

Team: 063

JOHN H. JACKSON MOOT COURT COMPETITION

2021-2022

***Alderaan – Measures Concerning Permanent
Magnet Generators for Windmills***

Coruscant
(Complainant)

versus

Alderaan
(Respondent)

SUBMISSION ON BEHALF OF THE COMPLAINANT

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LIST OF REFERENCES

I. CONVENTIONS AND TREATIES

Abbreviation	Full citation
DSU	Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 UNTS 401, 33 ILM 1226 (1994).
GATT	General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 UNTS 187, 33 ILM 1153 (1994).
ASCM	Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 UNTS 14 (1994).
VCLT	Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, 8 ILM 679 (1969).

II. CASES

A. Appellate Body Reports of the WTO

Short Title	Full Case Title and Citation
<i>Argentina – Import Measures</i>	<i>Argentina — Measures Affecting the Importation of Goods</i> , WT/DS438/AB/R; WT/DS444/AB/R; WT/DS445/AB/R, adopted 15 January 2015.
<i>Australia – Automotive Leather II</i>	<i>Australia — Subsidies Provided to Producers and Exporters of Automotive Leather</i> , WT/DS126/R, adopted on 16 June 1999.
<i>Brazil – Retreaded Tyres</i>	<i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/AB/R, adopted 17 December 2007.
<i>Canada – Aircraft</i>	<i>Canada — Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/AB/R, adopted 2 August 1999.

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<i>Canada – Autos</i>	<i>Canada — Certain Measures Affecting the Automotive Industry</i> , WT/DS139/AB/R; WT/DS142/AB/R, adopted on 19 June 2000.
<i>Canada – Renewable Energy / Feed-in Tariff Program</i>	<i>Canada — Measures Relating to the Feed-in Tariff Program</i> , WT/DS412/AB/R; WT/DS426/AB/R, adopted on 24 May 2013.
<i>China – Raw Materials</i>	<i>China — Measures Related to the Exportation of Various Raw Materials</i> , T/DS394/AB/R; WT/DS395/AB/R; WT/DS398/AB/R, adopted 30 January 2012.
<i>EC – Asbestos</i>	<i>European Communities – Measures affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/AB/R, adopted 5 April 2001.
<i>EC-Seal Products</i>	<i>European Communities — Measures Prohibiting the Importation and Marketing of Seal Products</i> , WT/DS400/AB/R; WT/DS401/AB/R, adopted on 18 June 2014.
<i>EC and certain member States – Large Civil Aircraft</i>	<i>European Communities and Certain member States — Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/40/Rev.1, adopted 1 June 2011.
<i>Japan – DRAMs (Korea)</i>	<i>Japan — Countervailing Duties on Dynamic Random Access Memories from Korea</i> , WT/DS336/AB/R, adopted on 17 December 2007.
<i>Peru – Agricultural Products</i>	<i>Peru — Additional Duty on Imports of Certain Agricultural Products</i> , WT/DS457/AB/R, adopted on 31 July 2015.
<i>Russia – Railway Equipment</i>	<i>Russia — Measures affecting the importation of railway equipment and parts thereof</i> , WT/DS499/AB/R, adopted 5 March 2020.
<i>US – Large Civil Aircraft (2nd complaint)</i>	<i>United States — Measures Affecting Trade in Large Civil Aircraft — Second Complaint</i> , WT/DS353/AB/R, adopted 12 March 2012.
<i>US – Anti-Dumping and</i>	<i>US – Anti-Dumping and Countervailing Duties (China)</i> , WT/DS379/12/Add.7, adopted 25 March 2001.

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<i>Countervailing Duties (China)</i>	
<i>US – Corrosion-Resistant Steel Sunset Review</i>	<i>United States — Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan, WT/DS244/AB/R, adopted 9 January 2004.</i>
<i>US – Countervailing Duty Investigation on DRAMs</i>	<i>US – Countervailing Duty Investigation on DRAMs, WT/DS296/11, adopted 20 July 2005.</i>
<i>US – Anti-Dumping Duty on DRAMs</i>	<i>United States — Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from Korea, WT/DS99/R, adopted on 19 March 1999.</i>
<i>US – Gasoline</i>	<i>United States — Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted 20 May 1996.</i>
<i>US – Large Civil Aircraft (2nd complaint)</i>	<i>United States — Measures Affecting Trade in Large Civil Aircraft — Second Complaint, WT/DS353/AB/R, adopted 12 March 2012.</i>
<i>US – Softwood Lumber IV</i>	<i>United States — Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada, WT/DS257/AB/R, adopted 17 February 2004.</i>
<i>US – Supercalendered Paper</i>	<i>United States — Countervailing Measures on Supercalendered Paper from Canada, WT/DS505/AB/R, adopted 6 February 2020.</i>
<i>US – Zeroing (EC)</i>	<i>United States — Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing), WT/DS294/AB/R, adopted 18 April 2006.</i>
<i>US – Shrimp</i>	<i>United States — Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, adopted 12 October 1998.</i>

B. Panel Reports of the WTO and the GATT

Short Title	Full Case Title and Citation
<i>Argentina – Hides and Leather</i>	<i>Argentina — Measures Affecting the Export of Bovine Hides and the Import of Finished Leather</i> , WT/DS155/R, adopted on 16 February 2001.
<i>EC – Countervailing Measures on DRAM Chips</i>	<i>European Communities — Countervailing Measures on Dynamic Random Access Memory Chips from Korea</i> , WT/DS299/R, adopted on 3 August 2005.
<i>EC and certain member States – Large Civil Aircraft</i>	<i>European Communities and Certain member States — Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/R, adopted on 1 June 2011.
<i>India – Autos</i>	<i>India — Measures Affecting the Automotive Sector</i> , WT/DS146/R; WT/DS175/R, adopted on 5 April 2002.
<i>Indonesia – Import Licensing Regimes</i>	<i>Indonesia — Importation of Horticultural Products, Animals and Animal Products</i> , WT/DS477/R; WT/DS478/R, adopted on 22 November 2017.
<i>Japan – DRAMs (Korea)</i>	<i>Japan — Countervailing Duties on Dynamic Random Access Memories from Korea</i> , WT/DS336/R, adopted on 17 December 2007.
<i>Japan – Semi-Conductors</i>	<i>Japan – Trade in Semi-Conductors</i> , L/6309 – 35S/116, adopted on 4 May 1988.
<i>Russia – Railway Equipment</i>	<i>Russia – Measures Affecting the Importation Of Railway Equipment and Parts Thereof</i> , WT/DS499/R, adopted on 5 March 2020.
<i>Turkey – Textiles</i>	<i>Turkey — Restrictions on Imports of Textile and Clothing Products</i> , WT/DS34/R, adopted on 19 November 1999.
<i>US-Anti-Dumping Methodologies (China)</i>	<i>United States — Certain Methodologies and their Application to Anti-Dumping Proceedings Involving China</i> , WT/DS471/R, adopted on 19 October 2016.

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<i>US – Softwood Lumber IV</i>	<i>United States — Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada</i> , WT/DS257/R, adopted on 29 August 2003.
<i>US-Export Restraints</i>	<i>United States – Measures Treating Exports Restraints as Subsidies</i> , WT/DS194/4, adopted 28 August 2001.

C. Other International Courts

Short Title	Full Case Title and Citation
ICJ, <i>Right of Passage over Indian Territory</i> (Portugal v India)	<i>Right of Passage over Indian Territory</i> , Portugal v India, Judgment, Preliminary Objections, [1957] ICJ Rep 125, ICGJ 173 (ICJ 1957), 26 November 1957.
PCIJ, S.S. ‘ <i>Lotus</i> ’ (France v Turkey)	S.S. ‘ <i>Lotus</i> ’, France v Turkey, Judgment, (1927), para 45, PCIJ Series A no 10, ICGJ 248 (PCIJ 1927), 7 September 1927.

III. ARTICLES AND CONTRIBUTIONS

Abbreviation	Long Form
A. MILLS (2014)	Alex Mills, <i>Rethinking Jurisdiction in International Law</i> , 84 BRITISH YEARBOOK OF INTERNATIONAL LAW 187–239 (2014).
C. VALLES, V. POGORETSKY, T. YANGUAS (2019)	Cherise Valles, Vitaliy Pogoretsky and Tatiana Yanguas, <i>Challenging Unwritten Measures in the World Trade Organization: The Need for Clear Legal Standards</i> , 22 JOURNAL OF INTERNATIONAL ECONOMIC LAW 459-482 (2019).
S. LESTER et. al. (2018)	Simon Lester, Bryan Mercurio and Arwel Davies, <i>WORLD TRADE LAW: TEXT, MATERIALS AND COMMENTARY</i> (Hart Publishing, 2018).
V. CROCHET and V. HEGDE (2020)	Victor Crochet and Vineet Hegde, <i>China’s ‘Going Global’ Policy: Transnational Production Subsidies Under the WTO SCM Agreement</i> , 23(4) JOURNAL OF INTERNATIONAL ECONOMIC LAW 841 – 863 (2020).

