

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**Suntech Power International Ltd.**

**v.**

**Italian Republic**

**(ICSID Case No. ARB/23/14)**

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**PROCEDURAL ORDER NO. 2**

***Members of the Tribunal***

Ms. Olufunke Adekoya SAN, President of the Tribunal  
Ambassador (Ret.) David Huebner, Arbitrator  
Prof. Thomas Clay, Arbitrator

***Secretary of the Tribunal***

Ms. Aïssatou Diop

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June 9, 2025

## **I. INTRODUCTION**

1. In accordance with paragraph 15 of Procedural Order No. 1 and the Procedural Calendar established in Procedural Order No. 1, each party submitted document production requests to the other in the form of a Redfern Schedule.
2. On April 28, 2025, in accordance with the Procedural Calendar, the Parties exchanged their document production requests in the form of a Redfern Schedule.
3. On May 12, 2025, the Parties exchanged their objections to the requests for document production.
4. On May 26, 2025, the Parties exchanged their replies to objections regarding document production simultaneously and submitted their completed Redfern Schedules, which contained reasoned applications for an order from the Tribunal concerning document production.
5. In this Order, the Tribunal addresses the Parties' contested document requests.

## **II. APPLICABLE STANDARDS**

6. Paragraph 15.1 of Procedural Order No. 1 states that the Tribunal, in considering the Parties' document production requests, will use the IBA Rules on the Taking of Evidence in International Arbitration 2020 (IBA Rules) as a guideline in determining any contested requests.
7. Guided by these standards, the Tribunal has deliberated and reached decisions on each contested request as detailed in the Redfern Schedules attached as Annex 1 (on the Claimants' Requests for Documents) and Annex 2 (on the Respondent's Requests for Documents). The Tribunal's decisions should be understood in the terms outlined in paragraphs 8 to 10 below.
8. Whenever the Tribunal orders the production of documents and a party invokes privilege against disclosure, the party should identify any such privileged document

in a “privilege log”, with a neutral description and the date of the document.

9. Whenever the Tribunal does not deem it necessary to issue a document production order on the grounds that the requested party has claimed to have conducted an extensive search for responsive documents and has not located them, the Tribunal reserves the right to take appropriate action if such documents, or their existence, were to subsequently emerge.
10. Whenever a party has stated or pledged, in response to a document production request, that it will provide any documents responsive to the request that it finds or discovers, the Tribunal deems that pledge binding, as if the Tribunal had ordered the production request.

### **III. ORDER**

11. The Tribunal **ORDERS** as follows:

- i. The Tribunal decides on the contested document production requests as set out in Annexe 1 and Annexe 2, which are the Redfern Schedules for the Claimants and the Respondent, respectively. These Annexes form an integral part of the present Order.
- ii. Each Party shall produce all documents ordered to be produced by July 28, 2025.
- iii. If a Party withholds the production of a document based on an assertion of privilege or another immunity from disclosure, that Party must provide a Privilege Log, as described in paragraph 8 above, to the other side by July 28 2025.
- iv. The documents produced shall not be communicated to the Tribunal at this stage and shall not be considered part of the record unless and until one side submits a document to the Tribunal in accordance with the Procedural Calendar.

On behalf of the Tribunal

[signed]

Ms. Olufunke Adékoya SAN  
President of the Tribunal  
Date: June 9, 2025

## Annex 1

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

**ICSID Case No. ARB/23/14**

In the matter of

**SUNTECH POWER INTERNATIONAL LTD. (SWITZERLAND)**

**Claimant**

v.

**THE ITALIAN REPUBLIC**

**Respondent**

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**CLAIMANT'S DOCUMENT REQUESTS**

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28 April 2025

No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	Tribunal Decision
1.	<p>Respondent, Counter-Memorial ¶ 17, states that the Spalma Incentivi allegedly “<i>was adopted as part of a broader effort to ... ensure the long-term sustainability of the support mechanism for renewable energy.</i>”</p> <p>Produce the analysis</p> <p>Respondent undertook before enacting the Spalma Incentivi showing how it was allegedly supposed to “<i>ensure the long-term sustainability of the support mechanism for renewable energy.</i>”</p>	Respondent asserts, without evidence, that the Spalma Incentivi Decree helped sustain the FIT support mechanisms. This is a central defense alleged by Respondent so they should allow Claimant to examine this evidence, if any.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	
2.	<p>Respondent, Counter-Memorial ¶ 17, states that the Spalma Incentivi “<i>was based on a comprehensive assessment of the financial burden placed on energy users, particularly small and medium-sized enterprises, by existing incentive schemes.</i>”</p> <p>Produce this “<i>comprehensive assessment.</i>”</p>	Respondent asserts, without evidence, that the Spalma Incentivi Decree was based on a “ <i>comprehensive assessment</i> ” of the burden on energy users, particularly SMEs. This is a central defense alleged by Respondent so they should allow Claimant to examine this evidence, if any.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	

