

Index

A

Achmea ruling, 44–45, 51–52, 189–194,
198, 267, 319–323, 325, 516–518,
521, 523–525, 530, 570
Administração Nacional de Estradas (ANE),
115

B

Bahgat Mohamed Abdel Raouf against
Egypt
Aswan Development and Mining
Company (ADEMCO), 1357–1358,
1361, 1380–1381, 1409, 1423, 1427,
1433, 1437
claimant's claim
false telephone calls, 1364–1365
Finnish nationality, 1410–1414
jurisdiction *Ratione Personae*, 1389–
1396
nationality from 1997–present, 1380–
1382
nationality up to 1997, 1377–1380
relief request, 1372
SAC judgment, 1404–1405
dispute, 1361–1362
factual background, 1374–1377
interim measures, 1363–1364
legal framework, 1383
parties, 1361
preliminary procedural hearing, 1363
procedural history, 1362–1363

respondent's position
jurisdiction ratione personae, 1384–1388
jurisdictional objections, 1373
on claimant's Finnish nationality,
1406–1410
request for disclosure of the court file
documents, 1368
SAC judgment, 1402–1404
submissions on jurisdiction, 1365–
1366
Tribunal's analysis
claimant's Egyptian nationality, 1415–
1416
claimant's Finnish nationality, 1415
decision, 1447
dual nationals' claims, 1416–1420
jurisdiction *Ratione Personae*, 1373–
1374, 1396–1402
jurisdiction *Ratione Temporis*, 1421–
1437
revival of proceedings, 1367
sac judgment, 1405
second deposit request and suspension
of proceedings, 1366–1367
temporal jurisdiction, 1438–1446
third deposit request and third party
funding, 1368–1372
BIT (bilateral investment treaty). See also
specific ICSID Cases
applicable substantive law, 1442–1446
1980 legal effect, 1427–1430, 1435–1437
2004 jurisdiction, 1422–1427, 1430–1435

C

Carnegie Minerals against Gambia Republic
 AD HOC committee's analysis
 administrative fees and direct expenses, 1198
 annulment claim, 1185–1186
 cost decision, 1198–1200
 decision, 1200
 dispute to appoint an arbitrator, 1188
 Gambia's argument in support of annulment, 1190–1196
 nature of annulment, 1186–1188
 sequence of events, 1188–1190
 claimant's claim
 appointment of Ms. Kalicki, 1183–1185
 arbitration request, 1172–1174
 cost submission, 1197
 ICSID annulment proceedings, 1182–1183
 right to appoint an arbitrator, 1185
 overview, 1165–1166
 procedural history, 1166–1171
 respondent's position
 Article 52(1)(a) ICSID Convention), 1179–1180
 cost submission, 1197–1198
 MS. KALICKI's appointment, 1175–1178, 1180–1182
 right to appoint arbitrator, 1178
 Tribunal's constitution, 1171, 1174–1175
 Cotonou Convention Arbitration, 178–182
 Court of Justice of the European Union (CJEU), 43
 Achmea Arbitration, 44–45, 51–52, 198, 267, 325, 516–518, 521, 523, 530, 570
 and tribunals of the Member States, 320
 Spalma Incentivi Decree", 1227
 TFEU framework, 528–529

D

dual nationality, 1416–1420

E

Energy Charter Treaty (ECT), 759–760, 767–769, 771–772, 774, 787, 789–790, 802
 2019 Declarations, 327–329
 Article 10(1), 357–371
 Article 26(1) pursuant to the VCLT., 331–334
 Italian standards, 1213, 1217, 1228–1229, 1251, 1255–1257, 1260, 1262, 1264, 1265–1269, 1274–1278, 1289–1293, 1310–1311, 1319, 1323, 1336–1337, 1339, 1343–1346, 1349
 Environmental Impact Assessment (EIA), 678–679, 714, 718, 728, 730
 Eötvös Loránd University (ELTE), 29
 Eskosol S.P.A. in Liquidazione agaisnt. Italian Republic
 claimant's position
 abuse of rights, 1274–1275
 admissibility objection, 1272–1273
 arbitrary and unreasonable conduct, 1292
 arbitration under the agreements, 1410–1414
 Blusun award to liability issues, 1278–1279
 business plan, 1251–1254
 constant protection and security, 1343
 construction and funding of plants, 1240–1242
 Conto Energia IV, 1250–1251
 cost submission, 1347
 disproportionate conduct, 1292–1293
 expropriation, 1339
 impairment by unreasonable or discriminatory measures, 1345–1346