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VAN DEN BOSSCHE and ZDOUC (2017)	Peter van den Bossche and Werner Zdouc, THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION (Cambridge University Press, 2017).
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IV. OTHER MATERIALS

Abbreviation	Long Form
Agreement Concerning a Scottish Trial in the Netherlands (1999)	Agreement between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland concerning a Scottish Trial in the Netherlands, 24 August 1998, UKTS No. 43 (1999).

LIST OF ABBREVIATIONS

Abbreviation	Long Form
AB	Appellate Body
ABR	Appellate Body Report
AFL	Alderaan's Finance Laws
DSB	Dispute Settlement Body
GHS	Green Hope Strategy
JSDZ	Juneland Special Development Zone
MEIZ	Mos Eisley Industrial Zone
MMID	Ministry of Mining and Industrial Development
MoE	Minister of Environment
MoU	Memorandum of Understanding
PMG	Permanent Magnet Generators
PoL	Provision of Land
PR	Panel Report
TMT	Thousand Metric Tons
UN	United Nations
WTO DSS	World Trade Organization Dispute Settlement System
WTO	World Trade Organization

SUMMARY OF ARGUMENTS

I. The PoL is a specific subsidy inconsistent with ASCM Art. 3.1(a)

- The PoL granted by Investerix is a subsidy within the meaning of ASCM Art. 1.1 as it is a financial contribution that confers a benefit to the recipient - Desertix.
- The PoL constitutes a financial contribution as it is a provision of land that does not amount to general infrastructure. The land is not general infrastructure as only Desertix may benefit from it. Investerix is a public body insofar as Alderaan exerts meaningful control over it and Investerix exercises governmental functions. Control is demonstrated as: Investerix is fully owned by Alderaan (i); 80% of the members of its board of directors are MMID officials (ii); and it deviated from its standard commercial practice in selling the plot of land to Desertix only after consulting with the Alderaan government (iii). Moreover, it is proven that Investerix exercises governmental functions as it is required to support Alderaan's industrial policy. Moreover, the PoL is granted within the territory of Alderaan.
- The PoL confers a benefit to Desertix as only Desertix could acquire full ownership of the land on terms more favourable than those available on the market.
- The PoL constitutes a prohibited subsidy under ASCM Art. 3.1(a) because it is contingent upon export performance of SaberLite PMGs in fact. Contingency is proven to the extent that: the ratio-analysis demonstrates that the ratio of exports of SaberLite PMGs is higher in the PoL scenario (i); the PoL assists Desertix to bring a new product to the market, SaberLite PMGs (ii); and the export obligation intervenes with the normal conditions of supply and demand (iii).

II. The loan causes serious prejudice under ASCM Art. 5(c)

- The loan granted by Zurix Bank to Desertix constitutes a subsidy under ASCM Art. 1.1 because it is a financial contribution and confers a benefit to the recipient. The loan is a financial contribution as: it is a direct transfer of funds (i); granted by a private body which is entrusted or directed by Alderaan (ii); and it was granted within the territory of Alderaan (iii). The loan grants a benefit to Desertix as it was given on more favourable terms than what would otherwise be available to Desertix on the market.
- The loan is a specific subsidy under ASCM Art. 2.1. The specificity of the loan is not affected by the location of the recipient in the JSDZ, as it is still within the jurisdiction of Alderaan by virtue of the 2019 MoU establishing jurisdiction of Alderaan over the JSDZ. The loan is *de facto* specific to Desertix because it is the only enterprise capable of making use of the subsidy program.

- The loan caused serious prejudice to the interests of Coruscant under ASCM Art. 5(c), as it resulted in a significant loss of sales of PMGs to Magnetix within the meaning of ASCM Art. 6.3(c). The lost sales occurred in competition against Desertix's subsidized PMGs in the same product market in Naboo, as they are substitutable both on demand-side and supply-side. Moreover, the loss of sales was significant as it consisted of a five-year exclusivity contract, conferring an advantage in subsequent purchases by the same customer to the winning competitor. Finally, there is a causal link between the loan and the loss of sales, insofar as sales would not have been lost in the counterfactual scenario.

III. The overarching measure is a quantitative restriction under GATT Art. XI:1, and is not justifiable under GATT Art. XX

- Alderaan's export tax and the export registration requirement are written measures that are in existence. The refusal of mining permits is an unwritten measure that can be described as an ongoing conduct. The ongoing conduct exists, as it is attributable to the Alderaan government, and its precise content is proven. Moreover, it is established that it is repeatedly applied and is likely to continue to have a future application.
- The export registration requirement, the export tax, and the decisions of non-renewal and refusal of mining permits constitute an overarching measure that is systematically applied in pursuance of the GHS.
- The measure constitutes a *de facto* quantitative restriction on exporting neodymium from Alderaan under GATT Art. XI:1 because it is statistically proven to have limiting effects on the exportation of neodymium.
- The overarching measure is not justifiable under GATT Art. XX general exceptions. It is not justifiable under Art. XX(b) as it is not necessary to protect human, animal or plant life or health, and reasonably alternatives to the measure are available. Even if it were provisionally justifiable under Art. XX(b), the measure is inconsistent with the *chapeau* of Art. XX, as it amounts to arbitrary and unjustifiable discrimination, is intentional and lacks the required transparency and procedural fairness standards. The measure also breaches the *chapeau* as it operates as a disguised restriction on the international trade of neodymium, meant to favour Alderaan's kyber PMG industry.

STATEMENT OF FACTS

1. Alderaan, Tatooine and Coruscant are Members of the WTO. Alderaan and Coruscant are developed Members. Tatooine is a least-developed Member.
2. Since July 2016 Alderaan has been making significant changes to become a world leader in sustainability, including cutting down on the mining and exportation of neodymium because of its toxicity. Neodymium is the key material to produce PMGs, a windmill part that is used to convert the rotation energy of the blades into electricity. 60% of the world's neodymium reserves can be found in Alderaan. An alternative material to produce these PMG's, namely kyber, is found in Tatooine. Tatooine holds more than 95% of the world reserves of kyber.
3. Special Electrix, Alderaan's largest PMGs producer, developed the SaberLite Technology to produce PMGs based on kyber instead of neodymium. The SaberLite Technology allows Alderaan to reduce neodymium mining. To ensure Special Electrix access to kyber, Alderaan entered into negotiations with Tatooine and demarcated an industrial zone in Tatooine, the JSDZ. In June 2018, the land was sold to Alderaan's largest industrial land developer – Investrix. Investrix ensures safety in the zone and develops infrastructure and connectivity in the JSDZ.
4. Investrix sold a plot of land in the JSDZ to Desertix. Desertix is a subsidiary of Special Electrix set up in Tatooine to guarantee the supply of kyber and establish the production of the SaberLite PMGs. The sale of land was financed by a loan from Zurix Bank, an Alderaan private bank.
5. Ventix Generatix, a large windmill manufacturer entered parallel negotiations for the exclusive supply of their PMGs with two suppliers. The supply contract was won by Desertix, who offered a lower price. The negotiations with Magnetix, a Coruscant PMG producer were discontinued in March 2020.
6. Due to the measures taken by the Alderaan government to reduce mining and export of neodymium, such as import taxes and administrative requirements, there have been severe delays at the Alderaan customs. Furthermore, between January 2018 and December 2019, the Alderaan government decided not to renew multiple mining permits of Alderaan's most prominent mining companies. All these instances have led to a severe shortage in neodymium supply for manufacturers such as Magnetix. After unsuccessful consultations, Coruscant submitted a request to the DSB for the establishment of a panel.

IDENTIFICATION OF THE MEASURES AT ISSUE

Measure 1: The provision of land from Investerix to Desertix (hereinafter “PoL”).

Measure 2: The loan from Zurix Bank to Desertix (hereinafter “the loan”).

Measure 3: Export restrictions constituting the overarching measure (hereinafter “overarching measure”).