No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	Tribunal Decision
3.	Respondent, Counter-Memorial ¶ 17, states that the Spalma Incentivi allegedly “ <i>was carefully designed to avoid undermining the profitability of existing PV plants or disrupting the stability of the incentive regime.</i> ” Produce the analysis that Respondent conducted before enacting the Spalma Incentivi Decree that shows how this decree was “ <i>carefully designed to avoid undermining the profitability of existing PV plants or disrupting the stability of the incentive regime.</i> ”	Respondent asserts, without evidence, that the Spalma Incentivi Decree considered the profitability of existing PV plants. This is a central defense alleged by Respondent so they should allow Claimant to examine this evidence, if any.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	
4.	Respondent, Counter-Memorial ¶ 200, states that the Spalma Incentivi was enacted allegedly “ <i>to protect producers that benefit of [from] incentives...</i> ” Produce the analysis that Respondent conducted before enacting the Spalma Incentivi that references protecting the producers.	The Respondent asserts, without evidence, that the Spalma Incentivi Decree was enacted to “ <i>protect producers.</i> ” This is a central defense alleged by Respondent so they should allow Claimant to examine this evidence, if any.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	



5.	Respondent, Counter-Memorial ¶ 301, states the Spalma Incentivi was “ <i>preceded by consultation phases (in some cases also extremely long and cumbersome), and led by legitimate public policy targets.</i> ” Produce the consultations.	Respondent argues as part of its defense that it engaged in “ <i>consultation phases</i> ” before enacting Spalma Incentivi, without providing any evidence. Claimant should be allowed to examine the evidence, if any, of the consultation upon which Respondent relies.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	
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No.	Claimant’s Request	Claimant’s Justification	Respondent’s Response and/or Objections	Claimant’s Response	Tribunal Decision
6.	Respondent, Counter-Memorial ¶ 302, states the Spalma Incentivi was “ <i>necessary for the competitiveness</i> ” of small-medium-enterprises (SMEs). Produce the analysis undertaken by Respondent before it enacted the Spalma Incentivi evaluating how the Spalma Incentivi was needed to preserve the “competitiveness” of SMEs.	Respondent defends the Spalma Incentivi, on the basis that it was allegedly needed “ <i>for the competitiveness</i> ” of SMEs, without adducing any proof of this need. Claimant should be allowed to examine this evidence, if any.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	

7.	Respondent, Counter-Memorial Section 2.2, argues that the Spalma Incentivi was implemented in response to the alleged “ <i>Excessive Burden for Final Users</i> ”, and it relies upon Figures 1 to 4 to try to prove this alleged “excessive burden”. Produce the data and any spreadsheets in native format underlying Figures 1 to 4.	Respondent defends the Spalma Incentivi by reliance on Figure 1 (general electricity costs), Figure 2 (general system charges), Figure 3 (Evolution of A3 Charges - to cover the cost of incentives for renewable and similar sources) and Figure 4 (State of the Energy Account), but none of the data underlying those Figures is produced. Claimant is entitled to review that data to respond to this argument. The cites to the website in footnote 81 and 82 corresponding to Figures 1 and 2 do not function.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	
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No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	Tribunal Decision
8.	Respondent, Counter-Memorial ¶ 246, argues that the reduction of 6 to 8% under Option C <i>"is considered not to be excessive."</i> Please produce the documents regarding how these tariff reductions under Spalma Incentivi were calculated.	Respondent argues that these tariff reductions were not excessive, yet they do not produce any evidence of how this conclusion was reached or how the 6 to 8% was calculated to ensure this reduction was not excessive. Claimants should be allowed to see the data used by Italy to calculate this tariff reduction to be able to respond to the data underlying Respondent's argument.	<b><u>Objection:</u></b> The Respondent objects to this request. The request is not aimed at obtaining a specific, existing document, but rather at contesting the legal reasoning set forth in the Counter-Memorial. The request is neither relevant nor material to the outcome of the case. In any event, the Respondent confirms that it does not possess the documentation requested.	Respondent has confirmed that it lacks proof for its assertion that the 6 to 8% Spalma Incentivi reduction was <i>"not excessive"</i> confirming this is just its own <i>"legal reasoning."</i> No further response is required at this time.	
9.	Respondent, Counter-Memorial ¶ 305, defends the Spalma Incentivi arguing that a general taxation alternative was not viable because of several economic measures such as <i>"(i) The lack of direct price signals to energy consumers (ii) possible distortion of the energy markets by artificially lowering the cost of renewable sources. (iii) challenges in measuring effectiveness and accountability."</i> Respondent cites Paragraph 3.22 of the Chiesa/Chiaroni expert report to support this	Respondent defends the Spalma Incentiv arguing that there were several economic reasons why a general taxation alternative was not viable, yet there is zero evidence that these economic reasons cited by Respondent were actually evaluated or even considered, as opposed to being a post- hoc excuse. Claimant should be entitled to determine if in fact Respondent considered a general tax alternative and if so why it was not adopted.	<b><u>Objection:</u></b> The Chiesa/Chiaroni expert report articulates clear theoretical objections to the Claimant's Compass Lexecon expert report, specifically challenging its assertion of the absolute superiority of general taxation. This response does not seek to replicate or assess the arguments advanced by the Government, but rather aims to contribute, from a theoretical and academic perspective, by highlighting the failure of the Compass Lexecon report to adequately consider the pros and cons of alternative frameworks.	This objection evades the core reason and justification for this request. If the Italian government considered general taxation as an alternative to reducing incentives under the Spalma Incentivi, it should produce evidence that general taxes were considered. If that tax analysis was not undertaken then Italy should be required to disclose this here by stating that there are no documents responsive to this request.	The Tribunal determines that this request is overly broad and lacks specificity. The request is denied.