- on inconsistent conduct, 1291
- Italy's failure to provide stable legal framework, 1289–1290
- investment, 1237–1240
- on liability, 1278–1279, 1345–1346
- lack of transparency, 1291
- notion of foreign control, 1260–1262, 1264–1265
- request for relief, 1228–1229
- Res Judicata, 1272–1273
- Romani Decree and Conto Energia IV, 1250–1251
- umbrella clause, 1336–1337
- Conto Energia IV, 1247–1250
- introduction and parties, 1217
- notion of “foreign control” under the ECT, 1262–1265
- procedural history, 1217–127
- Romani Decree, 1242–1247
- factual background, 1229–1237
- regulatory framework prior to the challenged measures, 1229–1237
- respondent's position
 - abuse of rights, 1273–1274
 - admissibility objection, 1270–1272
 - arbitration under the agreements, 1406–1410
 - Article 10(1), 1338–1339
 - Article 25(2)(b), nationality requirements, 1256–1260
 - Blusun award to liability issues, 1279–1281
 - causal link, 1295–1302
 - changing regulations, 1303–1305
 - constant protection and security, 1343–1344
 - cost submission, 1347
 - Eskosol's failure to qualify for the FiT incentives, 1302–1303
 - Eskosol's FET claim, 1281, 1307–1309
 - expropriation, 1340–1341
 - FET definition, 1295
 - general regulatory measures, 1303–1305
 - impairment by unreasonable or discriminatory measures, 1346
 - legitimate expectations, 1294–1296
 - jurisdiction *Ratione Personae*, 1256–1260
 - legitimate expectations, 1294–1295
 - on liability, 1279–1281, 1346
 - request for relief, 1228–1229
 - Res Judicata, 1270–1272
 - Romani Decree, 1305, 1307, 1340–1341
 - violation of legitimate expectations regarding stability and consistency, 1281–1285
 - umbrella clause, 1337–1338
- suspension request, 1227–1228
- Tribunal's analysis
 - admissibility objection, 1270–1273
 - agricultural land use regulations, 1335–1336
 - arbitrary and unreasonable conduct, 1310–1321
 - arbitration under the agreements, 1415
 - Article 25(1), 1265
 - Article 26(7), 1266
 - awards, 1349
 - Blusun award to liability issues, 1281
 - causal link, 1285–1289
 - claimant's Egyptian nationality, 1415–1416
 - costs decision, 1348
 - dual nationals' claims, 1416–1420
 - disproportionate and non-transparent conduct, 1321–1326
 - Eskosol's failure to qualify for the FiT incentives, 1289
 - expropriation, 1341–1342
 - impairment by unreasonable or discriminatory measures, 1346
 - jurisdiction and admissibility, 1254–1256

