulators are starting to factor in climate change' (2019) 56(4) Finance and Development 26, 29.
4. Sebastian James, Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications (World Bank Group 2014) 6.
5. Lise Johnson, Perrine Toledano, Investment Incentives: A Survey of Policies and Approaches for Sustainable Investment (Columbia Center on Sustainable Investment 2022) III.
6. Martin Dietrich Brauch, 'Reforming International Investment Law for Climate Change Goals' in Michael Mehling and Harro van Asselt (eds), Research Handbook on Climate Finance and Investment Law (Edward Elgar Publishing forthcoming 2023) pts 3.2-3.

National legislation can reduce various political and economic risks associated with renewable energy projects, including the lack of information on renewable energy options, high transaction costs, limited access to technology, inadequate infrastructure, unfavorable power pricing rules, lack of access to credit, government monopolies, uncertainty in national policies, and insurance gaps.[1] Unsurprisingly, no State is bound by its unilateral commitments as the unilateral changes of pro-foreign investment laws and reduction or withdrawal of incentives by the host State are merely the exercise of sovereignty.[2] This concern is unlikely to be alleviated unless there are treaty obligations that require the States to honor commitments made as to the treatment of foreign investments.[3] Thus, where a contract or municipal laws and regulations mandate fundamental commitments in favor of foreign investment and its economic value, such negative changes are elevated to a breach of treaty commitments.[4] The normal effect of such clauses in International Investment Agreements (IIAs) could be to transform what might be seen as an obligation under domestic law, into a justiciable obligation under international law, bring greater protection to investors, and ensure that State contracts and other obligations of the host State are no more governed exclusively by domestic law which are susceptible to revocation by governments.[5]

Although both IIAs and investment incentives are used by governments to attract investments and promote outward investments, harmonizing investment incentives by including them in IIAs has not been on the agenda so far. This is particularly because incorporating investment incentives into IIAs would not be without costs to the parties. In fact, the attitude of States toward including investment incentives in their IIAs largely depends on whether they adopt a *laissez-faire* approach to foreign investment.[6] However, most governments prefer to retain the power to create and/or modify investment schemes as needed based on their changing public policy needs.[7] Most notably, developing countries might face capacity constraints in implementing these policies and as a result, incorporating convenient incentive provisions into IIAs does not guarantee more foreign investments.[8] Therefore, IIAs seldom contain binding incentive measures, and they may simply include incentive provisions of general application in soft law language. It is important to note that while it is rare to find IIA provisions addressing the substantive details of investment contracts which often contain different incentive obligations,

1. Bradford S Gentry, Jennifer J Ronk, 'International Investment Agreements and Investments in Renewable Energy' in Leslie Parker and others (eds), From Barriers to Opportunities: Renewable Energy Issues in Law and Policy (Forestry & Environmental Studies Publications Series 2007) 58-59.
2. Diego Zannoni, 'The Legitimate Expectation of Regulatory Stability under the Energy Charter Treaty' (2020) 33(2) Leiden Journal of International Law 451, 457-58. See also Orsat Miljenić, 'Energy Charter Treaty – Standards of Investment Protection' (2018) 24(83) Croatian International Relations Review 52, 73.
3. M Sornarajah, The International Law on Foreign Investment (Cambridge University Press 2021) 40-46.
4. Matthias Herdegen, Principles of International Economic Law (Oxford University Press 2016) 432-88. Zannoni (no 8), 457-58. Miljenić (no 8), 73.
5. Thomas W Walde, 'The "Umbrella" Clause in Investment Arbitration: A Comment on Original Intentions and Recent Cases' (2005) 6(2) Journal of World Investment & Trade 183, 202-207. See generally, Michael Bennon and Francis Fukuyama, 'The obsolescing bargain crosses the Belt and Road Initiative: renegotiations on BRI projects' (2022) 38(2) Oxford Review of Economic Policy 278. Today many arbitration proceedings on foreign investment projects are ongoing for different reasons. For instance when the Government of Sri Lanka suspended its support for the Colombo Port City project. The Chinese States-owned Enterprise which was the concessionaire for that project threatened to resort to arbitration to recover damages of around $143m for delays on the project and this led the Government of Sri Lanka to settle the dispute in 2016: at 283-90.
6. UNCTAD, Investment Promotion Provisions in International Investment Agreements (United Nations Publication 2008) 9.
7. Brauch (no 6), pts 3.2–3.
8. UNCTAD (no 12), XII.

reforming or revoking national policies or derogations from contractual provisions may lead to breaches of investment protection provisions and the objectives of the applicable IIAs.[1] So far at least 80 publicly-known Investor-State Dispute Settlement (ISDS) cases related to breaches of renewable energy investment policies have been brought against a number of States resulting in awards worth millions of dollars.[2]

International investment law has generally received little attention from sector-specific analyses compared to other sub-systems of international law such as international trade law.[3] Much of the existing literature highlights the positive effects of investment incentives on the promotion of foreign investments in the renewable energy sector. For instance, *Zhao et al.* have analyzed the role of China's incentive policies for renewable energy power generation,[4] and similarly, *Alves* and his colleagues have conducted a panel analysis of international renewable energy incentive policies in developed and developing countries between 2005 and 2015.[5]

Another notable example is the recent book by *Raikar* and *Adamson,* titled 'Renewable Energy Finance: Theory and Practice'. In this work, the authors have carried out in-depth analyses of the prevailing fiscal and financial policies to support renewable energies.[6] However, the ways in which renewable energy incentives have been typically approached in the literature are limited by geographical boundaries and/or national legislation points of view.[7] Besides, most of the studies have focused on certain categories of incentives. As a result, the comprehensive approach to the legal status and nature of investment incentives, the way they are incorporated into IIAs, and their relationship with renewable energy investments are often overlooked.

Against this background, this article aims to draw the attention of researchers to the potential role of IIAs in promoting renewable energy investments by better utilizing incentive provisions. Organized into four parts, the article first describes fiscal incentives and their potential impact on promoting renewable energy investments and the relevant IIAs provisions. The second part discusses the financial incentives and the way in which IIAs approach them. The third part explores the nature and impact of regulatory incentives on promoting foreign investments in the renewable energy sector.