	allegation but there is no evidence that this general tax alternative was considered by Respondent. Produce evidence that Respondent considered and evaluated this tax alternative.				
10.	To justify the Romani Decree's abrupt end to Conto Energia III, Respondent, Counter-Memorial	Respondent's defense of the Romani Decree's abrupt termination of Conto Energia III is based on the alleged high	<b><u>Objection:</u></b> The issues are addressed in the Mr. Bacchiocchi Witness Statements " <i>Evolution of the legislative</i> "	Respondent states that it has no further documents beyond	The Tribunal determines that the request is relevant and material but lack of specificity makes it unduly burdensome. The request is partially granted. Respondent is to produce the GSE reports referred to in footnotes 7 and 8 of the Bacchiocchi Witness Statement and the data supporting Figures 1 and 2 in the witness statement.

No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	Tribunal Decision
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	<p>¶ 149 (c), states that returns for producers during the 2010-2011 period were “<i>particularly high</i>” and that “<i>it was evident that the profitability of the[se] plants had reached an exceptionally high level compared to the two-year period 2008-2009. According to estimates made by independent companies in the industry, profits, once even the capital was paid, were above 20%.</i>” Produce the data underlying Respondent’s conclusion that these returns were particularly high, including the alleged “<i>estimates made by independent companies.</i>”</p>	<p>profitability it references in this Paragraph, but it adduces no data showing what it means by “high profitability” or how this conclusion was reached. Respondent even cites to “estimates made by independent companies.” If such evidence exists, Respondent should produce this data and the “independent estimates” it relies upon so Claimant has an opportunity to examine it.</p>	<p><i>framework related to the market development” -</i> ¶¶ 14-42) and in any documents referred in, which are in. Respondent is not in possession of any additional documents that are pertinent to the matters identified.</p>	<p>what is contained in Mr. Bacchiocchi’s Witness Statement. However, Mr. Bacchiocchi does not produce any fact exhibits or the data underlying his figures. Respondent must be ordered to produce every fact document and the data that Mr. Bacchiocchi relies upon. For example in the paragraphs 14 to 42 of his witness statement, which is cited by Respondent in its objection, Mr. Bacchiocchi cites GSE reports in footnotes 7 and 8 but does not include the reports as exhibits. He also cites Figures 1 and 2 but does not produce the data underlying these figures. In sum, Respondent has access to these GSE reports and factual data through its witness and must produce this evidence.</p>	
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No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	
11.	<p>To justify the Romani Decree's abrupt end to Conto Energia III, Respondent, Counter-Memorial ¶ 149 (c), states that returns for producers during the 2010-2011 period were "<i>particularly high</i>" based allegedly on "<i>a comparison between the total revenue (incentives and valorization of energy) and the total costs (calculated using the LCOE method)</i>." Produce the total revenue and the total costs calculated using the so-called LCOE method.</p>	<p>Respondent's defense of the Romani Decree's abrupt termination of Conto Energia III is based on the high profitability it references in this Paragraph. It relies upon a comparison of revenues and costs using a so-called LCOE method without producing any of this data. If such evidence exists, it should be produced so Claimant has an opportunity to examine the data and the so-called LCOE method that Respondent relies upon.</p>	<p><b>Objection:</b> The issues are addressed in the Mr. Bacchiocchi Witness Statements "Evolution of the legislative framework related to the market development" - §¶ 14-42) and in any documents referred in, which are in. Respondent is not in possession of any additional documents that are pertinent to the matters identified.</p>	<p>Respondent states that it has no further documents beyond what is contained in Mr. Bacchiocchi's Witness Statement. However, Mr. Bacchiocchi does not produce any fact exhibits or the data underlying his figures. Respondent must be ordered to produce every fact document and the data that Mr. Bacchiocchi relies upon. For example in the paragraphs 14 to 42 of his witness statement, which is cited by Respondent in its objection, Mr. Bacchiocchi cites GSE reports in footnotes 7 and 8 but does not include the reports as exhibits. He also cites Figures 1 and 2 but does not produce the data underlying these figures. In sum, Respondent has access to these GSE</p>	<p>The Tribunal determines that the request is relevant, specific and material but unduly burdensome. The request is partially granted. Respondent is to produce the GSE reports referred to in footnotes 7 and 8 of the Bacchiocchi Witness Statement and the data supporting Figures 1 and 2 in the witness statement.</p>