- notion of “foreign control” under the ECT, 1265–1270
 - Res Judicata*, 1275–1278
 - Rule 41(5) Objection, 1265–1270
 - umbrella clause, 1336
 - violation of legitimate expectations
 - regarding stability and consistency, 1326
- European Union Member States
 - CJEU, 320
 - Declarations of 15–16 January 2019, 325–329
- European Commission
 - Amicus Curiae* Submission, 318–319, 323–325
 - State Aid Procedures., 306–307
 - Updated *Amicus Curiae* Submission, 325
- F**
- Fair and Equitable Treatment (FET)
 - Article 10(1), 367–371
 - breached the FET standard, 540
 - Italian standards, 1278, 1307–1309
- H**
- Honduras and the Dominican Republic on
 - Australian restriction
 - appeals, 879–880
 - Appellate Body’s analysis
 - 7.1221 of the Panel Report, 1053–1055
 - actual effects of the TPP measures, 924–929
 - alternative measures, 1061–1053, 1068–1078, 1081–1082
 - Article 11 of the DSU, 895–897, 901–906, 1057–1061, 1078–1080
 - Article 16.1 of the TRIPS Agreement, 1088–1112
 - Article 2.2 of the TBT Agreement, 885–889, 1025–1038, 1063–1068, 1082–1083
 - Article 20 of the TRIPS Agreement, 1112–1135
 - Articles 7.1 and 11 of the DSU, 1146–1150
 - Australia’s objective, TPP measures, 1014–1025
 - brand difference, 1039–1043
 - breach of Article 11, 1084
 - burden of proof, 897–899, 989–992
 - causation standard, 1048–1052
 - cigarette consumption analysis, 929–934
 - costliness on smoking behaviour, 934–941
 - cross-cutting themes, 986–987
 - discretion as the trier of facts, 992–995
 - dispute resolution, 1011–1014
 - disregarding the Dominican Republic’s evidence, 915–922
 - due process and Article 11 of the DSU, 1087–1088
 - Due process concerns, 973–983
 - endogeneity and multicollinearity,
 - price variable, 946–954
 - evidence assessment, 972–973
 - facts submission, 1008–1009
 - FCTC Guidelines, 1143–1145
 - future impact, TPP measure, 1009–1011
 - Honduras’ allegations, 999–1008, 1009–1011
 - inappropriate attaching probative value, 909–915
 - misapprehension of the Panel’s findings., 987–989
 - more trade-restrictive than necessary (Australia), 1084–1086
 - non-stationarity, tax level variable, 955–959
 - Panel’s application of Article 2.2, 1057
 - Panel’s errors in Appendices C and D, 983–986
 - Panel’s overall conclusion, 899–901

- pre- and post implementation evidence, 906–907, 923–924
- private actors' reaction to the TPP measures, 1055–1057
- proportionality assumption, 941–944
- sample re-weighting events in the RMSS data", 959–964
- smoking prevalence analysis, 926–934
- special requirements under the TPP measures (Hondura), 1135–1143
- STATA ivreg2 formula, 964–972
- summary of findings, 907–909
- tobacco costliness, linear *versus* a quadratic trend, 944–946
- TPP measures to Australia's objective, 889–895
- value of imported tobacco products, 1043–1048
- Article 16.1 of the TRIPS agreement, 1152–1153
- Article 2.2 of the TBT agreement, 1150–1152
- Article 20 of the TRIPS agreement, 1153–1154
- key action areas, 881–882
- overview, 870–878
- participants claim, 878
- products at issue, 880–881
- recommendation, 1154
- retail packaging and appearance of tobacco products, 882–885
- third participants claim, 878–879
- Hungary-UK BIT, state-owned assets, 105
- ANE's 30 October 2009 Settlement Offer, 138–142
- applicable laws, 18
 - merits, 19–20
 - procedure, 18
 - scope of this award, 20
- Article 1 of the BIT, 154
- claimant's claim
 - 2 November 2009 letter, settlement agreement, 208–211
- Achmea Decision binding on the Tribunal, 51–53
- analysis, 50–51, 57–59
- arbitrary, inconsistent, and contradictory conduct, 222–224
- Article 2(3), 222–224
- Article 2(4), 231
- Article 25 ICSID Convention, 158, 161–162
- Article 8 BIT is compatible with the EU Treaties, 48
- Article 8 of the BIT and EU treaty prevalence, 47–50
- bad faith, 224
- conflict, 59–61
- Cotonou Convention Arbitration, 178–182
- damages, 236–237
- EU Treaties do not prevail, 48–50
- EU Treaties, application of Article 8 of the BIT?, 56–57
- existence of a settlement agreement, 207
- jurisdiction, 63–66
- lack of transparency, 224–225, 228–229
- legitimate expectations, 224
- Member States declarations, 53–56
- Mozambique's obligation, 222, 230, 231–232
- Mozambique's breach of conduct, 230
- on Mozambique investment, 155–156, 185–199
- quantum, 89–92
- on treaty claims or purely contractual claims, 168–171
- closing of the proceeding, 128
- CMC'S letter pursuant to Article 9(3), 153
- compensation
 - CMC's efforts, 136–138
- costs, 237–240
 - jurisdiction, 127–128