Finally, technical and business support incentives are examined in light of recent developments in treaty law. Eventually, the article concludes that fiscal incentives are still the most frequently used investment incentives, and with the introduction of Feed-in Tariffs (FITs), financial incentives are particularly gaining momentum in the renewables energy sector. Nevertheless, IIAs seldom articulate clear incentives that target renewable energy, and investments in this sector may benefit from the same incentive provisions as other types of foreign

1. UNCTAD, State Contracts: Series on Issues in International Investment Agreements (United Nations Publication 2004) 12.
2. Gentry and Ronk (no 7), 69-71. Ladan Mehranvar and Sunayana Sasmal, The Role of Investment Treaties and Investor-State Dispute Settlement in Renewable Energy Investments (Columbia Center on Sustainable Investment (CCSI) 2022) 10.
3. Jan Peter Sasse, An Economic Analysis of Bilateral Investment Treaties (The Netherlands: Gabler Verlag, 2011).
4. Zhen-Yu Zhao, Yu-Long Chen and Rui-Dong Chang, 'How to stimulate renewable energy power generation effectively? - China's incentive approaches and lessons' (2016) 92 Renewable Energy 147, 151.
5. Elia Elisa Cia Alves and others, 'From a Breeze to the Four Winds: A Panel Analysis of the International Diffusion of Renewable Energy Incentive Policies (2005–2015)' (2019) 125 Energy Policy 317.
6. Santosh Raikar, Seabron Adamson, Renewable Energy Finance: Theory and Practice (London: Academic Press 2019).
7. See eg, Mustafa Ozcan, 'Assessment of Renewable Energy Incentive System from Investors' Perspective' (2014) 71 Renewable Energy 425. In this work, the author has surveyed the efficacy of renewable energy incentives and other support mechanisms only in Turkey.

investments in general. However, IIAs should incorporate investment incentive provisions as they can help protect and promote foreign investments in renewable energy. These provisions bring more clarity and predictability to the investment environment as they serve as a signal that the host State has laws and policies in place to promote foreign investments and help prevent the abuse of incentive measures.

1. The Potential Contribution of Fiscal Incentives to Renewable Energy Investments

Fiscal Incentives, also referred to as tax incentives, are among the incentives stemming from governmental policies and may have various forms, and often implicate tax-based measures, such as the reduction or periodic freeze of tax payments.[1] Generally, tax incentives may be in the form of a tax credit, tax abatement, or tax exemption.[2]

Today, many countries are introducing new fiscal incentives for priority sectors (for example through the establishment of Special Economic Zones (SEZs)). For instance, Angola has recently adopted its Free Zones Act which focuses on developing the agricultural and industrial sectors, labor-intensive industries, and high-tech industries, and offers a range of tax incentives to companies established in the free zones. Similarly, Botswana has announced that investors' income from SEZ-licensed projects is to be taxed at a special rate of 5% for the first 10 years, and 10% thereafter.[3] China has also offered tax holidays for 'new technology enterprises' which operate in SEZs.[4] Clearly, fiscal incentives remain the most frequently used investment incentives on the part of host developing countries that lack the competitive financial capacity to provide upfront subsidies for inward investments.[5]

As the UN Environment Emissions Gap Report (2018) has confirmed the possible key role of fiscal policies 'in creating strong incentives for low-carbon investments and reducing GHG emissions', so far various countries have adopted fiscal incentives for the renewables sector.[6] Thus, fiscal incentives have become the prevailing incentive for the promotion of renewable energies.[7] These incentives are designed to help the investors with the costs and risks of renewable energy projects as they can mitigate the costs of installation and production, and potentially increase the earnings from the generated renewable energy. These incentives can also offset market failures that favor fossil fuels over renewable energy.[8]

Although there are controversies about the real impact of fiscal incentives on renewable

1. Nicole Tryndina and others, 'Renewable energy incentives on the road to sustainable development during climate change: A review' (2022) 10 Frontiers in Environmental Science 1, 2.
2. The University of Calgary, 'Fiscal incentives' (Energy Education) <https://energyeducation.ca/encyclopedia/Fiscal_incentive#cite_note-IPCC_SRREN-2> accessed 10 May 2023.
3. UNCTAD, World Investment Report 2022: International Tax Reforms and Sustainable Investment (United Nations Publication 2022) 61.
4. OECD, Overcoming Barriers to International Investment in Clean Energy, Green Finance and Investment (OECD Publishing 2015) 92.
5. UNCTAD, Incentives: Series on Issues in International Investment Agreements (United Nations Publication 2004) 5.
6. UNEP, The Emissions Gap Report 2018 (United Nations Environment Programme 2018) XXI. Yose Rizal Damuri and Raymond Atje, Investment Incentives for Renewable Energy: Case study of Indonesia (The International Institute for Sustainable Development 2013) 15.
7. Tryndina and others (no 22), 1. OECD (no 25), 90.
8. Dan Arvizu and others, 'Technical Summary' in Ottmar Edenhofer and others (eds), Renewable Energy Sources and Climate Change Mitigation: Special Report of the Intergovernmental Panel on Climate Change (Cambridge University Press 2012) 151-52.

energy development, some studies suggest that such incentives are effective if they are correctly targeted to favor the taxpayers over the entities that are producing energy from fossil fuels, and therefore government policies and investment contracts must be thoroughly drafted and executed.[1] A notable example is the incentive policy system for renewable energy power generation in China. The Government of China has developed renewable energy production by providing tax incentives for solar, hydro, wind, and geothermal power projects. These preferential tax schemes cover Value-Added Tax (VAT), income tax, and import duties. The government's preferential tax policies for renewable energy production have considerably reduced the tax burden on renewable energy investors compared to the standard VAT rate of 17% and the income tax rate of 25%. Similarly, the import duty of renewable energy equipment has a considerable impact on the investors' profit as lower import duties help foreign investors to safely import the equipment they require.[2] As surveys confirm, the aforesaid measures have particularly reduced the costs of wind power installed capacity, facilitated the regional presence of wind power manufacturing, and promoted foreign investments in this sector.[3]

It is important to mention that some States have also adopted restrictive tax policies as a tool to speed up renewable energy projects. For instance, the German government has established an ecological tax reform that imposes a tax on the consumption of power produced by non-renewable sources. Similarly, Denmark has introduced a CO2 emission tax on the consumption of fossil fuels, while providing various tax supports for the use of renewables.[4] Following such incentives, the per-unit cost of electricity from renewable sources drops, and the renewable energy sector can have a level playing field to compete with conventional energies.[5] Therefore fiscal incentives are deemed to be more efficient in the renewable energy sector than in other energy sectors.[6] Hopefully, these schemes are likely to have sweeping impacts beyond Europe and pave the way for other governments to follow suit and contribute to the renewable energy transition.