LEGAL PLEADINGS

I. THE POL IS A SPECIFIC SUBSIDY INCONSISTENT WITH ASCM ART. 3.1(a)

1. For a measure to be a prohibited subsidy, it must be a specific subsidy and be inconsistent with ASCM Art. 3.1(a). For a measure to be a specific subsidy it must fall under the definition of a subsidy as per ASCM Art. 1.1 and be specific under ASCM Art. 2.3.
2. The PoL falls within the definition of a subsidy[1]. Furthermore, it is a specific subsidy[2] because it is a prohibited subsidy considering ASCM Art. 3.1(a)[3].

1. The PoL is a subsidy under ASCM Art. 1.1

3. As per ASCM Art. 1, a subsidy is a financial contribution that confers a benefit. The PoL by Investerix to Desertix is a financial contribution by a public body under Art. 1.1(a)[A] and grants a benefit to Desertix under Art. 1.1(b)[B].

A. The PoL is a financial contribution under ASCM Art.1.1(a)(1)

4. The PoL is a financial contribution [a] by Investerix - a public body [b], within the territory of Alderaan [c] pursuant to ASCM Art. 1.1 (a)(1).

a. Financial contribution

5. As per ASCM Art. 1.1(a)(1)(iii), a financial contribution exists when there is provision of goods,¹ other than general infrastructure.² The PoL constitutes a provision of a good[i]. It does not fall within the definition of “general infrastructure”[ii].

i. The PoL is a provision of a good

6. The ordinary meaning of a “good” includes a wide range of property, such as immovable property.³ Land is an immovable property. Thus, the plot of land qualifies as a good.
7. Furthermore, the AB noted that the term “provision” needs to be understood as supplying or furnishing for use or to make available.⁴ This includes transactions in which the recipient pays for the goods or services.⁵ The plot of land of 182,108 sq m was sold by Investerix for a fixed price of \$39,153,220 to Desertix. Thus, the PoL constitutes a provision of a good.

¹ ABR, *US – Large Civil Aircraft* (2nd complaint), ¶ [618].

²² PR, *EC and certain member States – Large Civil Aircraft*, ¶ [7.1036].

³ ABR, *US – Softwood Lumber IV*, ¶ [58-59].

⁴ ABR, *EC and certain member States – Large Civil Aircraft*, ¶ [964].

⁵ ABR, *US – Large Civil Aircraft* (2nd complaint), ¶ [618].

ii. The PoL does not constitute general infrastructure

8. ASCM Art. 1.1 (a)(1)(iii) states that the provision of goods does not include general infrastructure. General infrastructure is defined as “infrastructure that is not provided to or for the advantage of only a single entity or limited group of entities, but rather is available to all or nearly all entities.”⁶ Only Desertix is authorized to purchase a plot of land in the JSDZ, and not other entities. Thus, the PoL does not constitute general infrastructure.
9. The PoL is a financial contribution as it is a provision of a good and not general infrastructure.

b. Investrix is a public body

10. As per ASCM Art. 1.1(a)(1), a financial contribution made by a government or a public body, includes all levels of government and public bodies. Investrix, although not a government, constitutes a public body. A public body is an entity that possesses, exercises or is vested with governmental authority.⁷ It is vested with governmental authority when there is a close relationship to a government. This is proven by the existence of a meaningful control of the government over the entity and the exercise of governmental functions by that entity.⁸ Ownership of the entity by the related government can indicate meaningful control.⁹ In *US – Anti-Dumping and Countervailing Duties (China)*, the AB found that it was proven that Chinese state-owned companies “effectively exercised certain governmental functions” by demonstrating that they are required to support China's industrial policies.¹⁰
11. Alderaan exercises meaningful control over Investrix. First, Alderaan owns all the shares of Investrix. Second, 80% of the members of the board of directors of Investrix also serve in the Alderaan MMID. Third, Investrix changed its standard commercial practice in the JSDZ after a meeting with the Alderaan MMID, as it allowed Desertix to purchase a plot of land instead of the normal land use rights. This proves the exercise of meaningful control.
12. Additionally, Investrix is required to support Alderaan's industrial policy within the JSDZ by providing infrastructure, safety, security, and environmental protection as set out in Art. 8 MoU. This proves that Investrix exercises governmental functions within the zone. Thus, Investrix constitutes a public body as per ASCM Art. 1.1 (a).

c. Investrix is located within the territory of Alderaan

⁶ PR, *EC and certain member States – Large Civil Aircraft*, ¶ [7.1036].

⁷ ABR, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ [317-318].

⁸ Ibid, ¶ [285, 317-318].

⁹ Ibid, ¶ [285, 317-318].

¹⁰ ABR, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ [355].

13. As per ASCM Art. 1.1(a)(1), the financial contribution must be granted by a government or public body within the territory of a WTO Member. The term “within the territory of a Member” directly follows the term “a government or any public body”. Also, the definition of a government is inserted between brackets after the term. This indicates that “within the territory” only refers to “a government or any public body” and not to the location of the receiving entity. Further, ASCM Annex I(j) states that export credit support granted to foreign buyers, is a prohibited export subsidy as per ASCM Art. 3(1). This confirms that a subsidy can exist when it is granted to a foreign recipient. Thus “within the territory” only refers to the location of the government or the public body.
14. The PoL was granted by Investrix, a public body (paras 10-12). Since Investrix is located in Alderaan, the PoL is granted within the territory of Alderaan.
15. In conclusion, the PoL is a financial contribution granted by Investrix, a public body, established within the territory of Alderaan under of ASCM Art. 1.1(a).

B. The PoL by Investrix confers a benefit to Desertix under ASCM Art. 1.1(b)

16. ASCM Art. 1.1(b) states that for a “subsidy” to exist, it should also confer a benefit. Conferring a benefit means that the recipient is better off due to the financial contribution. According to the AB, whether the recipient is better off because of the financial contribution must be determined by establishing “whether the recipient has received a ‘financial contribution’ on terms more favourable than those available in the market”.¹¹
17. The PoL to Desertix by Investrix confers a benefit. As per the Land Sale Contract, Desertix was able to buy 182,108 sq m of land in the JSDZ from Investrix for \$215 per sq m, or \$39,153,220 in total. To compare, the price for full land ownership in Tatooine’s other Industrial Zone, the MEIZ, is on average \$235 per sq m, which would lead up to a total price of \$59,185,100 for the same surface area. This shows a price difference of \$20 per sq m or a total of \$20,000,000, which proves that Desertix was granted a benefit by Investrix.
18. This benefit not only includes a serious price reduction, but also the sole opportunity for Desertix to purchase land in the JSDZ as opposed to other enterprises, who could only obtain land use rights.
19. Desertix received a benefit on terms more favourable than those available to the recipients in the market. The sale took place for a price that is much lower than the economic value of the land sold. Moreover, only Desertix was able to acquire full land ownership.

¹¹ ABR, *US – Large Civil Aircraft* (2nd complaint), ¶ [635–636, 662, 690]; ABR, *Canada – Aircraft*, ¶ [157].

20. In conclusion, the PoL constitutes a “subsidy” under ASCM Art. 1.1 as it is a provision of a good, constituting a financial contribution, by Investrix, a public body within the territory of Alderaan, and it grants a benefit to Desertix.

2. The PoL is a specific subsidy under ASCM Art. 2.3

21. As per ASCM Art. 2.3, any subsidy falling under the provisions of Art. 3 is specific. Thus, the specificity test under Art. 2 need not be passed in cases of export subsidies. As per paras 22-27, the PoL is a prohibited subsidy under Art. 3. Thus, the PoL is a specific subsidy.

3. The PoL is a prohibited subsidy under ASCM Art. 3.1(a)

22. A subsidy is a prohibited subsidy within the meaning of ASCM Art. 3.1(a) when the subsidy is contingent upon export performance in fact.¹² To establish contingency in fact, there must be a link between the subsidy and export performance.¹³ The AB has ruled that the standard of contingency in fact is met if the facts demonstrate that the subsidy is “in fact tied to actual or anticipated exportation”.¹⁴ To establish contingency these relevant facts should be considered: i) the ratio-analysis; ii) bringing a specific product to the market; and iii) and favouring a recipient’s export sales over its domestic sales.¹⁵

23. First, the ratio-analysis is a comparison of “the ratio of anticipated export and domestic sales of the subsidized product that would come about in consequence of the granting of the subsidy” and “the situation in the absence of the subsidy”.¹⁶ There is contingency if the subsidy is designed to increase the enterprise’s ratio of export sales to domestic sales.¹⁷ The anticipated export of SaberLite PMGs with the presence of Desertix in the JSDZ, is higher than if the subsidy had not been granted, because the production would not have existed.

24. Second, subsidies that directly assist companies in bringing a specific product to the market also provide factual evidence of contingency upon export performance.¹⁸ The granted subsidy enabled Desertix to access a stable kyber supply to produce their new SaberLite PMGs and to deploy its production. The subsidy introduced a specific product, SaberLite PMGs, into the market.