- Cotonou Convention Arbitration, 171–178
- dispute, 128–138
 - compensation negotiations before 2010, 134–136
 - IPC 27 and engineer’s determination, 134–136
 - LOT 3 contract, 130–133, 133–134
 - Mozambique’s infrastructure, 128–130
- ECJ’s Achmea Judgment, 189–194
- factual background, 30
 - 2014 tenders, 36–38
 - adoption of the 2011 Amendment, 34–36
 - agricultural land regulation in Hungary, 30–31
 - claimants’ business in Hungary, 31–32
 - domestic proceedings, 38–39
 - eviction, 39–41
 - intra-EU objection, 43
 - jurisdiction, 42–43
 - lease agreement and the pre-lease right, 32–34
 - settlement efforts, 41–42
- Gridella’s Witness Statement, 126
- jurisdiction, 153–154
- liability, 68–81
- MFN Clause, 232–235
 - respondent’s objection, 234
 - timing issues, 233
 - Tribunal’s decision, 233, 236
 - umbrella clause, 236
- Mozambique, political developments, 145
 - compensation negotiations from 2010 to 2016, 145–152
- Namacurra- Rio Ligonha Lot 3, 143–144
- overview, 115–116
- preliminary matters
 - 2011 Amendment pre -lease right, 81–88
 - analysis, 66–58, 81–89, 95
 - expropriation, 88–89
 - costs, 102–103
 - dispute, 13–15
 - interest, 100–102
 - jurisdiction, 61–68
 - mitigation, 100–101
 - operative part, 103–104
 - parties, 13
 - place of proceedings, 18
 - secondary valuation, 97–100
 - valuation, 96–97
- procedural history, 20–30, 116–127
 - additional submissions, 125
 - Alicandri’s testimony, 124
 - amended translations, 125
 - bifurcation request, 118–119
 - Gridella, witness statement, 124
 - hearing on jurisdiction and the merits, 126–127
 - registration of request, 116–117
 - Tribunal’s constitution, 117–118
 - written submissions and pre-hearing conferences, 119–126
- requests for relief, 15–16
- respondent’s position
 - Article 25 ICSID Convention, 158–160
 - Article 8 BIT is incompatible with the EU Treaties, 43–45
 - Cotonou Convention Arbitration, 172–178
 - ECJ’s Achmea Judgment, 189–194
 - EU Treaties prevail, 45–47
 - jurisdiction, 61–63
 - MFN Clause, 233
 - no “investment” in Mozambique, 154–155
 - on Mozambique’s conduct, 225–226, 230, 231–232
 - on settlement agreement, 211–214
 - on treaty claims or purely contractual claims, 166–168
 - preliminary matters, 43–47
 - quantum, 92–95
 - tenders are irrelevant to the expropriation claim, 74–75

Tribunal's analysis
 award, 240
 bad faith, 227–228
 coercion, 225, 229
 Contracting State within the meaning
 of the ICSID Convention, 165
 Cotonou Convention, 183–187
 denial of just and fair treatment, 226–
 227, 230, 232
 “investment” within the meaning of
 the BIT, 163–165
 “investors” within the meaning of the
 BIT, 157–158, 163–165
 Lot 3 Contract, 187–189
 merits, 206–207, 236
 on treaty claims or purely contractual
 claims, 171
 Tribunal's constitution, 17–20
 arbitrator appointed by the claimants, 17
 arbitrator appointed by the respon-
 dent, 17
 assistants, 18
 presiding arbitrator, 17
 secretary, 17

I

ICSID Case No. ARB/09/19. *See*
 Carnegie Minerals against Gambia
 Republic
 ICSID Case No. ARB/14/29. *See*
 Romania BIT against Sweden, alcohol
 sector
 ICSID Case No. ARB/14/34. *See* RWE
 Innogy GmbH and RWE Innogy
 Aersa S.A.U on renewable energy
 products against Spain
 ICSID Case No. ARB/15/50. *See* Eskosol
 S.P.A. in Liquidazione v. Italian
 Republic
 ICSID Case No. ARB/16/32. *See*
 Mauritius and UK, real estate and
 tourism development