However, so far IIAs have rarely included fiscal incentives, in part due to the fact that such programs might be expensive and many developing countries may find difficulties in implementing them, and partly because of the existence of Double Taxation Treaties (DTTs).[7] On the other hand, most IIAs that stipulate fiscal incentives provide them in a general manner and without adequate clarification of the conditions and the extent to which such measures should be granted.[8] For instance, the Treaty establishing the Common Market for Eastern and Southern Africa (COMESA) has not only asked the parties to cooperate and adopt collective policy measures 'to achieve a harmonized monetary and fiscal system in the Common Market' but also invites them to 'remove administrative, fiscal and legal restrictions to intra-Common

1. Tryndina and others (no 22), 3.
2. Zhao, Chen and Chang (no 18) 151.
3. Qiang Wang, 'Effective Policies for Renewable Energy - The Example of China's Wind Power - Lessons for China's Photovoltaic Power' (2010) 14(2) Renewable and Sustainable Energy Reviews 702, 702-710.
4. Zhao, Chen and Chang (no 18), 151.
5. Sikandar Abdul Qadir and others, 'Incentives and strategies for financing the renewable energy transition: A review' (2021) 7 Energy Reports 3590, 3598.
6. Tryndina and others (no 22), 3.
7. UNCTAD (no 24), 87. UNCTAD (no 12), XII.
8. UNCTAD (no 12), 35-36.

Market investment'.[1] Another example is the China – Kuwait BIT which proposes 'tax relief' as a possible incentive to promote investment flows.[2]

Although some agreements such as the Trade and Cooperation Agreement between the EU and the UK provide detailed provisions on taxation,[3] many agreements exclude or carve-out taxation matters totally or partly from their scope of protection.[4] For instance, the Japan-Georgia BIT clearly excludes taxation measures from the scope of National Treatment (NT) and the Most Favored Nation Treatment (MFN).[5] The Brazil-India BIT goes even further as it has generally carved out such measures from the jurisdiction of the agreement in toto.[6]

Generally, IIAs that do not exclude taxation from their scope provide important signaling assistance for prospective foreign investors in various sectors including renewables.[7] This is due to the fact that these instruments may have different implications for the host State's general and specific tax-related measures. As NT and MFN provisions are designed to prevent de facto and de jure discriminatory treatment preferential tax policies exclusively in favor of national or foreign investors from third States could be seen as a breach of NT or MFN under the applicable IIAs.[8] Similarly, Fair and Equitable Treatment (FET) clauses that are drafted in an open-ended way leave the tribunals with a broad margin of interpretation and might lead to their interpretation of taxation measures as a breach of the investors' legitimate expectations of regulatory stability.[9] As clearly stated by the tribunal in *Electrabel v Hungary,*

> *[The] obligation to provide fair and equitable treatment comprises several elements, including an obligation to act transparently and with due process; and to refrain from taking arbitrary or discriminatory measures or from frustrating the investor's reasonable expectations with respect to the legal framework adversely affecting its investment.*[10]

1. Treaty Establishing the Common Market for Eastern and Southern Africa (opened for signature 5 November 1993, entered into force 8 December 1994) ('COMESA') arts 76, 159.
2. Agreement between China and Kuwait for the Promotion and Protection of Investments (signed 23 November 1985, entered into force 24 December 1986) art 2.
3. Trade and Cooperation Agreement between the EU and the UK (opened for signature 30 December 2020, entered into force 1 May 2021).
4. Ohene-Manu Kenneth and Fernández Antuña Antolín, 'Taxation Exclusions' (Jus Mundi, 6 September 2022) <https://jusmundi.com/en/document/publication/en-taxation-exclusions#> accessed 20 January 2023. See eg Agreement between Oman and Hungary for the Promotion and Reciprocal Protection of Investments (signed 2 February 2022, entered into force 24 October 2022). This agreement does not regulate tax policies whatsoever. See also The Energy Charter Treaty (opened for signature 17 December 1994, entered into force 16 April 1998) ('ECT') 2080 UNTS 100 art 21.
5. Agreement between Japan and Georgia for the Liberalisation, Promotion and Protection of Investment (signed 29 January 2021, entered into force 23 July 2021) ('Japan-Georgia BIT') art 19.2.
6. Investment Cooperation and Facilitation Treaty between Brazil and India (signed 25 January 2020, not yet in force) ('Brazil – India BIT') art 3.6(b). See also Model Text for the Indian Bilateral Investment Treaty (2015) art 2.4(ii).
7. Energy Charter Secretariat, Special Paper Series: Handbook on General Provisions Applicable to Investment Agreements in the Energy Sector (ECS 2017). Antony Crockett, 'Stabilisation Clauses and Sustainable Development: Drafting for the Future' in Chester Brown and Kate Miles (eds), Evolution in Investment Treaty Law and Arbitration (Cambridge University Press 2011) 519-521.
8. UNCTAD (no 24), 87-90.
9. Igor V Timofeyev and others, 'Investment Disputes Involving the Renewable Energy Industry Under the Energy Charter Treaty' in J W Rowley, Doak Bishop and Gordon E Kaiser (eds), The Guide to Energy Arbitrations (Law Business Research 2020), 45-70.
10. Electrabel S.A. v The Republic of Hungary (Decision on Jurisdiction, Applicable Law and Liability) (ICSID Case No. ARB/07/19, 30 November 2012) para 7.74. See also Noble Ventures, Inc. v Romania (Award) (ICSID, Case No ARB/01/11, 12 October 2005).