No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	
				reports and factual data through its witness and must produce this evidence.	
12.	<p>Respondent, Counter-Memorial ¶ 152 (a), states that the Romani Decree “dictated clear criteria according to which the Fourth Energy Account would have to be enacted, which included (article 25(10)): the redefinition of incentive tariffs ...”</p> <p>Produce documents that show how the “redefinition of incentive tariffs” of the Fourth Energy Account were calculated.</p>	<p>Respondent argues that the Romani Decree provided clear criteria which led to the redefined incentive tariffs imposed through the Fourth Energy Account, but Respondent has not produced any evidence of the how the Fourth Energy Account tariffs were actually calculated. Claimant should be allowed to examine these calculations which should exist.</p>	<p><b>Objection:</b></p> <p>The Respondent objects to this request. The request is not aimed at obtaining a specific, existing document, but rather at contesting the legal reasoning set forth in the Counter-Memorial. In any event, the tariffs were established by ministerial decrees which, under the Italian legal system, are general administrative acts that do not require a statement of reasons, in accordance with Article 3, paragraph 2, of Law No. 241/1990. Therefore, no document exists that records the calculations underlying the determination of the tariff.</p>	<p>No further response is required here as Respondent has admitted that no document exists that records the calculations underlying the determination of these tariff reductions imposed under the Fourth Energy Account.</p>	

13.	<p>Respondent alleges that the Romani Decree was reasonable allegedly because it allowed Conto Energia</p> <p>III “to continue providing for a transitional scheme for plants commissioned by 31 May 2011, which could continue to benefit from the more favourable scheme of the Third Energy Account (article 25(9)).” Produce documents showing how this cutoff date was determined.</p> <p>Produce documents showing how this cut- off date was determined.</p>	<p>Respondent argues that the 31 May 2011 cut-off date implemented by the Romani Decree for Conto Energia III was reasonable even though the cut off date took place well before the 14month grace period contained in Conto Energia. Claimant should be allowed to see the evidence of how Respondent’s Romani Decree arrived at the 31 May 2011 cut-off date for Conto Energia III, which contradicted the grace period.</p>	<p><b>Objection:</b></p> <p>The issues are addressed in the Mr. Bacchiocchi Witness Statements “Evolution of the legislative framework related to the market development” - §¶ 14-42) and in any documents referred in, which are in.</p> <p>Respondent is not in possession of any additional documents that are pertinent to the matters identified.</p>	<p>Respondent states that it has no further documents beyond what is contained in Mr. Bacchiocchi’s Witness Statement. However, Mr. Bacchiocchi does not produce any fact exhibits or the data underlying his figures. Respondent must be ordered to produce every fact document and the data that Mr. Bacchiocchi relies</p>	<p>The Tribunal determines that the request is relevant, and material but lack of specificity makes it unduly burdensome. The request is partially granted. Respondent is to produce the GSE reports referred to in footnotes 7 and 8 of the Bacchiocchi Witness Statement and the data supporting Figures 1 and 2 in the witness statement.</p>
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No.	Claimant’s Request	Claimant’s Justification	Respondent’s Response and/or Objections	Claimant’s Response	
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				<p>upon. For example in the paragraphs 14 to 42 of his witness statement, which is cited by Respondent in its objection, Mr. Bacchiocchi cites GSE reports in footnotes 7 and 8 but does not include the reports as exhibits. He also cites Figures 1 and 2 but does not produce the data underlying these figures. In sum, Respondent has access to these GSE reports and factual data through its witness and must produce this existing evidence.</p>	
14.	<p>Respondent, Counter-Memorial ¶ 156, asserts that unnamed investors filed administrative claims before domestic Courts, against the Romani Decree but that “<i>all administrative proceedings that were brought against the new regulation were won by Italy.</i>” Produce the administrative court rulings Italy relies upon.</p>	<p>Respondent defends the Romani Decree through administrative court rulings that have not been produced. Claimant should be entitled to review these rulings if they are relied upon by Respondent.</p>	<p>Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.</p>	<p>No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.</p>	