ICSID Case No. ARB/17/27. *See*
 Hungary-UK BIT, state-owned
 assets

M

Mauritius and UK, real estate and tourism
 development
 ad hoc committee
 Article 52(1), 802–804
 decision on costs, 821–822
 overview of the matters, 783
 Tribunal's power, 811
 Tribunal seriously departed from a
 fundamental, 818–819
 applicable law, 682
 Article 52(1), 789–790
 ECT Article 10(1), 787–789
 annulment clause, 783
 core element, 784–786
 costs, 820–822
 structure and functioning of the
 award, 786–790
 claimants' claim, 791–796
 cost, 733
 DIA certificates of conformity, 770–
 772
 liability (Le Morne), 709–712
 Pointe Jérôme (liability), 712–713
 Tribunal's power, 804–807
 Tribunal seriously departed from a
 fundamental, 812–815
 factual background, 675–680
 Le Morne, 675–680
 Pointe Je'Rô` Me, 680–681
 introduction and parties, 669
 investment disputes, 737
 introduction, 759–760
 Le Morne Brabant, 739–745
 parties, 759
 Pointe Jérôme, 745–748
 procedural history, 760–767
 jurisdiction and admissibility, 683

- claimants' counter-memorial and counter memorial on jurisdiction, 683, 686–689
- positions of the parties, 683–690
- respondent's counter-memorial on the merits and memorial, 683–686
- respondent's rejoinder on the merits and reply on jurisdiction, 689–690
- Le Morne, 690–702
 - admissibility of the claims, 701–702
 - BIT-protected assets?, 693–694
 - contractual rights, 690–692
 - funds expended, 696–697
 - Gosling and PPD, 694–695
 - investment disputes, 695–696
 - liability, 702–703
 - Pointe Je'Rô` Me, 698–701
 - rejoinder on the merits, 713–715
 - respondent's counter-memorial on the merits, 705–707
 - TGI a protected investor, 697–698
- Le Morne Heritage Trust Fund (LMHTF), 677, 683, 739
- Letter of Intent (LOI), 678–679, 685, 687, 697, 705–706, 710, 712, 718, 720, 722, 741–742, 744
- liability, 702
 - positions of the parties, 702–704
- parties' claims and requests for relief, 681–682
 - claimants' request for relief, 681–682
 - respondent's request for relief, 682
- parties' interpretation of the award, 770–783
 - DIA certificates of conformity, 770–772
- Pointe Jérôme
 - discrimination, 726–727
 - fair and equitable treatment, 727–730
 - indirect expropriation, 731–732
 - jurisdictional objections joined to the merits, 732–733
 - liability, 703–704
 - Pointe Jérôme Development Limited (PJD), 680–681, 699–700, 704, 729–730, 732
 - Power, 804–811
 - procedural history, 669–675
 - rejoinder on the merits, 715–716
 - respondent's counter-memorial on the merits, 708–709
 - respondent's position, 796–802
 - annulment proceedings, 819–820
 - Board of Investment (BOI), 677–678, 683–684, 692, 705, 708, 711, 718, 721–722, 739, 741–742, 746
 - cost, 733
 - DIA certificates of conformity, 772–775
 - rejoinder on the merits, 713–716
 - scope of the annulment, 783–784
 - reasons on which the award is based, 791
 - Tribunal's power, 807–811
 - Tribunal seriously departed from a fundamental, 816–818
- Tribunal's Analysis
 - award, 734, 767–769
 - breach of fair and equitable treatment (Le Morne), 723–726
 - cost decisions, 733–734
 - DIAS issued by the municipality, 775–783
 - expropriation claim, 768–769
 - indirect expropriation (Le Morne), 717–722
 - indirect expropriation, 717–722
 - investment at Pointe Jérôme, 726–733
 - jurisdiction, 690
 - legal instability claim: breach of Article 10(1), first sentence of the ECT, 767
 - legitimate expectations claim, 768
 - reasoning concerning the three claims, 767

N

NAFTA, Article 1117(1)(a), 1443, 1446
 Nationality Requirement under Article 25
 (2)(b), 1256–1262
 National Land Agency (NLA), 14