Moreover, non-restricted Full Protection and Security (FPS) clauses can directly protect foreign investors based on the concepts of stability of tax framework and investment environment; particularly because a growing number of tribunals are extending the scope of FPS to legal and economic stability.[1] In a similar way, the obligations against expropriation can safeguard foreign investments against tax measures that substantially deprive the investors of their investments. And the same goes for other IIAs' clauses such as transfer of funds obligations, umbrella clauses, and ISDS provisions.[2] Particularly, ISDS mechanisms enable foreign investors to directly hold the host States accountable for legislative interferences and negative taxation practices. ISDSs are the preferable means of ensuring that the covered investments are not dramatically affected by subsequent legal and/or political measures.[3] As rightly stated by the tribunal in *Quasar de Valores v Russia,*

> *The notion that states have a considerable margin of discretion in enacting and enforcing tax laws should not lead to any confused idea that they have a discretion as to whether or not to comply with an international treaty [...] It is no answer for a state to say that its courts have used the word 'taxation' - any more than the word 'bankruptcy' - in describing judgments by which they affect the dispossession of foreign investors. If that were enough, investment protection through international law would likely become an illusion, as states would quickly learn to avoid responsibility by dressing up all adverse measures, perhaps expropriation first of all, as taxation. When agreeing to the jurisdiction of international tribunals, states perforce accept that those jurisdictions will exercise their judgment, and not be stumped by the use of labels.*[4]

Thus, ISDS provisions provide foreign investors with a great deal of protection against all possible host States' arbitrary/discriminatory taxation measures. To date, about 95% of IIAs contain ISDS provisions, and so far in at least 165 cases, foreign investors, including those in the renewable energy sector, have challenged the host States' tax-related measures based on the applicable IIAs.[5] The most notable examples are the investment disputes against the Government of Spain inter alia arising out of a series of policy reforms affecting the renewables energy investors, and imposing a 7% tax on power generators' revenues.[6] However, a brief

1. UNCTAD (no 24), 89. Sornarajah (no 9) 459-460. See eg Siemens AG v The Argentine Republic, (Award) (ICSID Case No ARB/02/8, 17 January 2007) para 303. Azurix Corp v The Argentine Republic (Award) (ICSID Case No ARB/01/12, 14 July 2006) para 408. Biwater Gauff (Tanzania) Ltd v United Republic of Tanzania (Award) (ICSID Case No. ARB/05/22, 24 July 2008) pp. 715-29. National Grid Public Limited Company v The Argentine Republic (Award) (UNCITRAL Case No. 1:09-cv-00248-RBW, 3 November 2008) pp 181-9.
2. UNCTAD (no 24), 88-90.
3. Energy Charter Secretariat (no 44). Crockett (no 44), 519-521.
4. Quasar de Valores SICAV S.A., Orgor de Valores SICAV S.A., GBI 9000 SICAV S.A. and ALOS 34 S.L. v. The Russian Federation (Award) (SCC Case No. 24/2007, 20 July 2012) para 179.
5. UNCTAD (no 24), 87-90. See eg Cairn Energy PLC and Cairn UK Holdings Limited v The Republic of India (Final Award) (PCA Case No. 2016-07, 21 December 2020) para 2032. Charanne B.V. and Construction Investments S.A.R.L. v Spain (Final Award) (SCC Case No. 062/2012, 21 January 2016). Hulley Enterprises Ltd. v Russian Federation (Final Award) (PCA Case No. 2005-03/AA226, 18 July 2014).
6. See eg Yukos Universal Limited (Isle of Man) v The Russian Federation (Final Award) (PCA, Case No 2005-4/AA 227, 18 July 2014) para. 1430. Filipe Vaz Pinto and Joana Granadeiro, 'Round-up of Arbitrations in the Renewable Energy Sector: Lessons for Portugal' (2019) 6(2) e-Pública 73, 73-113. Investment Policy Hub, 'Investment Dispute Settlement Navigator' <https://investmentpolicy.unctad.org/investment-dispute-settlement/advanced-search> accessed 20 May 2023.

review of the arbitral awards suggests that the tribunals have often dismissed the investors' tax claims and ruled in their favor based on the host States' revocation of financial incentives.[1] In other words, fiscal incentives are most effective when combined with financial incentives.[2]

2. Financial Incentives and the Renewable Energy Sector

Although developing countries are more frequently using fiscal incentives, it appears that financial incentives are playing a greater role in developed countries.[3] However recent research suggests that investment incentives are of little use if there is less public awareness.[4] Therefore, there is still a need for developing specific investment incentives literature and the notion of financial incentives is no exception. In much the same way that energy markets have just recently become more familiar with terms like volatility, uncertainty, complexity, and ambiguity, much work remains to be done to define the exact domain of financial incentives in the renewable energy sector.[5]

Generally, financial incentives refer to the availability of funds based on performance.[6] They may include subsidies, preferential loans, loan guarantees, export credits, government equity participation, and preferential insurance schemes.[7] For instance, FITs which are sometimes classified as subsidies, are known as the principal driving force in the worldwide development of Solar Photovoltaic, and, so far more than 110 governments have adopted such measures.[8]

It is important to mention that home countries and international institutions may similarly offer financial incentives to encourage outward investments or support renewable energy investments in a particular destination. For instance, the Japan Bank for International Cooperation provides overseas investment loans to Japanese investors and/or their overseas affiliates inter alia for various infrastructure projects in other countries.[9] Another notable example is the credit facilities provided by various international institutions, such as the European Investment Bank, World Bank, and development agencies of different countries to promote investments in Turkey's renewable energy projects.[10] However, such offers are mostly carried out by utilizing