25. Third, export-contingent subsidies must “preferentially support a recipient's export sales over domestic sales”.¹⁹ This condition occurs if they are designed to persuade a recipient

¹² ABR, *Australia – Automotive Leather II*, ¶ [9.55].

¹³ ABR, *Canada – Aircraft*, ¶ [167]; ABR, *Canada – Autos*, ¶ [99].

¹⁴ ABR, *Canada – Aircraft*, ¶ [170].

¹⁵ ABR, *EC and certain member States – Large Civil Aircraft 21.5 – US*, ¶ [6.702]; PR, *Australia – Automotive Leather II*, ¶ [9.55]; PR, *Canada – Aircraft*, ¶ [9.339].

¹⁶ ABR, *EC and certain member States – Large Civil Aircraft 21.5 – US*, ¶ [6.698].

¹⁷ ABR, *EC – Large Civil Aircraft*, ¶ [1044]; D. Coppens, 121.

¹⁸ PR, *Canada – Aircraft*, ¶ [9.339].

¹⁹ ABR, *EC – Large Civil Aircraft*, ¶ [1045, 1053, 1098].

“to export in a manner that is not simply reflective of the conditions of supply and demand in the domestic and export markets.”²⁰ Land Sale Contract Art. 4 explicitly states that Desertix must endeavour half of its SaberLite PMG production every six months to Alderaan. This export obligation interferes with the normal conditions of supply and demand in the domestic and export markets.

26. Additionally, the Ambassador of Alderaan to Tatooine stated: “Desertix has accepted to supply the SaberLite PMGs to Alderaan’s windmill industry before supplying foreign competitors.” This also proves the factual existence of contingency upon export performance. Therefore, the PoL is a prohibited subsidy under ASCM Art. 3.1(a).
27. In conclusion, the PoL is a prohibited subsidy a ASCM Article 3.1(a), as it constitutes a subsidy that is deemed specific due to *de facto* contingency upon export performance.

II. THE LOAN CAUSES SERIOUS PREJUDICE UNDER ASCM ART. 5(c)

28. For a measure to cause serious prejudice under ASCM Art. 5, it must be a subsidy as per Art. 1 and meet the requirement of specificity under Art. 2.1. Moreover, the subsidy must cause serious prejudice under ASCM Art. 6. The loan granted by Zurix Bank to Desertix constitutes a “subsidy” within the meaning of ASCM Art. 1[1]. It is specific as per Art. 2.1[2]. It also causes serious prejudice to Coruscant’s interests under ASCM Art. 5(c), as it resulted in lost sales of PMGs in the market of Naboo under ASCM Art. 6.3 (c)[3].

1. The loan is a subsidy within the meaning of ASCM Art. 1.1

29. The loan constitutes a financial contribution under ASCM Art. 1.1 (a)(1) [A], which confers a benefit within the meaning of ASCM Art. 1.1(b) [B].

A. The loan is a financial contribution under ASCM Art. 1.1(a)(1)

30. The loan constitutes a direct transfer of funds [a], granted by a private body entrusted or directed by Alderaan [b], which is located within its territory [c].

a. The loan constitutes a direct transfer of funds

31. ASCM Art. 1.1(a)(1)(i) states that a financial contribution can consist of a “direct transfer of funds”. This provision explicitly lists loans as an example of such direct transfers. The measure at issue is a ten-year loan of \$93,372,000 granted to Desertix. The qualification of this measure as a loan is undisputed. Therefore, the loan granted to Desertix is a direct transfer of funds constituting a financial contribution under ASCM Art. 1.1(a)(1).

b. Zurix Bank is a private body entrusted or directed by Alderaan

²⁰ Ibid.

32. The financial contribution must be granted by a private body entrusted or directed by Alderaan. According to the AB, “entrustment” refers to the delegation and granting of responsibility by the government to a private entity,²¹ and “direction” means that the government exercises control over a private entity.²²
33. To establish the entrustment or direction of a private body, there must be a demonstrable link between the government and the conduct of a private body.²³ According to the AB, the following elements can indicate a demonstrable link: some form of threat or inducement (i);²⁴ an act of a private body against its commercial interests (ii);²⁵ and the intention or motivation of the government (iii).²⁶
34. The AFL provides that all banks within its territory must have regard to the government’s strategic policy priorities. Alderaan gives banks the responsibility of furthering its strategic policy priorities. Zurix Bank was entrusted by Alderaan to grant the loan to Desertix because this furthers one of its strategic policy priorities, namely moving away from neodymium mining and encouraging the use of other materials like kyber. Moreover, Alderaan exercises control over Desertix by obliging banks to submit yearly reports to prove the compliance of their investments with the AFL.
35. Three elements emphasize the link between Alderaan and Zurix Bank. First, there is a threat of a significant fine of up to 1% of the bank’s yearly turnover for failing to submit their yearly report. Second, the granting of the loan on more beneficial terms implies that it goes against the bank’s commercial interests. Third, the granting of the loan is in line with the government’s revealed intention. This is demonstrated by the explicit statement of Alderaan’s MoE in support of the loan. According to MoE’s statement, the granted loan will enable SaberLite PMGs to be a key tool to reduce the usage of neodymium-based PMGs. The link between Alderaan and the granting of the loan by Zurix Bank is proven.
36. Therefore, Zurix Bank granted the loan under the entrustment and direction of Alderaan within the meaning of ASCM Art. 1.1(a)(1)(iv).

c. Zurix is located within the territory of Alderaan

²¹ Ibid, ¶ [116].

²² Ibid, ¶ [115].

²³ ABR, *US – Countervailing Duty Investigation on DRAMs* (2005), ¶ [112].

²⁴ Ibid, ¶ [116].

²⁵ Ibid, ¶ [115, 116 and 186].

²⁶ ABR, *Japan – DRAMs (Korea)*, ¶ [138]; PR, *Japan – DRAMs (Korea)*, ¶ [7.70]; PR, *EC – Countervailing Measures on DRAM Chips*, ¶ [7.59].

37. Under ASCM Art. 1.1(a)(1), the body conferring the financial contribution must be located “within the territory of a Member”. Zurix Bank is established in Alderaan. Thus, the financial contribution is granted by a body “within the territory of a Member”.

38. In conclusion, the loan is a financial contribution as it constitutes a direct transfer of funds. These funds are granted by Zurix bank, a private body under the direction of the Alderaan government. Therefore, the loan was granted within the territory of Alderaan.

B. The loan confers a benefit to Desertix under ASCM 1.1(b)

39. ASCM Art. 1.1 (b) states that for a “subsidy” to exist, it should also confer a benefit. This means that the financial contribution should be received on terms more favourable than those available to the recipient in the market. Additionally, regarding a loan, ASCM Art. 14 is relevant to interpret the term “benefit”.²⁷ Under Art. 14, a government loan only confers a benefit when there is a “difference between the amount that the firm receiving the loan pays for the government loan and the amount the firm would pay for a comparable commercial loan which the firm could actually obtain on the market.” This comparison must be done when the recipient received the loan.²⁸

40. The AB considered that ASCM Art. 14 (b) does not expressly specify any geographical or national scope to determine the relevant “market” for comparison.²⁹ However, the AB indicated relevant factors for establishing a benchmark such as timing, structure, maturity, size, and currency of the comparable commercial loan.³⁰

41. Zurix Bank granted a ten-year loan to Desertix of \$93,372,000 at an interest rate of 4% per annum, that is considered a government loan as set out above in paras 32-36. Desertix is established in Tatooine, so it is reasonable to assume that, in the absence of the loan granted by Zurix Bank, it would have opted for a commercial loan from a bank established in Tatooine. A comparable commercial loan, in terms of amount, time and currency, granted in Tatooine should be considered as the benchmark. The long-term interest rate for loans in Tatooine is 10%. For a commercial loan Desertix must pay \$102,300,000. The benefit under ASCM Art. 14(b) is the difference between the cost of the government loan and the benchmark, the commercial loan, here \$5,580,000.

42. The considerable cost difference shows that Desertix received a loan by the Alderaan government on terms more favourable than those of a commercial loan. Thus, Desertix is better off, and the loan granted by Zurix Bank confers a benefit as per ASCM Art. 1.1(b).

²⁷ ABR, *Canada – Aircraft*, ¶ [155 and 158].

²⁸ ABR, *EC and certain member States – Large Civil Aircraft (2011)*, ¶ [835].

²⁹ ABR, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ [475-480].

³⁰ ABR, *US – Softwood Lumber IV*, ¶ [96].