No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	
15.	<p>Page 5 of the Chiesa/Chiaroni expert report states that the Romani Decree was needed to avoid the risk of <i>"compromising the financial sustainability of the support mechanism."</i> Produce the data showing that the support mechanism was at risk and what level of risk.</p>	<p>Respondent and its experts argue that the Romani Decree was required to avoid a risk to the sustainability of the tariffs, but no data or calculations are cited showing that these incentives were at risk. Claimant should be entitled to review this alleged data to defend against the allegation of this supposed risk.</p>	<p><b>Objection:</b> In the Chiesa/Chiaroni expert report, numerous sources are explicitly cited to substantiate concerns regarding the financial sustainability and systemic instability associated with the Conto Energia support mechanism. Notably, at paragraphs 1.84 to 1.88, reference is made to a series of articles published in Il Sole 24 Ore, Italy's leading financial daily, which consistently underscored the escalating fiscal burden imposed by the incentive scheme. These articles stressed the rapid and unsustainable growth of the associated expenditures and highlighted the resulting pressure on public finances, thereby calling for prompt and decisive regulatory action. Further support is provided at paragraph 3.16, where the expert report cites an official document issued by ARERA (the Italian Regulatory Authority for Energy, Networks and Environment), which offers detailed quantitative evidence of the mounting financial risk. The ARERA document reveals that the cost of the Conto</p>	<p>No further response is required here as Respondent has confirmed that it will only rely on the sources cited in this expert report, which include primarily news articles, all of which post-date when Claimant made its investment, and ARERA data, which does not demonstrate the lack of stability of the financial incentives. Thus, no further response is required here.</p>	

			<p>Energia scheme increased more than fivefold in the span of a single year - rising from its 2010 level to over €3.5 billion in 2011. This exponential surge in public expenditure not only raised serious concerns regarding fiscal sustainability but also posed a material threat to macroeconomic stability.</p> <p>In light of this context, the Chiesa/Chiaroni expert report concludes that the need for regulatory intervention was not merely prudent but objectively necessary in order to preserve the financial equilibrium of the system and ensure the long-term viability of public support mechanisms in the energy sector.</p>		
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No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	Tribunal Decision
16.	Respondent, Counter-Memorial ¶ 373, states that: <i>"At the time when the Claimant started their investments, the operational costs to produce PV energy had been sharply reduced due to technological progress and scale economies. The progressive reduction of tariffs in the third and fourth Conto, however, were not sufficient to overcome the imbalance between PV investors remuneration and the reduced costs for producing electricity..."</i> Produce the evidence that Respondent relies upon to show that the <i>"progressive reduction of tariffs in the third and fourth Conto"</i> were allegedly not sufficient to overcome this alleged imbalance.	Respondent argues that the reductions imposed by the Romani Decree and the fourth energy account were needed because the reductions achieved by the 3rd Conto Energia accounts were not sufficient to overcome an alleged <i>"imbalance."</i> Similarly, Respondent argues that the Spalma Incentivi was required because the combined incentive reductions of the 3rd and 4th Conto Energia accounts were not sufficient to overcome an alleged <i>"imbalance."</i> Respondent fails to cite evidence for this proposition and must produce evidence of the supposed <i>"imbalance"</i> , if any, so Claimant may respond.	<b>Objection:</b> The issues are addressed in the Mr. Bacchiocchi Witness Statements <i>"Evolution of the legislative framework related to the market development"</i> - §¶ 14-42) and in any documents referred in, which are in. Respondent is not in possession of any additional documents that are pertinent to the matters identified.	Respondent states that it has no further documents beyond what is contained in Mr. Bacchiocchi's Witness Statement. However, Mr. Bacchiocchi does not produce any fact exhibits or the data underlying his figures. Respondent must be ordered to produce every fact document and the data that Mr. Bacchiocchi relies upon. For example in the paragraphs 14 to 42 of his witness statement, which is cited by Respondent in its objection, Mr. Bacchiocchi cites GSE reports in footnotes 7 and 8 but does not include the reports as exhibits. He also cites Figures 1 and 2 but does not produce the data underlying these figures. In sum, Respondent has access to these GSE reports and factual data through its	The Tribunal determines that the request is relevant, and material but the lack of specificity makes it unduly burdensome. The request is partially granted. Respondent is to produce the GSE reports referred to in footnotes 7 and 8 of the Bacchiocchi Witness Statement and the data supporting Figures 1 and 2 in the witness statement.