1. See eg SolEs Badajoz GmbH v Kingdom of Spain (Award) (ICSID Case No. ARB/15/38, 31 July 2019). Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v Kingdom of Spain (ICSID Case No. ARB/13/36, 23 December 2013). RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.à r.l. v Kingdom of Spain (ICSID Case No. ARB/13/30, 23 November 2013). Infrastructure Services Luxembourg S.à.r.l. and Energia Termosolar B.V. v Kingdom of Spain (ICSID Case No. ARB/13/31, 29 October 2013).
2. Arvizu and others (no 29), 151-52.
3. Johnson, Toledano (no 5), 25.
4. Boban Melović, Dragana Ćirović, 'Analysis of Financial Incentives as an Instrument of Renewable Energy Sources Management in Montenegro', E3S Web of Conferences 157, No. 04001, (2020): pp. 1-6. See generally Rafael Leal-Arcas, 'The Multilateralization of International Investment Law' (2009) 35(1) North Carolina JILCR 33 at 70.
5. Abdul Qadir and others (no 34), 3598.
6. OECD, Governing Regional Development Policy: The Use of Performance Indicators (OECD Publishing 2009), 41.
7. Anastasios Gourgourinis, 'Domestic Investment Incentives in International Trade Law' (2023) 22(1) World Trade Review 35, 38.
8. REN21, 'Renewables 2017 Global Status Report' (REN21 Secretariat, 2017) <https://www.ren21.net/wp-content/uploads/2019/05/GSR2017_Full-Report_English.pdf> accessed 20 June 2023. Jennifer Runyon, 'IEA: Feed-in Tariff Not a Subsidy, But Tax Credits Are' (Renewable Energy World, 11 January 2013) <https://www.renewableenergyworld.com/solar/iea-feed-in-tariff-not-asubsidy-but-tax-credits-are/> accessed 24 May 2022. Marie Wilke, Feed-in Tariffs for Renewable Energy and WTO Subsidy Rules: An Initial Legal Review (International Centre for Trade and Sustainable Development 2011), 11.
9. Japan Bank for International Cooperation, 'Overseas Investment Loans' (JBIC) <https://www.jbic.go.jp/en/support-menu/investment.html> accessed 20 March 2023.
10. Mustafa Ozcan, 'Assessment of Renewable Energy Incentive System from Investors' Perspective' (2014) 71 Renewable Energy 425, 427.

national and/or institutional initiatives and IIAs do not necessarily play a determined role in this context. On the other hand, to help implement the agreed objectives, some IIAs offer financial assistance to a party on either a unilateral or reciprocal basis.[1] Despite all these the term 'financial incentive' often connotes the incentives provided for foreign investors and/or their investments by the host State and in its territory.

Financial incentives may partly fall under the purview of 'financial contributions' mentioned in Article 1.1(a)(1) of the Agreement on Subsidies and Countervailing Measures (SCM) which refers to the transfer of economic resources (i.e., money, goods, or services) delegated with such a function.[2] It appears that the SCM is among the few multilateral treaties with universal application that has tried to define and regulate financial incentives, as it was adopted due to the insufficient treatment of subsidies and countervailing measures in the General Agreement on Tariffs and Trade (GATT). [3]

Financial incentives have double importance in the renewable energy sector, which is why some scholars simply divide renewable energy investment incentives into two broad categories, namely financial and regulatory incentives.[4] Since the early 1980s, financial incentives have been the most common form of renewable energy investment incentives and were particularly effective with regard to wind power projects in Denmark and Germany.[5] Still, different types of renewable energies are often deemed capital-intensive, meaning that a considerable portion of the investors' costs is incurred prior to the operation of these projects. And even for successful investments, their costs are only recouped in the long term. As a result, these projects cannot compete with conventional energy projects without substantial financial incentives.[6] Therefore, financial incentives are still provided as supplementary support schemes for the promotion of renewable energies.[7]

Financial incentives in the renewable energy sector are often targeted at the provision of project finance which is especially crucial to developing big and/or modern renewable energy projects (e.g., hydropower and geothermal power plants) that need huge financial resources and expose investors to greater risks.[8] As opposed to tax incentives which are often administered by a single national authority, financial incentives may take various forms with different policy objectives and are intermittently granted by several private bodies and government entities at national, subnational, and local levels. These challenging features of financial incentives

1. Eg., Enhanced Partnership and Cooperation Agreement between the European Union and the Republic of Kazakhstan (opened for signature 21 December 2015, entered into force 1 March 2020) ('EU-Kazakhstan EPCA') art 261. Free Trade Agreement between Egypt and the EFTA States (opened for signature 27 April 2007, entered into force 1 September 2008) art 34.
2. Agreement on Subsidies and Countervailing Measures (entered into force 1 January 1995) 1869 UNTS 14 ('SCM') art 1.1.
3. Gourgourinis (no 60), 40-42. Zaker Ahmad, 'Conflicts of the SCM Agreement with LDCs Interests over Renewable Energy Incentives: Proposals for Reform' (2015) 50(2) Foreign Trade Review 118, 126.
4. Tryndina and others (no 22), 3.
5. Reinhard Haas and others, 'A Historical Review of Promotion Strategies for Electricity from Renewable Energy Sources in EU Countries' (2011) 15(2) Renewable and Sustainable Energy Reviews 1003, 1013-1026.
6. IRENA (no 2), 8. Jean-François Gagné, Energy Technology Perspectives: Harnessing Electricity's Potential (IEA Publications 2014), 14. See also SolEs Badajoz GmbH v Kingdom of Spain (Award) (ICSID Case No. ARB/15/38, 31 July 2019) para 415.
7. Bernardo Sarti, 'Policies for the Deployment of Renewable Energies: An Overview' (2018) 62 Social Impact Research Experience (SIRE) 1, 1-24.
8. Damuri, Atje (no 27), 14.

increase the likelihood of their abuse and they may be granted in a discretionary manner and possibly based on political criteria rather than economic justifications.[1] As a result, the cost-benefit analysis (*ex-ante*) of renewable projects can also be a challenging task for prospective investors.[2]