43. The loan is a “subsidy” as it is a financial contribution and grants a benefit to Desertix.

2. The loan is specific under ASCM Art. 2.1

44. ASCM Art. 2 states that for a subsidy to be “specific”, it must be given to an enterprise or industry within the jurisdiction of the granting authority. Alderaan is the granting authority[A]. The loan was granted to Desertix, an entity within the jurisdiction of Alderaan[B]. The loan is specific to an enterprise, Desertix[C].

A. Alderaan is the granting authority

45. When a subsidy is granted by a private body, the granting authority is the governmental authority that entrusts or directs such body.³¹ Alderaan entrusted and directed Zurix Bank to grant a loan to Desertix (paras 32-36). Alderaan can be considered the granting authority.

B. The loan was granted to an enterprise within the jurisdiction of Alderaan

46. As per ASCM Art. 2, for a subsidy to be specific, it must be given to an enterprise or industry or group of enterprises or industries “within the jurisdiction of the granting authority”. The term “within the jurisdiction” has not been interpreted by the WTO DSS.

47. In international law, “jurisdiction” not only refers to territorial jurisdiction but also extraterritorial jurisdiction.³² The exercise of extraterritorial jurisdiction is seen as acceptable under certain circumstances, for example, when this is authorized by other States.³³ There are multiple cases in international law whereby an agreement between two States is seen as an authorization.³⁴

48. A MoU was concluded between Tatooine and Alderaan. Art. 1 MoU provides that Tatooine and Alderaan will develop the JSDZ according with the applicable laws and regulations of both States. Art. 5 MoU provides that the JSDZ, during the construction, attraction of tenant businesses and operation, is entitled to relevant policy support and facilitation provided by Alderaan. According to Art. 8 MoU, Investerix, will ensure safety in the JSDZ. Also, Art. 9 of the MoU establishes a management committee in the form of an intergovernmental coordinating committee. A joint venture committee between the Ministry of Investment of Tatooine and Investerix is also established. Alderaan, the granting entity, is authorized by Tatooine to exercise its authority in the JSDZ based on the MoU.

³¹ ABR, *US–Anti-Dumping Duty on DRAMs*, ¶[116]; V. CROCHET and V. HEGDE (2020), 850.

³² PCIJ, *S.S. ‘Lotus’* (France v Turkey), ¶ [45]. A. MILLS (2014), 190-191.

³³ A. MILLS (2014), 195.

³⁴ Agreement concerning a Scottish Trial in the Netherlands (1999); ICJ, *Right of Passage over Indian Territory* (Portugal v India).

49. Given the extra-territorial interpretation of jurisdiction and the authorisation by Tatooine in the MoU, Alderaan has jurisdiction over the JSDZ. As the loan was granted in the JSDZ, it can be considered as granted within the jurisdiction of Alderaan as per ASCM Art. 2.1.

C. The loan is de facto specific to Desertix

50. As per ASCM Art. 2, the subsidy must be “specific to an enterprise or industry or group of enterprises or industries”. Art. 2.1(c) lists different factors to determine *de facto* specificity.³⁵ According to the AB, compliance with one factor – the use of a subsidy program by a limited number of enterprises – can suffice to establish *de facto* specificity.³⁶

51. By granting the loan, Zurix Bank provided Desertix with the necessary funds for the purchase of a parcel of land in the JSDZ. This sale of land makes it possible for Desertix to produce kyber PMGs in Tatooine and export them to Alderaan. As confirmed by the Alderaan MoE, the loan helps Alderaan’s producers of PMGs to shift away from their reliance on neodymium, which is one of the core objectives of Alderaan’s GHS. Thus, the loan was only granted to Desertix. Desertix is the only enterprise that can make use of this subsidy programme. This makes the loan *de facto* specific under ASCM Art. 2(c).

52. Therefore, the loan constitutes a specific subsidy within the meaning of ASCM Art. 2.1 as it was granted within the jurisdiction of the granting authority and is *de facto* specific.

3. The loan causes serious prejudice within the meaning of ASCM Art. 5(c)

53. As per ASCM Art. 5(c), adverse effects include “serious prejudice to the interests of another Member”. ASCM Art. 6.3(c) posits that serious prejudice may arise, *inter alia*, when the effect of the subsidy is loss of sales in the same market. According to the AB, a two-step approach may be used to determine whether the conditions in Art. 6.3(c) are fulfilled. First, the existence of a significant loss of sales in the same market must be determined. Second, a causal link must be established between subsidy and loss of sales.³⁷

54. The loan causes serious prejudice under Art. 5(c) because there is a significant loss of sales as per Art. 6.3(c) [A], and there is a causal link between the loan and the loss of sales [B].

A. There was a significant loss of sales in the same market under ASCM Art. 6.3(c)

55. Under ASCM Art. 6.3(c), for a significant loss of sales to occur, the subsidy must affect products competing in the same market. The loan affects SaberLite PMGs and neodymium PMGs, which compete in the same market [a]. Furthermore, sales are lost [b], and this loss is significant [c].

³⁵ VAN DEN BOSSCHE and ZDOUC (2017), 800.

³⁶ PR, *US – Softwood Lumber IV*, ¶ [7.116].

³⁷ ABR, *EC – Large Civil Aircraft*, ¶ [1163–1164].

a. The loan affects products competing in the same market

56. A “market” is defined as a “a set of products in a particular geographical area that are in actual or potential competition with each other”.³⁸ Products exercise a competitive constraint when they are substitutable.³⁹ Both demand-side and supply-side substitutability should be considered.⁴⁰
57. Demand-side substitutability arises when two products are substitutable or considered substitutable by customers.⁴¹ Kyber PMGs and neodymium PMGs could both compete for the same contract for a windmill producer indicates that both these products were considered substitutable by the relevant consumer. Desertix only won the Ventix contract when it offered to lower its PMG prices to match those of Magnetix. Therefore, an increase in price on its PMGs was found unprofitable by Desertix due to the competitive constraint exercised by Magnetix’s PMGs. Hence, under a demand-side substitutability analysis, Magnetix’s PMGs and Desertix’s PMGs are substitutable and compete in the same market.
58. Supply-side substitutability arises when there is evidence that a supplier can switch its production at limited or prohibitive cost from one product to another in a short period of time.⁴² The main difference between SaberLite PMGs and neodymium PMGs lies in the different materials used for their production, respectively kyber and neodymium. The main change Magnetix would have to make to switch its production to SaberLite PMGs would be a change in materials. As kyber is now mined in the JSDZ, it seems possible that Magnetix could gain access to this material and switch its production to SaberLite PMGs quickly. This indicates that the two products are substitutable on the supply-side.
59. Thus, SaberLite PMGs and neodymium PMGs are substitutable on both the demand and supply side. Therefore, the PMGs compete in the same market as per ASCM Art. 6.3(c).

b. Sales were lost

60. Lost sales are “sales that suppliers of the complaining Member failed to obtain and that instead were won by suppliers of the respondent Member”.⁴³ The concept of lost sales is “relational”. This includes a consideration of “the behaviour of both the subsidized firm, which must have won the sales, and the competing firm, which allegedly lost the sales”.⁴⁴ The loss of sales must be analysed at the level of a specific sales campaign.⁴⁵

³⁸ ABR, *EC – Large Civil Aircraft*, ¶ [1119].

³⁹ Ibid, ¶ [1120].

⁴⁰ Ibid, ¶ [1121].

⁴¹ Ibid.

⁴² Ibid; ABR, *Canada – Renewable Energy / Feed-in Tariff Program*, ¶ [5.171].

⁴³ Ibid, ¶ [1220].

⁴⁴ ABR, *US – Large Civil Aircraft (2nd complaint)*, ¶ [1217].

⁴⁵ Ibid, ¶ [2627].

61. Magnetix and Desertix competed for an exclusive supply campaign with Ventix Generatix. Desertix won the supply contract. Magnetix lost sales within as per ASCM Art. 6.3(c).

c. The loss of sales was significant

62. The AB defined “significant” in ASCM Art. 6.3 (c) as “something that can be characterized as important, notable or consequential”.⁴⁶ To determine significant loss, the panel used the following factors: the strategic importance of winning a particular sale, the important learning effects, and economies of scale associated with the sale and the advantages to being the incumbent supplier with a given customer with respect to subsequent purchase.⁴⁷

63. First, winning the contract with Ventix Generatix was of strategic importance as Ventix is the largest windmill producer in Naboo. Securing the largest share of the market of Naboo was particularly significant to Magnetix against Desertix, as the latter’s parent company, Special Electrix, is its main international rival in the production of PMGs.