P

PricewaterhouseCoopers Legal (“PWC”),
 41

R

RDL 2/2013, RDL 9/2013 and Law 44/
 2013, 302–305, 351, 458
 Romania BIT against Sweden, alcohol
 sector
 1990s regulatory framework in
 Romania, 506–507
 1998–2003 changes in regulatory frame-
 work, 509–510
 2003 and after changes in regulatory
 framework, 511–513
 Achmea decision, 517, 524–525
 claimants’ position
 additional tax liability, 514
 admissibility of a shareholder’s claim,
 534
 applicable standard, 535–538, 553–
 554, 563–564
 Arbitration Rule 41(2), timeliness,
 520–524
 breached the FET standard, 540
 business expansion, 510–511
 cost submissions, 569–570
 discriminatory measures, 554–556
 early investments in Romania, 507–
 508
 failure to accord FPS., 564–565
 fair and equitable treatment, 535–538
 full protection and security of invest-
 ments (“FPS”), 562–563
 good faith failure, 540–541

 initial investment period, 538–539
 other allegations, 541
 price revision, mineral water claim,
 531–532
 rejection of respondent’s additional
 preliminary objection, 519
 request for relief, 514–515
 unreasonable measures, 556–557
 domestic law (Sweden), 525–527
 individual claimants, 473
 jurisdiction and admissibility, 515–517
 mineral water project (1997–2001,
 Romania), 508
 prices of mineral water, 513
 procedural history, 473–506
 respondent’s position
 admissibility of a shareholder’s claim,
 533–534
 applicable standard, 541–543, 557–
 558, 566–567
 Article 30(3), VCLT, 527–530
 compensation, 570
 discriminatory measures, 558
 failure to accord FPS, 567
 incompatibility of intra-EU BITs,
 517–518
 lack of benchmarks, 545
 MFN clause, 565
 Mineral Water Claim, 530–531
 on Achmea decision, 518–519
 on breach of legitimate expectations,
 543–544
 on lack of good faith, 545
 stable legal and business framework,
 544–545
 unreasonable measures, 558–559
 unreasonable or discriminatory con-
 duct, 545
 spirits market from 2004 (Romania), 513
 Tribunal’s analysis
 applicable law, 546–547
 Article 61(2) of the ICSID
 Convention, 570–572
 awards decision, 572–573

- FET standard, 547
- FPS provisions, 568–569
- liability decision, 534–535
 - on discrimination, 560–562
 - on good faith, 552–553
 - on legitimate expectations, 548–552
- price revision, mineral water claim, 532–533
- stable legal and business framework, 552
- timing issues, 524–525
- unreasonable or discriminatory conduct, 553–557
- Royal Decree 2818/1998 (“RD 2818/1998”) and the Plan for Renewable Energy Promotion 2000–2010 (“2000 PER”), 278–279
- Royal Decree 436/2004 (“RD 436/2004”), 279–282
- Royal Decree Law 6/2009 (“RDL 6/2009”) and the Pre-Assignment Register, 290–291
- Royal Decree Law 7/2006 (“RDL 7/2006”), 283–284
- Royal Decree No. 661/2007 of 25 May 2007 (“RD 661/”, 279–282
- RWE Innogy GmbH and RWE Innogy Aersa S.A.U on renewable energy products against Spain
 - Amicus Curiae Submission (EC), 318–319, 323–325
- CNE report of 7 March 2012; the MOU of 20 July 2012, 300–305
- measures and the new regime, 300–307
- RD 661/2007 regime in making investments post-2007
- Special Regime 2009–2010, 276–277
- supreme court judgments, 307–349, 384–390
- 1997 Electricity Law (Law 54/1997), 276–277
- 2005–2010 Plan for Renewable Energy, 282–283
- 2009–2010 special regime development, 292–294
- claimants’ claims
 - Articles 31 and 32 VCLT., 353–355
 - attribution and authorisation, 351–352
 - breach of transparency, 431–433
 - compensation, 444–451
 - failure to create stable conditions, 416–417
 - FET obligations under Article 10(1), 367–371
 - intra-EU objection, 315–318
 - legitimate expectations, 352–353, 390–397
 - liability issues, 351–353
 - margin of appreciation, 397–398
 - on applicable law, 350
 - on the 2019 Declarations, 328–329
 - on the Achmea Judgment, 322–323
 - on the EC’s updated submission, 325
 - on unreasonable disputed measures, 422–425
 - proportionality issues, 398–416
 - relief requests, 271–274
 - restitution, 443
 - Spanish investments, 294–300, 305–306
 - tax objection, 345–346
 - Umbrella Clause, violations, 438–440
- ECJ ruling
 - Achmea Judgment, 319–320
 - Declarations of 15–16 January 2019, 325–327
- European Commission State Aid
 - Procedures, 306–307
- Law 15/2012, 301–302
- legal and factual background, 275–309
- RDL 2/2013, RDL 9/2013 and Law 44/2013, 302–305
- Renewable Energy Promotion 2000–2010, 278–279
- request to arbitration, 255
- respondent’s position