No.	Claimant's Request	Claimant's Justification	Respondent's Response and/or Objections	Claimant's Response	Tribunal Decision
				witness and must produce this evidence.	
17.	Respondent, Counter-Memorial ¶ 155, relies on a supposed European Commission "investigation" that the Romani Decree implemented the Second European Directive, citing only a press article. Produce the EC's investigative report, if any.	Respondent relies upon a European Commission investigation to defend the Romani Decree. Respondent should produce the EC's report of the investigation, if it exists, not just a press article, so Claimant can respond to the report to the extent the Respondent relies upon it.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	

18.	<p>With respect to Article 43, Respondent asserts, at Counter- Memorial ¶ 182, that Article 43 was not “disproportionate.”</p> <p>Produce any analysis.</p> <p>Respondent undertook describing how the 10 year ban on any affiliated plant that was arrived at.</p>	<p>Respondent defends Article 43 on the grounds that it was not deemed “disproportionate,” but adduces no evidence or analysis of the factors that Respondent considered before imposing the punitive measures of Article 43. In other words, Respondent has not produced any data showing how it is that Article 43 was not disproportionate. Claimant should be entitled to see this analysis underlying Article 43, if any, to respond to Respondent’s argument.</p>	<p><b>Objection:</b></p> <p>The Respondent objects to this request. The request is not aimed at obtaining a specific, existing document, but rather at contesting the legal reasoning set forth in the Counter- Memorial. Moreover, Respondent in §¶ 182 affirmed that <i>“Furthermore, it is undisputed that the reason why the measure was set aside by the Italian Constitutional Court was not based on any assumption of disproportionality or unequal treatment per se, but by the sole fact that its adoption by the administration was beyond the scope of the mandate received.”</i></p> <p>Therefore, only the reasoning underlying the ruling of unconstitutionality was cited, not the disproportionality of the measure.</p>	<p>Claimant’s request is in fact seeking to determine if any evidence exists that supports Respondent’s argument that Article 43 was not “disproportionate.” If it exists, Respondent must produce it. Respondent’s reference to <del>te</del> Constitutional Court’s ruling is a diversion and is non- responsive. Respondent must either produce <del>te</del> requested evidence or simply confirm that none exists.</p>	<p>The Tribunal determines that this request is overly broad and not specific. Thee request is denied.</p>
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No.	Claimant’s Request	Claimant’s Justification	Respondent’s Response and/or Objections	Claimant’s Response	Tribunal Decision
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19.	Respondent's experts from Politecnico di Milano, at page 14 of their report, state that they " <i>confirm [their] independence from both parties.</i> " Produce the studies and project that Politecnico di Milano has undertaken for Respondent, including the GSE.	Professor Chiesa and Chiaroni, who claim to be independent from Respondent, are employed by Politecnico di Milano. Respondent and their experts should produce the requested information so Claimant can verify if in fact the GSE and Respondent have been clients of Politecnico di Milano.	Respondent will undertake a good faith search for the relevant documentation and, if found, will produce it accordingly.	No further response required as Respondent has agreed to produce. Claimant reserves the right to seek adverse inferences if no documents are found.	
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## Annex 2



**Suntech Power International Ltd.**

v.