64. Second, there are important learning effects and economies of scale associated with this sale. The contract that Magnetix and Desertix competed for concerned the exclusive supply of PMGs for Ventix Generatix’s windmill production over five years. Hence, it can be assumed that this contract concerns a significant number of PMGs. Desertix will benefit from economies of scale in its PMG production. The contract provides Desertix with learning opportunities because it is the first time Desertix can put its research on SaberLite PMGs into practice.

65. Last, by winning an exclusive supply contract for 5 years, Desertix acquired an advantage concerning subsequent purchases by the same customer. The loss of sales was significant.

66. In this regard, Magnetix has lost sales within the meaning of ASCM Art. 6.3(c) as there was a significant loss of sales of PMGs that were competing in the same product market.

B. There is a causal link between the loan and the lost sales

67. The AB considers a “counterfactual analysis” to be the most appropriate test to determine whether the lost sales were caused by the challenged subsidy. There is a lost sale when this analysis shows that, in the absence of the challenged subsidy, sales won by the subsidized firm would have been made instead by the competing firm.⁴⁸

68. Alderaan may contend that other factors contributed to the lost sales, such as the fact that SaberLite PMGs are lighter and smaller than neodymium PMGs, as well as capable of generating electricity at lower wind speeds. However, such factors do not preclude finding

⁴⁶ ABR, *US-Washing Machines*, ¶ [5.62].

⁴⁸ Ibid, ¶ [1220].

⁴⁷ ABR, *EC and certain member States – Large Civil Aircraft*, ¶ [1219].

that the loss of sales is caused by the subsidy if it is proven that there is a “genuine and substantial relationship of cause and effect” between the subsidy and the loss of sales.⁴⁹

69. In effect, the subsidy granted by Alderaan in the form of a loan was the genuine and substantial cause of the loss of sales by Magnetix. Had Desertix not received the loan, it could neither have purchased the parcel of land in the JSDZ, nor have developed its production facilities. Hence, receiving the loan was instrumental for Desertix to be able to produce kyber PMGs, and thus to compete with Magnetix in Naboo. Without the loan, Desertix would not have been able to start its operations, and the contract would have been won by Magnetix, as there were no other competitors besides Desertix. Therefore, a causal link between the loss of sales and the loan is established.

70. In conclusion, Magnetix suffered a significant loss of sales within the meaning of ASCM Art. 6.3(c), and there is a causal link between this loss of sales and the granting of the loan. Hence, the loan causes serious prejudice under ASCM Art. 5(c).

III. THE OVERARCHING MEASURE IS A QUANTATIVE RESTRICTION UNDER GATT ART XI:1, IS NOT JUSTIFIABLE UNDER GATT ART XX

71. For a measure to violate GATT Art. XI:1, it must be a quantitative restriction that cannot be justified under GATT Art. XX. Prior to assessing a violation under GATT Art. XI:1, the existence of a measure must be established.

72. The export tax, the export registration and the non-renewal and refusal of mining permits are “measures” as per WTO jurisprudence [1]. They constitute an overarching measure that is in systematic application [2]. This overarching measure is a quantitative restriction as per Art. XI:1 [3]. The quantitative restriction cannot be justified under Art. XX [4].

1. The existence of three measures is proven

73. Both written and unwritten measures can be challenged before the WTO DSS.⁵⁰ The existence of both measures must be proven.⁵¹ Alderaan’s export tax and export registration are written measures [A]. The non-renewal and refusal of mining permits by the Alderaan government is an unwritten measure that can be challenged as an ongoing conduct. [B].

A. The existence of the written measures is proven

74. A written measure is any act or omission attributable to a WTO Member.⁵² Alderaan imposed an export tax and export registration on neodymium, which are reflected in

⁴⁹ ABR, *EC and certain member States – Large Civil Aircraft*, ¶ [914]; ABR, *EC and certain member States – Large Civil Aircraft*, ¶ [1232].

⁵⁰ ABR, *US – Zeroing (EC)*, ¶ [189, 192-193].

⁵¹ ABR, *Argentina - Import Measures*, ¶ [5.104 and 5.108].

⁵² ABR, *US – Corrosion-Resistant Steel Sunset Review*, ¶ [81].

binding legal instruments. Both measures are attributable to Alderaan as their legal instruments prove that they are imposed by the Alderaan government.

B. The existence of the unwritten measure is proven

75. An unwritten measure is measure that is not expressed in a written rule or norm, even though some of the constitutive elements of these measures may be written.⁵³ An unwritten measure can be challenged as an “ongoing conduct”. To prove the existence of an ongoing conduct, four constitutive elements must be proven: the attribution of the measure to a WTO Member (i); its precise content (ii); the repeated application of its conduct (iii); and the likelihood that such conduct will continue to be applied in the future (iv).⁵⁴
76. The non-renewal and refusal of mining permits is an ongoing conduct that is attributable to the Alderaan [a], and its precise content is proven [b]. The non-renewal and refusal of mining permits is repeatedly applied [c], and is likely to continue in the future [d].

a. The measure is attributable to the Alderaan government

77. A measure that can be attributed to a Member is “every measure by any government entity, including legislative, executive, judicial branches”.⁵⁵ The Alderaan government refused to renew the mining permits and rejected applications for new mining permits. This is evidenced by decisions to refuse the permits that are signed by the MMID of the Alderaan government. The measure is thus attributable to the Alderaan government as it is a measure adopted by its executive branch, namely the MMID.

b. The precise content of the measure is proven

78. For the precise content, a description of the content of the act must be given. Furthermore, it must be demonstrated that the described act exists.⁵⁶ The MA Art. 2-3 provide a series of criteria that mining companies must meet to receive a mining permit from the Alderaan government. Alderaan has refused to grant or renew mining permits based on its national interest, even though most of the mining firms complied with MA Art. 2-3. The measure exists as the non-renewal and refusal are contained in decisions taken by the MMID. Furthermore, the Minister has made public statements about these decisions, stating that these decisions were taken in line with the GHS.

79. Thus, the precise content of the non-renewal and refusal of mining permits is proven.

c. The non-renewal and refusal of mining permits is repeatedly applied

⁵³ C. VALLES, V. POGORETSKY, T. YANGUAS (2019), 464.

⁵⁴ PR, *US – Softwood Lumber VII*, ¶ [7.775]; ABR, *US – Supercalendered Paper*, ¶ [5.17].

⁵⁵ ABR, *US – Corrosion-Resistant Steel Sunset Review (2004)*, ¶ [81].

⁵⁶ C. VALLES, V. POGORETSKY, T. YANGUAS (2019), 466.

80. According to the AB, the repeated application of a measure can be proven by the repeated use of the conduct in a string of determinations, made sequentially over an extended period.⁵⁷ From January 2018 to December 2019, the MMID refused the mining permits of 19 mining firms even though 17 of these mining firms complied with the MA Art. 2-3. Moreover, in the course of 2020, additional mining permits were refused or not renewed. The number of mining firms with a permit has dropped from 28 to 6. Most of these decisions not to renew or grant mining permits were identical. Thus, from 2018 until 2020, it is proven that the mining permits were repeatedly denied or not renewed.

d.likely to continue in the future

81. The likelihood of continued application can be demonstrated through several factors such as an adopted decision by a Member to follow a particular conduct in the future.⁵⁸ The MMID has explicitly stated that the non-renewal and refusal to grant mining permits is in line with the GHS of Alderaan to move away from the use and mining of neodymium. The aim of Alderaan is to progressively decrease neodymium mining which is reflected by the significant drop in the number of mining firms that have obtained or renewed their permit. Thus, the non-renewal and refusal of mining permits is likely to continue in the future.

82. Therefore, the existence of the non-renewal and refusal of mining permits as an ongoing conduct is proven, as it is attributable to the Alderaan government, and its precise content is proven. Moreover, it is repeatedly applied and is likely to continue in the future.

2. The measures constitute an overarching measure with a systematic application

83. According to the AB, a measure can be characterized as an overarching measure when it is a single measure composed of several different components.⁵⁹ A measure can also be defined as having a systematic application.⁶⁰

84. The export tax, export registration and non-renewal and refusal of mining permits constitute a single measure[A]. Also, the overarching measure is systematically applied[B].

A. The measures operate as a single measure

85. For an overarching measure to exist, it must be demonstrated how the different components operate together as a single measure and how a single measure exists distinct from its components.⁶¹ The interaction among the components can be proven by a common policy objective.⁶²

⁵⁷ ABR, *US – Zeroing (EC)*, ¶ [191-197].

⁵⁸ ABR, *US – Supercalendered Paper*, ¶ [5.44].