Moreover, renewable energy investors have a strong interest in the stability of the investment environment, the continuity of incentive schemes, and protection against adverse measures and policy changes during the payback period.[3] This calls on host States to observe the stability of financial incentives. As rightly claimed by the European Parliament, the Member States should ensure that 'the level of, and the conditions attached to, the support granted to renewable energy projects are not revised in a way that negatively affects the rights conferred thereunder and undermines the economic viability of projects that already benefit from support'.[4] Nonetheless, renewable energy projects usually have a term beyond that of one or two governments, and due to various economic and/or political reasons, host States may have to scale back or revoke the existing financial incentives before the completion of the payback period.[5] The revocation of these incentive schemes, if not discriminatory against foreign investments, can be seen as a serious distortion of economic equilibrium.[6]

Therefore, host States should not be able to revoke these incentive schemes without generating liability.[7] So far, the revocation of financial renewable energy incentives has been the subject of several ISDS cases. For instance, the Czech Republic, Italy, and Spain adopted financial incentives to increase renewable energy production. They however later discontinued or canceled these programs for economic reasons. This policy change adversely impacted foreign investors and resulted in dozens of investor-state cases which are known as the 'European Renewable Energy Cases'.[8] In these cases, the tribunals have awarded damages in favor of the claimants, partly thanks to the broad investment protections of the Energy Charter Treaty (ECT). [9]

1. James (no 4).
2. Johnson, Toledano (no 5), 74-75. Christian Bellak and Markus Leibrecht, 'The Use of Investment Incentives: The Cases of R&D-Related Incentives and International Investment Agreements' in Ana Teresa Tavares-Lehmann and others (eds), Rethinking Investment Incentives: Trends and Policy Options (Columbia University Press 2016), 65.
3. Nadejda Komendantova, Thomas Schinkoa, and Anthony Patt, 'De-risking Policies as a Substantial Determinant of Climate Change Mitigation Costs in Developing Countries: Case study of the Middle East and North African Region' (2019) 127(c) Energy Policy 404, 404-411. See also Timofeyev and others (no 46), 45-70.
4. European Parliament, Directive EU2018/2001 of 11 December 2018 on the Promotion of the Use of Energy from Renewable Sources (recast), [2018] OJ L328/82, 11/12/2018 art 6(1).
5. Johnson and Toledano (no 5), 102. Energy Charter Secretariat (no 44), 34.
6. Thomas Dromgool, Daniel Y Enguix, 'The Fair and Equitable Treatment Standard and Revocation of Feed in Tariffs-Foreign Renewable Energy Investments in Crisis-Struck Spain' in Volker Mauerhofer (ed), Legal Aspects of Sustainable Development (Springer 2016) 414.
7. Jack Biggs, 'The Scope of Investors' Legitimate Expectations under the FET Standard in the European Renewable Energy Cases' (2021) 36(1) ICSID Review 99, 99-100.
8. Ibid, 99. See eg., Antaris Solar GmbH and Dr Michael Gode v Czech Republic (PCA, Case No. 2014-01, 8 May 2013). BayWa r.e. Renewable Energy GmbH and BayWa r.e. Asset Holding GmbH v Kingdom of Spain (ICSID Case No. ARB/15/16, 16 April 2015). ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v Italian Republic (ICSID Case No. ARB/16/5, 8 March 2016).
9. Eg., AES Solar and others (PV Investors) v The Kingdom of Spain (Final Award) (PCA Case No. 2012-14, 28 February 2020) para 909. Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v Kingdom of Spain (Award) (ICSID Case No. ARB/13/36, 4 May 2017) para 486. Infrastructure Services Luxembourg S.à.rl and Energia Termosolar BV v Kingdom of Spain (Award) (ICSID Case No. ARB/13/31, 15 June 2018) para 748. InfraRed Environmental Infrastructure GP Limited and others v Kingdom of Spain (Award) (ICSID Case No. ARB/14/12, 2 August 2019). Masdar Solar & Wind Cooperatief U.A. v Kingdom of Spain (Award) (ICSID Case No. ARB/14/1, 16 May 2018) para 697.

IIAs can contribute to the alleviation of concerns around host States' financial incentive practices. Therefore, some IIAs oblige the parties to 'create and maintain favorable conditions for the investors' or cooperate in this regard.[1] Some have taken steps to regulate the margin of discretion of national decision-makers in relation to the application of financial incentives.[2] For instance, the EU-Kazakhstan Enhanced Partnership and Cooperation Agreement (EPCA) has generally drawn the party's attention to the need to omit 'anti-competitive business practices and state interventions, including subsidies [that] have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation'.[3] Moreover, the agreement states in clear language:

> *2. Each Party shall ensure transparency in the area of subsidies. To that end, each Party shall report every two years from the date of application of this Title to the other Party on the legal basis, including the policy objective or the purpose of the subsidy, the duration or any other time limits, the form and, where possible, the amount or the budget and the recipient of the subsidy granted by its government or a public body. Such report is deemed to have been provided if the relevant information is made available on a publicly accessible website or through the WTO notification mechanism.*
>
> *3. If a Party considers that a subsidy granted by the other Party is negatively affecting the first Party's interests, the first Party may request consultations on the matter. The requested Party shall accord due consideration to such a request. The consultations should, in particular, aim at specifying the policy objective of the subsidy, whether the subsidy has an incentive effect and is proportionate, and any measures taken to limit the potential distortive effect on trade and investment of the requesting Party.*[4]

Such provisions can promote foreign investments as they keep foreign investors informed about the new subsidies and their purposes, and help monitor such measures as an essential step to prevent the abuse of financial incentives.[5] Importantly financial incentives are subject to the standards of treatment under the applicable IIAs. For instance, the changes made to the financial incentives may inter alia amount to a breach of FET as an act against the investor's legitimate expectations, and detrimental to 'a stable business environment'.[6] However, some