**Italian Republic**  
**(ICSID Case No. ARB/23/14)**

**Respondent's Document production request**

1	2	3		4	5	6
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses/ Objections to Document Request	Reply to Objections to Document Request	Arbitral Tribunal's Decisions
		Ref. to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			
1	<b>List of all criminal proceedings, acts and final judgements thereof, that interested the Italian SPV and their directors</b>	R. Moon Witness Statement - § 47  Report of Richard Edwards FTI - § 3.27	Claimant asserts that these proceedings “ <i>reflect the hostile environment toward solar plants in Italy post- Romani Decree. In particular, these measures highlight how Respondent attempted to claw back FIT revenues from SPI’s Italian SPVs through any means available.</i> ”  Despite attempts at reconstruction at the various national judicial offices, it has been impossible to reconstruct the set of proceedings to which the Claimant refers generically. On the other hand, the Claimant obviously has such documents and can provide the complete picture, on which it bases its accusations.  This documentation is necessary in order to refute the Claimant’s claims.	Claimant objects on three grounds. 1) Claimant has not filed a claim under the Energy Charter Treaty based on criminal proceedings, therefore this request seeks information that is not material nor relevant to the outcome of this case. 2) The criminal proceedings themselves are not the point in this arbitration. Rather it is the result and the timing thereof. After years of prosecution by prosecutors, the meritless criminal proceedings ultimately failed in court, and the Italian authorities had to return EUR 68.5 million to the Italian SPVs. The authorities held onto that money for years, depriving the Italian SPVs of the ability to use those funds to repay their loans, until these funds were finally returned in 2019. The timing of the return of these seized funds is the only point made in the Damages Expert Report of Richard Edwards, who states that: “From May 2019, the funds that were accumulating in the separate bank accounts, amounting to EUR 68.5 million by that date, were returned to the group”. Italy does not contest the	Claimant’s objections are unfounded. The requested documents are directly relevant to assess whether the criminal proceedings were indeed meritless and whether the alleged “hostile environment” existed. Respondent is not merely attempting to confirm the existence of such proceedings, but seeks to examine their substance, outcome, and	Paragraph 47 of Moon’s witness statement refers specifically to six such proceedings. The Tribunal determines that this request is relevant to proceedings cited or relied upon by Claimant as being meritless. The Tribunal orders production of all criminal proceedings, acts and final judgements relating to the six criminal proceedings referred to at paragraph 47 of the Moon witness

				<p>return of funds, so its request does not seek relevant or material information. 3) Finally, these meritless proceedings were pursued for years <b>by Respondent's</b> provincial authorities and were adjudicated <b>before Respondent's own courts</b>, so Respondent already has access to the information it seeks. Respondent cannot shift the burden to locate files in its own courts to Claimant, particularly when those files are not even relevant nor material here</p>	<p>context to rebut Claimant's characterization. Respondent does not have access to a systematized database of such proceedings. The relevant records are decentralized across various judicial authorities. The documents are within Claimant's possession and not reasonably accessible to Respondent.</p>	
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2	<b>All documents related to the Swiss insolvency process that interested SPI in 2013/2014</b>	R. Moon Witness Statement - § VI	Documentation appears necessary in order to understand the reasons why a restructuring procedure was undergone and how the assets were valued, in order to properly reconstruct the factual events that affected the Claimant and thus refute the claim by the Claimant on the liability of Italy to that end.	Claimant objects to this request because it seeks documents that are not material nor relevant to the outcome of this arbitration. SPI's insolvency proceeding in Switzerland has nothing to do with the claims it pursues against Italy, nor the damages that SPI is seeking here. The fact that SPI went through a restructuring in Switzerland in 2013/2014 is just a background fact. Italy is just engaged in a fishing expedition as SPI's restructuring procedure has nothing to do with Italy's liability or damages here. Moreover, Italy cannot even articulate what documents it seeks. It simply asks for "all documents related to" the Swiss insolvency procedure from 12 years ago. Claimant thus also objects on the grounds that Respondent's request is unduly broad and vague.	Claimant cannot dismiss as "background facts" a corporate restructuring that materially influenced its financial and operational condition during the relevant period. The request is not a fishing expedition but seeks clarification of the events that affected Claimant's ability to operate and invest. Furthermore, the broad phrasing is justified given the nature of insolvency processes, and Claimant is well-positioned to identify responsive documents. Materiality lies in assessing causation and damages.	The Tribunal finds this request to be overly broad and not specific. It would impose an unreasonable burden on the Claimant to produce the requested documents. The request is denied.
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3	<b>Ecopower - EWII - Girasole - MT 2007 - Photos - S-Energia - Soleil - SV II - SVP 2016 financial statements</b>	Report of Richard Edwards FTI - § 1.29 – point (4)	<p>While financial statements from 2010 to 2020 are produced, those for 2016 are missing.</p> <p>The documents are necessary to complete the chronology of financial statements on which the Claimant bases its allegations.</p>	Claimant will conduct a reasonable search for these financial statements and, if available, will produce them.	No further response is required as Claimant has agreed to conduct a reasonable search and produce the requested documents. Respondent reserves the right to request that the Tribunal draw appropriate adverse inferences should no relevant documents be produced.	
4	<b>Ecopower III - Ecopower V - Ecopower VI - Girasole III 2016 financial statement</b>	Report of Richard Edwards FTI - § 1.29 – point (4)	<p>While financial statements from 2012 to 2020 are produced, those for 2016 are missing.</p> <p>The document is necessary to complete the chronology of financial statements on which the Claimant bases its allegations.</p>	Claimant will conduct a reasonable search for these financial statements and, if available, will produce them.	No further response is required as Claimant has agreed to conduct a reasonable search and produce the requested documents. Respondent reserves the right to request that the Tribunal draw appropriate adverse inferences should no relevant documents be produced.	