⁵⁹ ABR, *Argentina – Import Measures*, ¶ [5.108; 5.126, 5.132].

⁶⁰ PR, *Russia – Railway Equipment*, ¶ [7.947].

⁶¹ ABR, *Argentina – Import Measures*, ¶ [5.108].

⁶² Ibid, ¶ [5.126, 5.132]; ABR, *US – Zeroing (EC)* ¶ [202]; PR, *US-Anti-Dumping Methodologies (China)*, ¶ [7.309-7.310].

86. First, the interaction between the above-described components originates from the GHS of the Alderaan government. Both the Alderaan's MoE and the MMID have stated that the export tax and the decision not to renew mining permits is in line with the GHS.
87. Second, to demonstrate that the overarching measure exists as a single measure, the panel stated that "a measure would have to constitute an instrument with a functional life of its own".⁶³ The overarching measure would have to do something concrete, independently of any other instruments".⁶⁴ The overarching measure has diminished the domestic production and export sales of neodymium with 80% over the last two years. The restriction in production and export sales have also led to the duplication of the global neodymium price.
88. The existence of an overarching measure is proven, as the different components such as export tax, the export registration and the non-renewal and refusal of mining permits interact together. Moreover, the overarching measure has a functional life of its own.

B. The overarching measure is systematically applied

89. For a measure to have a systematic application, it must demonstrate that it is aimed at achieving a particular policy or result and is done according to a system, plan or organized method or effort. The observed repetition is a clear indication of a systematic activity.⁶⁵
90. The overarching measure is introduced to implement the GHS. The strategy aims to make Alderaan a continuous world leader in sustainability. Therefore, the Alderaan government will continue to shift away from the mining of neodymium. Furthermore, since January 2018, the Alderaan government has repeatedly refused to renew and grant mining permits leading to a significant decrease of neodymium mining companies. This implies the continued systematic application of the overarching measure.
91. In conclusion, the elements constitute an overarching measure that is systematically applied.

3. The overarching measure is a quantitative restriction as per GATT Art. XI:1

92. As per GATT Art. XI:1, quantitative restrictions on exports and imports are prohibited.⁶⁶ A measure creates a quantitative restriction if it is a quota, import or export license, or "any other measure" that restricts the exportation of a good.⁶⁷ The overarching measure is "any other measure" [A] that restricts the exportation of neodymium from Alderaan [B].

⁶³ PR, *United States – Measures Treating Exports Restraints as Subsidies (US-Export Restraints)*, ¶ [8.85].

⁶⁴ Ibid.

⁶⁵ PR, *Russia – Railway Equipment*, ¶ [7.947]

⁶⁶ PR, *Turkey – Textiles*, ¶ [9.63].

⁶⁷ PR, *India – Measures Affecting the Automotive Sector*, ¶ [7.265].

A. The overarching measure is described as “any other measure”

93. The category of “any other measures” is broadly defined as any measure restricting the importation, exportation, or sale for export of products.⁶⁸ According to the panel an overarching measure may fall under this category.⁶⁹ The overarching measure, comprising the non-renewal and refusal of mining permits, the export tax, and the export registration, is a measure that restricts the exportation of neodymium. The overarching measure thus falls under the category of “any other measure”.

B. The overarching measure restricts the exportation of neodymium

94. For a measure to constitute a quantitative restriction, it must restrict or prohibit the exports or imports. The AB has defined “restriction” as “something that has a limiting effect”.⁷⁰ Prohibition can be defined as a legal ban.⁷¹ Both *de jure* and *de facto* quantitative restrictions are covered by GATT Art. XI:1. The AB has held that statistical data can be used as evidence to examine the restricting effect of a measure.⁷²

95. Since the imposition of the overarching measure in 2018, the data, which are averages extracted from Annex 6, show a shift in the production and export of neodymium. Because of the non-renewal and refusal of mining permits, the domestic production of neodymium in 2020 (10.2 TMT) is only a third of

	2018	2019	2020
Domestic Production (TMT)	33.8	21.2	10.2
Export Sales (TMT)	23.8	13.0	5.8
Export Prices (USD/kg)	52.7	68.2	105.5

what it was in 2018 (33.8 TMT). Since the reduction of domestic production, the amount of neodymium for exportation has significantly decreased. Also, due to the export tax and export registration, the export prices have doubled since ‘18 (from \$52.7/kg to \$105.5/kg).

96. Due to reduced domestic production and doubled export prices, the export sales of neodymium dropped from 23.8 to 5.8 TMT. The data proves that the imposition of the overarching measure effectively restricted the neodymium exportation from Alderaan.

97. The overarching measure can be described as “any other measure” under GATT Art. XI:1. It restricts the exportation of neodymium as the statical data proves a significant decrease in the export sales. Thus, the overarching measure is a quantitative restriction.

⁶⁸ PR, *Japan – Semi-Conductors*, ¶ [104].

⁶⁹ PR, *Indonesia – Import Licensing Regimes*, ¶ [2.49, 2.64, 7.246, 7.266, 7.270].

⁷⁰ ABR, *China – Raw Materials*, ¶ [320].

⁷¹ Ibid, ¶ [319-320].

⁷² Appellate Body Report, *Peru – Agricultural Products*, ¶ [5.56]; PR, *Indonesia – Import Licensing Regimes*, ¶ [7.50].

4. The quantitative restriction is not justifiable under GATT Art. XX

98. Alderaan may argue that the overarching measure constituting a quantitative restriction is justifiable under GATT Art. XX. Art. XX sets forth a two-tiered test for a measure to be justifiable: it must fall under one of the exceptions listed in subparagraphs (a) – (j) of Art. XX(i); and meet the requirements of the *chapeau*(ii).⁷³

99. The overarching measure can be only examined under the scope of GATT Art. XX(b) as the measure's policy objective is the GHS, which emphasizes the negative health and environmental impact of mining. But the requirements of Art. XX(b) are not fulfilled[A] and the overarching measure does not meet the requirements of the *chapeau*[B].

A. The overarching measure does not meet the requirements of GATT Art. XX (b)

100. For a measure to be justified under GATT Art. XX (b) it must be designed to protect human, animal or plant life or health(i); and be necessary(ii).

101. It is not disputed that the objective is to protect against the risks of neodymium.

102. Second, regarding the necessity test, three elements must be considered: the measure must produce a material contribution to the objective(i); there must be no reasonably available alternatives (ii); and all factors must be weighted(iii). The overarching measure does not produce a material contribution the objective of protecting human, animal or plant life or health[a]. There are reasonable less trade-restrictive alternatives available to Alderaan[b]. After weighing and balancing all factors, it does not pass the necessity test[c].

a. The overarching measure does not produce a material contribution

103. For a measure to be necessary, the AB stated that it “must bring a material contribution and not merely a marginal or insignificant contribution to the achievements of its objective”.⁷⁴ A measure brings a material contribution “if there is a genuine relationship of ends and means between the objective pursued and the measure at issue”.⁷⁵

104. The export registration only contains technical and administrative requirements such as the identity of the miner, the identity of the customer and other details. These technical and administrative requirements are not related to the GHS. Furthermore, the export tax is only levied on neodymium that is exported, after it has been mined. As the negative health and environmental effects associated with neodymium mainly pertain to the process of mining neodymium, this tax does nothing to prevent these negative effects. Not all mining companies are denied a mining permit, thus neodymium is still mined.

⁷³ ABR, *US – Gasoline*, ¶ [22].

⁷⁴ ABR, *Brazil - Retreaded Tyres*, ¶ [145 and 151].

⁷⁵ Ibid, ¶ [145-6].

105. The export tax, registration and non-renewal do not prevent neodymium mining used for domestic PMG production. They do not produce a material contribution to the GHS.

b. There are reasonable alternatives

106. A measure can only be necessary in terms of GATT Art. XX(b) if there were no reasonably available alternative measures that could be expected to achieve the desired level of protection as the policy objective pursues.⁷⁶ Alderaan could have imposed alternative measures that achieve its GHS objectives, but it has failed to do so.

107. First, the health and environmental standards included in the MA do not address the risks relating to neodymium. In the Decision of 42/2019, the mining corporation complied with the MA but was still refused a mining permit. Alderaan could impose safety and health regulations that address the desired protection level relating to the risks of neodymium. Only mining companies that comply with the regulations could obtain a permit.