1. See eg, Agreement for the Promotion and Protection of Investment between Japan and Kenya, No. 55787 (signed 28 August 2016, entered into force 14 September 2017) ('Japan-Kenya BIT') art 5(3). See also Political, Free Trade and Strategic Partnership Agreement between the UK and Ukraine (signed 8 October 2020, entered into force 1 January 2021) arts 73 and 323.
2. See eg, Interim Agreement Establishing an Economic Partnership Agreement between the United Kingdom and the Republic of Cameroon (signed 9 March 2021, entered into force 19 July 2021) ('Cameroon - UK EPA'). This agreement urges the parties not to 'introduce new export subsidies or increase any existing subsidy of this nature on agricultural products destined for the territory of the other Party... [except] increases due to variations in the world prices of the products in question': art 24(1).
3. EU-Kazakhstan EPCA, art 156.
4. Ibid, art 159(2) and (3). See also CETA, art 7.3.
5. Leonardo Borlini, Stefano Silingardi, 'The Foundations of International Economic Order in the Age of State Capitalism' in Panagiotis Delimatsis, Georgios Dimitropoulos and Anastasios Gourgourinis (eds), State Capitalism and International Investment Law (Hart Publishing 2023), 17-41. See generally Christopher Frey, 'Tackling Climate Change Through the Elimination of Trade barriers for Low-Carbon Goods: Multilateral, Plurilateral and Regional Approaches' in Volker Mauerhofer (ed), Legal Aspects of Sustainable Development: Horizontal and Sectorial Policy Issues (Springer 2016), 456-57. Joseph L. Staats and Glen Biglaiser, 'The Effects of Judicial Strength and Rule of Law on Portfolio Investment in the Developing World' (2011) 92(3) Social Science Quarterly 609, 613.
6. Johnson, Toledano (no 5), 102. See eg., Saluka Investments BV v Czech Republic (Partial Award) (PCA, Case No. 2001-04,

IIAs have, for instance, excluded various financial incentives from the scope of their NT and/or MFN provisions.[1] Similarly, by using negative lists, some recent IIAs have exempted certain local governments from the scope of NT, particularly with respect to financial incentives for renewable energy projects.[2] It is crystal clear that foreign investors (and producers) would enjoy greater protection against the possible host States' discriminatory and arbitrary incentive practices in the absence of such exclusions.[3]

IIAs may also encourage or provide different financial incentives. For instance, the Cameroon-UK Economic Partnership Agreement (EPA) invites the parties to observe financial and technical cooperation through 'multilateral organizations and international financial institutions [that] may provide long-term financial resources, including risk capital, to assist in promoting growth in the private sector and help to mobilize domestic and foreign capital for this purpose'.[4] This agreement further elaborates on the particular kinds of cooperation including:

> *[G]rants for financial and technical assistance to support policy reforms, human resource development, institutional capacity building or other forms of institutional support related to a specific investment, measures to increase the competitiveness of enterprises and to strengthen the capacities of the private financial and non-financial intermediaries, investment facilitation and promotion and competitiveness enhancement activities.*[5]

To further encourage the establishment of foreign investments, some IIAs have long advocated for the granting of financial and other incentives at the early stages of investment projects. A notable example is the Investment Agreement among the Member States of the Organisation of Islamic Cooperation which stipulates that:

> *The contracting parties will endeavour to offer various incentives and facilities for attracting capital and encouraging its investment in their territories such as commercial, customs, financial, tax and currency incentives, especially during the early years of the investment projects, in accordance with the laws, regulations and priorities of the host state.*[6]

Although such clauses are usually drafted in soft law, they generally have the potential to favor foreign investments, including those in the renewable energy sectors, as they unequivocally indicate the original intention of parties to provide financial incentives for the

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17 March 2006) para 303. Occidental Exploration and Production Company v Republic of Ecuador (I) (Award) (LCIA Case No UN3467, 1 July 2004) para 183.

1. Eg., NAFTA, art 1108(7). USMCA, art 14.12(5). See also ECOWAS Common Investment Code (opened for signature 22 December 2019, entered into force 22 December 2019) art 7.6 and 20.1. See also CETA, art 8.15(5).

2. CETA, Reservation I-PT-94.

3. Gourgourinis (no 60), 38. Timothy Meyer, 'Free Trade, Fair Trade, and Selective Enforcement' (2018) 118 Columbia Law Review 491, 512. See eg., WTO, Canada-Certain Measures Affecting the Renewable Energy Generation Sector- Report of the Appellate Body, WT/DS412/AB/R (6 May 2013). WTO, Canada-Measures Relating to the Feed-in Tariff Program- Report of the Appellate Body, WT/DS426/AB/R (6 May 2013).

4. Cameroon - UK EPA, art 8.

5. Ibid, art 10.1(a).

6. Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference (adopted 5 June 1981, entered into force 23 September 1986) art 4.

covered investments and thereby give rise to a sort of legitimate expectations on the part of the foreign investors and tribunals regarding the host State's incentive policy practices. [1]

3. Regulatory Incentives

Many governments have adopted special investment and renewable energy-related laws. However, several regulatory issues remain, including instability, lack of comprehensive laws, inadequate regulatory frameworks for ancillary services and grid access, and the lack of transparency and predictability of incentives.[2] A notorious example of such hurdles in renewable energy investments is the bureaucratic procedures that expose foreign investors to challenging processes of obtaining government approval for their projects. A process that is not always based on merits and qualifications. Thus, in many cases, this results in a loss of confidence among prospective investors.[3]

In an attempt to alleviate these concerns, States bundle various regulatory incentives such as enhanced physical infrastructure, streamlined administrative services, advantages relating to foreign exchange, and other preferable legal and regulatory requirements with financial and fiscal incentives.[4] In this sense, regulatory incentives are adopted to achieve a variety of objectives including risk reductions, reliability, meeting technical, financial, and consumer service requirements, disaster responses, and enabling safe and reliable interconnections with electric systems, inter alia through the establishment of SEZs.[5] In this way, host States may 'offer or provide derogations from generally applicable laws or regulations' and exempt foreign investors from having to comply with the normally applicable regulations, providing them with favorable rights and conditions to facilitate and attract more foreign investments.[6]

Against this background, it is important to know that IIAs are themselves considered a particular type of regulatory incentive as they influence investors' decisions by offering substantive and procedural protections.[7] Besides, IIAs may prescribe certain incentives, or regulate the use of such supports. For instance, as mentioned above, they may require tax stabilization, or an even broader set of laws affecting the projects, and/or to provide compensation for undue changes in these laws.[8]