<b>5</b>	<b>GSF 2021 and 2022 financial statements</b>	Report of Richard Edwards FTI - § 1.29 – point (4)	<p>These documents are missing in the chronology of financial statements provided by the Claimant.</p> <p>These documents are particularly relevant to assess the post-sale situation of the parent company of the SPVs</p>	Claimant does <b>not</b> have these financial statements because GSF was sold in a transaction that closed in August 2021. In any event, the valuation date used by Claimant's damages expert, Richard Edwards of FTI, is 31/12/19. FTI does not rely on 2021 or 2022 information to perform their analysis.	Claimant's objection is baseless. While FTI's valuation cut-off is 31/12/2019, the post-sale financial health of GSF remains relevant to mitigation of damages, valuation integrity, and business continuity arguments. Moreover, these financial statements are within the recent past and should be reasonably available or obtainable by Claimant.	The Tribunal determines that this request lacks sufficient relevance to the case or materiality to its outcome. The request is denied.
<b>6</b>	<b>SV 2015 financial statement</b>	Report of Richard Edwards FTI - § 1.29 – point (4)	<p>While financial statements from 2010 to 2020 are produced, the one for 2015 is missing.</p> <p>The document is necessary to complete the chronology of financial statements on which the Claimant bases its allegations.</p>	Claimant will conduct a reasonable search for these financial statements and, if available, will produce them.	No further response is required as Claimant has agreed to conduct a reasonable search and produce the requested documents.	

					Respondent reserves the right to request that the Tribunal draw appropriate adverse inferences should no relevant documents be produced.	
7	<b>SV NEW 2011 – 2018 – 2019 – 2020 financial statements</b>	Report of Richard Edwards FTI - § 1.29 – point (4)	While financial statements from 2010 to 2017 are produced, those for 2011/2018/2019/2020 are missing. The document is necessary to complete the chronology of financial statements on which the Claimant bases its allegations.	Claimant will conduct a reasonable search for these financial statements and, if available, will produce them.	No further response is required as Claimant has agreed to conduct a reasonable search and produce the requested documents. Respondent reserves the right to request that the Tribunal draw appropriate adverse inferences should no relevant documents be produced.	

8	<b>SPI financial statements from 2007 to 2021</b>	R. Moon Witness Statement	<p>Claimant does not provide its own financial statements.</p> <p>These documents are particularly relevant with regard to jurisdiction, to assess the impact of Suntech Wuxi's bankruptcy on the Claimant, and to verify the correctness of the reconstruction provided.</p>	<p>SPI financial statements for 2007 do not exist because SPI was only incorporated in October 2007. The first year for which financial statements were produced were 2008. Claimant will conduct a reasonable search for the 2008 to 2021 financial statements and, if available, will produce them.</p>	<p>Respondent welcomes the proposed search and acknowledges the non-existence of 2007 financials. However, Respondent underscores the importance of the remaining documents for assessing jurisdiction and corporate structure. Should key years be unproduced, Respondent will invite the Tribunal to consider appropriate evidentiary consequences.</p>	
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9	<b>Forbearance agreement of March 2013</b>	R. Moon Witness Statement, § 12-15	<p>Claimant's witness states: "<i>By March 2013, I successfully negotiated a forbearance agreement with the bondholders of Suntech Power Holdings, ensuring that restructuring negotiations could continue past the March 2013 due date of the bonds without the threat of negative actions from the bondholders. (...)Suntech Wuxi's bankruptcy in March 2013 also negatively impacted SPI's balance sheet.</i>"</p> <p>Documentation appears necessary to properly reconstruct the factual events that affected the Claimant's group and thus refute the claims by the Claimant on the liability of Italy to that end.</p>	Claimant objects to this request, which is neither relevant nor material to the outcome of this arbitration. This agreement was not connected to Claimant. The forbearance agreement was between Claimant's ultimate parent company (Suntech Power Holdings) and the parent company's bondholders, and it has nothing to do with Italy's liability in this arbitration, nor damages.	Claimant's objection is baseless. It disregards the material connection between its corporate group's financial distress and its investment posture. The Witness Statement references the agreement and its impact on the group's financial position. It is thus relevant to context, causation, and quantum.	
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