108. Second, the aim of the GHS is to move away from the extraction of neodymium which is reflected in a significant decrease of production and exportation. Neodymium is of importance in the windmill industry as its global shortage has had a significant impact on the PMG manufactures. Thus, a controlled neodymium use could be a reasonable alternative instead of a shift away.

c. The overarching measure is not necessary

109. The determination of a measure's necessity involves the weighing and balancing of the importance of the interests or values, the material contribution of the measure to the objective, the measure's trade-restrictiveness, and the reasonable alternatives available.⁷⁷

110. The trade-restrictiveness of the measure, reasonable alternatives and the material contribution are explained in paras 95-96 and 103-108. Moreover, there are conflicting interests. Alderaan aims to protect human and environmental health against the risks of neodymium mining. However, wind energy is still mostly reliant on neodymium, as only Special Electrix holds the patented technology to produce SaberLite PMGs. Hence, the value of health and environment protection in Alderaan stands against the value of global health and environment protection, as neodymium is necessary to generate clean energy worldwide. Considering these elements, the aim of Alderaan to mitigate the risks of neodymium does not outweigh the impact of the measure on the neodymium PMG producers.

⁷⁶ ABR, *EC-Asbestos*, ¶ [145 and 168].

⁷⁷ ABR, *EC – Seal Products*, ¶ [5.214].

111. Thus, the overarching measure does not produce a material contribution aiming to protect humans, animals, and plants against the neodymium risks. There are reasonable alternatives. After weighing and balancing all factors, the measure is not necessary.

B. The overarching measure is inconsistent with the chapeau

112. A measure that is provisionally justified under subparagraphs (a) – (j) must meet the requirements of the *chapeau* of GATT Art. XX. The measure must not cause arbitrary or unjustifiable discrimination. And it must not amount to a disguised restriction on international trade. The overarching measure causes arbitrary and unjustifiable discrimination[a]. Moreover, it constitutes a disguised restriction on international trade[b].

a. The overarching measure causes arbitrary and unjustifiable discrimination

113. Arbitrary or unjustifiable discrimination includes three elements: the application of the measure must result in discrimination, the discrimination must be arbitrary or unjustifiable, and the discrimination must occur between countries where the same conditions prevail.⁷⁸ The overarching measure results in discrimination[i], the discriminatory is arbitrary and unjustifiable[ii], and occurs between countries where the same conditions prevail[iii].

i. The overarching measure results in discrimination

114. The measure affects producers of neodymium PMGs. Special Electrix was the biggest neodymium PMG producer in Alderaan before switching to SaberLite technology to produce neodymium-free PMGs. Due to this switch, Special Electrix is not affected by the overarching measure. Most other producers of neodymium PMGs are in the territory of other Members. The measure discriminates between Special Electrix and other producers.

ii. The discrimination is arbitrary and unjustifiable

115. The measure also amounts to arbitrary and unjustifiable discrimination. Arbitrary discrimination is caused when a certification process lacks transparency, predictability, and procedural fairness.⁷⁹ Unjustifiable discrimination “must have been foreseen” and is “not merely inadvertent or unavoidable”.⁸⁰ Discrimination is unjustifiable if it is intentional.⁸¹

116. Alderaan has put in place a mining permit renewal process that is deprived of any transparency, predictability, or basic due process standards. Permit applications have been arbitrarily denied even when decisions expressly recognized that health and environmental standards under Alderaan mining law were fulfilled. The non-renewal of mining permits thus causes arbitrary discrimination.

⁷⁸ ABR, *US – Shrimp*, ¶ [150].

⁷⁹ *Ibid.*, ¶ [181-183].

⁸⁰ ABR, *US – Gasoline*, p. 29.

⁸¹ S. LESTER et. al. (2018), 432.

117. Furthermore, the overarching measure is unjustifiably discriminatory since it was intentionally imposed to restrict the mining of neodymium and to hinder the supply of neodymium to PMG producers other than that of Alderaan. Desertix is the only company capable of producing PMGs without the use of neodymium. Alderaan restricted the mining and exportation of neodymium within its territory knowing it would only negatively affect PMG producers of other Members, while its own PMG sector remained unharmed. The discrimination could have been foreseen since Alderaan holds the largest supply of neodymium in the world. Additionally, Desertix has been producing kyber PMGs since 2017, the same year as the overarching measure was imposed. This is further evidence of the intentional nature of the overarching measure.

iii. The discrimination occurs in countries where the same conditions prevail

118. Under the chapeau, discrimination must occur between countries where the same conditions prevail. Yet, in circumstances where different conditions prevail among different Members a flexible application of the measure is necessary.⁸²

119. Alderaan holds more than 60% of the world's neodymium reserves which it exports globally. Due to the imposition of the overarching measure, there is a global shortage which has impacted neodymium producers in other countries. The Members' situations are different from that in Alderaan as they depend on neodymium exportation. Thus, Alderaan must be flexible in the application of its overarching measure. Yet, the overarching measure is applied in the same way for all Members despite their different situations.

120. Hence, the overarching measure constitutes arbitrary and unjustifiable discrimination.

b. The overarching measure is a disguised restriction on international trade

121. The term "disguised restriction to international trade" is interpreted as prohibiting actions that, under the appearance of protecting one of the objectives of the sub-paragraphs of GATT Art XX, aim to promote other interests.⁸³

122. Hence, the overarching measure is in a disguised restriction on international trade as it aims to restrict the neodymium exportation, favouring Alderaan's kyber PMG industry.

123. The overarching measure does not meet the requirements of the *chapeau* as it causes arbitrary and unjustifiable discrimination and a disguised restriction on international trade.

124. In conclusion, the overarching measure does not meet the requirements of GATT Art. XX(b). Moreover, it does not meet the requirements of the *chapeau*. Thus, the quantitative restriction cannot be justified under GATT Art. XX.

⁸² ABR, *US – Shrimp*, ¶ [164-165 and 177].

⁸³ ABR, *US – Gasoline*, ¶ [25].

REQUEST FOR FINDINGS

For the above-mentioned reasons, Coruscant respectfully requests the Panel to find:

I. that the PoL granted to Desertix by Investerix:

1. is a **subsidy** as per ASCM Art. 1 as it:
 - a. is a financial contribution as per ASCM Art. 1.1(a)(1) that:
 - i. is a provision of goods as per ASCM Art. 1.1(a)(1)(iii);
 - ii. is granted by a public body, insofar as Investerix is under meaningful control of the government of Alderaan; and
 - iii. is granted within the territory of Alderaan.
 - b. and confers a benefit within the meaning of ASCM Art. 1.1(b) to its recipient, Desertix.
2. is a **specific subsidy** under ASCM Art. 2.3 insofar as it is prohibited under Art. 3;
3. is a **prohibited subsidy** under ASCM Art. 3.1(a) since it is contingent upon exportation of PMGs in fact.

II. that the loan granted to Desertix by Zurix Bank:

1. is a **subsidy** as per ASCM Art. 1 as it:
 - a. is a financial contribution as per ASCM Art. 1.1 (a)(1) that:
 - i. is a direct transfer of funds as per ASCM Art. 1.1(a)(1)(i);
 - ii. is granted by a private body, Zurix Bank, under entrustment or direction of the Alderaan government; and
 - iii. is granted within the territory of the Alderaan, as Zurix Bank is established in Alderaan.
 - b. and confers a benefit within the meaning of ASCM Art. 1.1(b) to its recipient, Desertix.
2. Is a **specific subsidy** as per ASCM Art. 2.1 as it:
 - a. was granted within the jurisdiction of Alderaan pursuant to ASCM Art. 2.1, as Alderaan exerts jurisdiction over the JSDZ concurrently with Tatooine pursuant to the 2019 MoU, and the recipient, Desertix, is located within the JSDZ; and
 - b. is de facto specific to Desertix under ASCM Art. 2.1(c).
3. causes **serious prejudice** under ASCM Art. 5(c) as:
 - a. there was a significant loss of sales in the same market under ASCM Art. 6.3(c); and

- b. there is a causal link between the loan and the lost sales.

III. that the export registration requirement and export tax on neodymium, together with the decisions of non-renewal and refusal to grant mining permits:

1. are **measures** attributable to Alderaan;
2. constituting an **overarching measure** that is systematically applied with a view to implementing the GHS;
3. violate **GATT Art. XI:1** by restricting the importation of neodymium, as there are statistically proven limiting effects on the exportation of neodymium; and
4. the overarching measure is **not justified** under GATT Art. XX:
 - a. as it is not necessary to protect human, animal or plant life or health under GATT Art. XX(b), to the extent that there were reasonably available alternatives that would be less restrictive;
 - b. and it does not meet the requirements of the *chapeau* of GATT Art. XX, because it entails arbitrary and unjustifiable discrimination and constitutes a disguised restriction on the international trade of neodymium, intended to favour Alderaan's kyber PMG industry.