4. Technical and Business Support Incentives

recent research studies suggest that investment incentives may be of little use when there is a lack of awareness.[9] Therefore, some advisory services are designed to ease entry or support the establishment and operations of investors/investments and ensure their ability to successfully

1. Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 art 31.
2. Rahmatallah Poudineh, Anupama Sen and Bassam Fattouh, 'Advancing renewable energy in resource-rich economies of the MENA' (2018) 123 Renewable Energy 135, 145.
3. Abdul Qadir and others (no 34), 3598.
4. Gourgourinis (no 60), 39-42.
5. Ronald L. Lehr, 'Public Policy Perspective: Regulatory Incentives to Support Grid Modernization' in Lisa Schwartz (ed), Regulatory Incentives and Disincentives for Utility Investments in Grid Modernization: Future Electric Utility Regulation/ Report No. 8 (Berkeley Lab 2017), 78.
6. Johnson, Toledano (no 5), 6-7.
7. Bellak, Leibrecht (no 73), 63-64.
8. Johnson, Toledano (no 5), 45-107. See eg., Japan-Kenya BIT, art 5(3). See also Political, Free Trade and Strategic Partnership Agreement between the UK and Ukraine, arts 73 and 323.
9. Melović, Ćirović (no 57), 1-6. Leal-Arcas (no 57), 70.

manage and overcome the potential costs and risks that they may have encountered without such services.[1] These incentives may be categorized as 'investment facilitation' rather than 'investment promotion', because they may start from the pre-establishment phase and help investors with the establishment, operation, and maintenance of their investments.[2]

Notwithstanding the evident overlapping features between other investment incentives and technical and business incentives, the latter is often concerned with information asymmetries and possible administrative delays. The purposes of such incentives are inter alia to ease access to assets and provide the required infrastructure and resources, technical and consumer services, aftercare and disaster responses, etc.[3]

IIAs may provide for various technical and advisory support incentives and relevant frameworks, facilitating foreign investments in the renewable energy sector. For instance, they may provide contact points that let investors have direct access to the decision-making process through special advisory bodies or other official consultation procedures.[4] These 'contact' or 'inquiry' points are conceived as support incentives because they are devised to clarify the government rules and procedures, enable investors to engage in public consultations and receive timely and reliable information about laws and regulations and thereby reduce the costs and facilitate their investments and create an attractive investment climate for power projects.

Furthermore, foreign investors can overcome their possible disadvantages, such as language barriers or limited knowledge of local institutions by using such arrangements.[5]

Conclusion

This article provides insights into the legal relationship between International Investment Agreements (IIAs) and renewable energy incentives. It is important to note that the primary objective of this research was not to establish a mono-causal link between the provisions of IIAs and the promotion of renewable energy investments. Instead, the aim was to single out the relevant provisions and describe potential changes that may be made to further facilitate renewable energy investments and potentially secure the interests of the investors. Therefore, this research followed a deductive logic.

As observed, fiscal incentives are still the most frequently used investment incentives, and through the introduction of Feed-in Tariffs (FITs), financial incentives are particularly gaining momentum in the renewables sector. However, IIAs seldom articulate clear renewable energy targeted incentives and the investments in this sector may benefit from incentive provisions as other types of foreign investments in general. On the other hand, most IIAs provide for such incentives without adequate clarification of the conditions and the extent to which such measures must be carried out. Some have excluded several incentives from the scope of their NT and/or MFN while others have exempted certain local governments from providing NT for

1. Johnson, Toledano (no 5), 7-8
2. Shunta Yamaguchi, Rob Dellink, Greening Regional Trade Agreements on Investment (OECD Publications 2020), 50.
3. Johnson, Toledano (no 5), 7-8. Lehr (no 97), 78.
4. Eg., ECT, art 20.3.
5. OECD, Public Sector Transparency and the International Investor (OECD Publications 2003), 9-10. Anton Eberhard and others, Directions in Development, Energy and Mining: Independent Power Projects in Sub-Saharan Africa - Lessons from Five Key Countries (World Bank Group 2016), 47-97.

renewable energy incentives in particular. Foreign investors would enjoy greater protection against the possible host States' discriminatory practices in the absence of such exclusions.

The European renewable energy cases have proved the significance of investment protections under the applicable IIAs for the benefit of foreign investments and the relevance of these protections for protecting renewable energy investments against possible discriminatory or arbitrary incentive policy practices by host States. Given the increase in renewable energy incentive policies implemented by governments and the growing number of renewable energy projects around the world, it is no surprise if one claims that investment incentive provisions of IIAs can similarly contribute to the protection of foreign renewable energy investments in the future. This is particularly because such provisions bring more clarity and predictability to the investment environment, signaling that the host State has laws and policies in place to promote foreign investments. Furthermore, they can secure the interests of foreign investors in case of disputes, because in accordance with the principle of *effet utile,* the tribunals interpret the applicable agreements according to the ordinary meaning of the terms and should not overlook a text that clearly illustrates the original intention of the drafting parties regarding the provision and/or stability of incentive measures.

Therefore, similar to the international trade law system that has long endeavored to regulate various aspects of financial incentives and has adhered to the principles of liberalization, including the elimination or restriction of tariffs and non-tariff barriers to trade, international investment law and its agreements need to adopt a broader approach to investment promotion in general and incentive policies in particular. Indeed, the purpose of IIAs is to encourage flows of investment between the parties, and given the increased economic and environmental interests in renewables, modern IIAs need to incorporate regulatory incentives to facilitate renewable energy investments, helping renewables gain a level playing field on the market. It is promising to see that some recent agreements (e.g., Cameroon-UK EPA) are venturing into investment incentive regulation and have taken steps to limit the sphere of discretion of national decision-makers in applying these measures. A notable example is the EU-Kazakhstan Enhanced Partnership and Cooperation Agreement (EPCA) which has drawn the party's attention to the need to prevent anti-competitive business practices, interventions, and subsidies that could distort investment and trade liberalization. Such provisions can promote foreign investments in general and renewable energy investments in particular, and help prevent the abuse of incentive measures. For now, it remains to be seen how new IIAs will follow suit.

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