CNE report of 7 March 2012; the
 MOU of 20 July 2012, 300–301
 compensation, 452–455
 due diligence context, 371–373
 electricity sector, reforms, 300–309
 FET standard, 355–357
 intra-EU objection, 311–315
 jurisdictional objections, 309–310
 on claimants’ corporate restructuring,
 310
 on Disputed Measures, 425–429
 on EU law applications and preva-
 lence, 338–343
 on the 2019 Declarations (ECJ), 327–
 328
 on the Achmea Judgment, 320–322
 on the EC’s updated submission, 325
 remuneration model, 418–419
 requests to Tribunal, 274–275
 restitution, 443
 tax objection, 344–345
 transparent conditions, 433–435
 umbrella clause, 440–441
 Royal Decree 2818/1998, 278–279
 Royal Decree 436/2004, 279–282
 Royal Decree Law 6/2009, 290–291
 Royal Decree Law 7/2006, 283–284
 Royal Decree No. 661/2007, 279–282
 Royal Decree No. 661/2007 of 25 May
 2007, 284–290
 Spanish Supreme Court judgments, 307–
 349, 384–390
 special regime, 276
 Tribunal, appointment of, 255–256
 Tribunal’s analysis
 Article 10(1) ECT, 357–367, 429–
 431, 435–438, 442
 Article 17 of RD 661/2007, 419–422
 Article 26 ECT, 331–338
 compensation, 455–459
 decision, 459–460
 due diligence, 382–384
 intra-EU objection, 329–331
 on taxation, 347–349

on timing issues, 373–381
 restitution, 443
 Supreme Court judgments, 384–390
 written and oral phases of proceedings,
 256–271

S

Sri Lanka-UK BIT asset-based investment
 award, 654
 claimants’ position
 Article 1(a) of the BIT, 623–627, 635–
 636
 Article 25(1), investment within the
 meaning, 618–620
 Article 31 of the VCLT, 623
 Article 5(2) of the BIT, 637
 cost submission, 652
 indirect ownership of the Montrose
 Share, 630–632
 legality clause, 633–634
 MOU-based argument, 612–616
 request for arbitration, 584
 request for relief, 603
 factual background, 590–599
 Montrose Land Development Planning
 financing, 602–603
 jurisdictional objections, 607–612
 state acquisition, 600–602
 procedural history, 584
 respondent’s position
 Article 1(a) of the BIT, 620–623, 634–
 635
 Article 5 of the BIT, 636–637
 cost submission, 652–653
 jurisdictional objections:, 603–606
 on claimant’s contribution and risk.,
 616–618
 on indirect ownership of shares, 627–
 630
 request for relief, 603
 section 4 of the Sri Lankan Trusts
 Ordinance., 632–633
 shareholder level

jurisdictional objections, 620
 Tribunal's analysis
 arbitration proceedings, 584
 jurisdictional principles, 637–644
 loss in value of the Montrose Share,
 651–652
 MOU operations, 644–647
 on cost, 653–654
 protected investment., 647–651
 written and oral phases, 584–589

T

Treaty on the European Union (TEU),
 43
 Treaty on the Functioning of the European
 Union (TFEU), 43
 Trade-Related Aspects of Intellectual
 Property Rights (TRIPS)
 Article 16.1, 1088–1089

Article 20, 1112–1113, 1118–1129

U

Umbrella Clause, 272
 Article 10(1) of the ECT, 1337–1338
 violations, 438–441
 United Commission on International Trade
 Law (UNCITRAL), 1359, 1361,
 1362, 1366–1367, 1369, 1383, 1417–
 1418

V

Vienna Convention on the Law of Treaties
 (VCLT)
 Article 26(1), 331–334
 Article 30(3), 527–530
 Article 31, 623, 353–355
 Articles, 32 VCLT, 353–355