A CASE STUDY ON RATE ADJUSTMENT DISPUTE BETWEEN INDEPENDENT POWER PRODUCER AND TAIPOWER COMPANY: A NEW CHALLENGE ARISING FROM TAIWAN-JAPAN BILATERAL INVESTMENT AGREEMENT?

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ABSTRACT

This article analyzes the legal issues of the dispute between a State-owned company, Taiwan Power Company (TPC) and the Independent Power Producers (IPPs). It examines whether Taiwan has violated principles under the Taiwan-Japan BIA or international investment law as a result of the intervention by competent authority. The article will focus on some steps or measures taken by TPC and the Fair Trade Commission of Taiwan (TFCT), such as the civil law suit filed by TPC, the huge fine imposed by the TFTC, etc. By analyzing the Taiwan-Japan BIA and some practices in international investment law, this article argues that although the huge fine could deprive the value of the IPPs, it would not constitute "indirect expropriation" because it does not impair the core benefit of the IPPs. However, some steps adopted by TPC and the TFTC might violate the principle of "fair and

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equitable treatment." This article also argues that while responding to public pressure is important and forming the energy policies is within the authority of the host State, policy makers still cannot neglect foreign investors' protection.

KEYWORDS: *Independent Power Producer (IPP), Taiwan-Japan BIA, indirect expropriation, Fair and Equitable Treatment*