

**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 ALDERAAN  
GOVERNMENT**

**TABLE OF CONTENTS**

<b>TABLE OF CONTENTS .....</b>	<b>ii</b>
<b>LIST OF REFERENCES .....</b>	<b>iv</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>ix</b>
<b>STATEMENT OF FACTS.....</b>	<b>xii</b>
<b>IDENTIFICATION OF THE MEASURES AT ISSUE.....</b>	<b>1</b>
<b>LEGAL PLEADINGS .....</b>	<b>1</b>
 <i>I. THE POL IS NOT A SPECIFIC SUBSIDY AND IS NOT INCONSISTENT WITH ASCM ART. 3.1 .....</i>	
1.The PoL does not constitute a subsidy under ASCM Art. 1 .....	1
A.The PoL is not a financial contribution.....	1
a. Investerix is not a public body .....	1
b. The PoL does not constitute a provision of land.....	2
c. The PoL is not granted within the territory of Alderaan .....	2
B. The PoL does not confer a benefit to Desertix under ASCM Art. 1.1(b) .....	4
2.The PoL is not a prohibited subsidy under ASCM Art. 3.1(a) .....	4
 <i>II. THE LOAN IS NOT A SPECIFIC SUBSIDY AND DOES NOT CAUSE SERIOUS PREJUDICE AS IT HAS NOT RESULTED IN LOSS OF SALES .....</i>	
1. The loan does not constitute a subsidy under ASCM Art. 1 .....	6
A. The loan is a not a financial contribution.....	6
a. Zurix Bank is not a public body .....	6
b. Zurix Bank is not entrusted or directed by Alderaan .....	7
c. The loan is not granted within the territory of Alderaan.....	8
B. The loan does not confer a benefit to Desertix under ASCM Art. 1.1(b) .....	8
2. The loan lacks specificity under ASCM Art. 2.....	9
A. The government of Alderaan is the granting authority .....	9

## GENERAL PART

B. The loan was granted to an entity outside the jurisdiction of Alderaan.....	9
3. The loan does not cause serious prejudice under ASCM Art. 5(c) and 6.3(c) .....	10
A. The products are not competing in the same market .....	10
a. Demand-side substitutability.....	11
b. Supply-side substitutability.....	11
B. The loss of sales was not significant .....	12
C. The causal link between the loan and the alleged prejudice cannot be demonstrated .....	13

### *III. THE EXPORT TAX, EXPORT REGISTRATION, AND NON-RENEWAL AND REFUSAL OF MINING PERMITS, DO NOT VIOLATE GATT ART. XI.....*

13

1. The existence of the non-renewal and refusal of mining permits as an unwritten measure consisting of an ongoing conduct is not proven .....	14
A. The non-renewal and refusal of mining permits is not repeatedly applied .....	14
B. The non-renewal and refusal of mining permits is unlikely to continue in the future .....	14
2. The existence of an overarching, systematically applied measure is not proven .....	15
A. The existence of a single measure cannot be proven .....	15
a. The different components do not constitute a single measure .....	15
b. The single measure does not have a functional life of its own .....	15
B. There is no systematic application .....	16
3. <i>Arguendo</i> , the measure is not a quantitative restriction under GATT Art. XI.....	16
A. The export tax does not fall within the scope of GATT Art. XI:1.....	16
B. The alleged overarching measure is not a quantitative restriction .....	16
4. The alleged overarching measure is justifiable under GATT Art. XX(b) .....	17
A. The measure is necessary to protect human, animal or plant life or health .....	17
a. The measure is designed to protect human, animal or plant life or health.....	17
b. The measure is necessary .....	18
B. The measure does not cause arbitrary or unjustifiable discrimination and does not amount to a disguised restriction on international trade .....	19
a. The measure does not cause arbitrary or unjustifiable discrimination.....	19
b. The measure does not amount to a disguised restriction on international trade ..	20

## **LIST OF REFERENCES**

### **I. CONVENTIONS AND TREATIES**

<b>Abbreviation</b>	<b>Full citation</b>
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**

<b>Short Title</b>	<b>Full Case Title and Citation</b>
<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>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.
<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.

## GENERAL PART

<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 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 – Alcoholic Beverages II</i>	<i>Japan — Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R; WT/DS10/AB/R; WT/DS11/AB/R, adopted 1 November 1996.
<i>Korea – Commercial Vessels</i>	<i>Korea – Commercial Vessels</i> , WT/DS273/8, adopted 11 April 2005.
<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 – Carbon Steel (India)</i>	<i>US – Carbon Steel (India)</i> , WT/DS436/20, adopted 19 December 2014.
<i>US – Large civil aircraft</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 Countervailing Duties (China)</i>	<i>US – Anti-Dumping and Countervailing Duties (China)</i> , WT/DS379/12/Add.7, adopted 25 March 2001.
<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</i> , WT/DS244/AB/R, adopted 9 January 2004.
<i>US – Countervailing Duty Investigation on DRAMs</i>	<i>US – Countervailing Duty Investigation on DRAMs</i> , WT/DS296/11, adopted 20 July 2005.
<i>US – Gasoline</i>	<i>United States — Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/AB/R, adopted 20 May 1996.

## GENERAL PART

<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 – Offset Act (Byrd Amendment)</i>	<i>United States — Continued Dumping and Subsidy Offset Act of 2000</i> , WT/DS217/AB/R; WT/DS234/AB/R, adopted 16 January 2003.
<i>US – Softwood Lumber IV</i>	<i>United States — Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada</i> , WT/DS257/AB/R, adopted 17 February 2004.
<i>US – Tuna II (Mexico)</i>	<i>United States – Measures concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , WT/DS381/AB/R, adopted 16 May 2012.
<i>US – Tuna II (Mexico) (21.5 – Mexico)</i>	<i>United states - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products - Recourse to article 21.5 of the DSU by Mexico</i> , WT/DS381/AB/RW, adopted 3 December 2015.
<i>US – Upland Cotton</i>	<i>United States — Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005.
<i>US – Zeroing (EC)</i>	<i>United States — Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)</i> , WT/DS294/AB/R, adopted 18 April 2006.
<i>US – Shrimp</i>	<i>United States — Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58/AB/R, adopted 12 October 1998.
<i>US – Washing Machines</i>	<i>United States — Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea</i> , WT/DS464/AB/R, adopted 7 September 2016.

### B. Panel Reports of the WTO and the GATT

Short Title	Full Case Title and Citation
<i>EU – Energy Package</i>	<i>European Union and its member States — Certain Measures Relating to the Energy Sector</i> , WT/DS476/R, adopted 10 August 2018.
<i>Indonesia – Chicken</i>	<i>Indonesia - Measures Concerning the Importation of Chicken Meat and Chicken Products</i> , WT/DS484/RW, adopted 10 November 2020.

## GENERAL PART

<i>US – Large Civil Aircraft (2nd complaint),</i>	<i>US – Large Civil Aircraft (2nd complaint)</i> , WT/DS353/29, adopted 23 March 2012.
<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.
<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.

## III. ARTICLES AND CONTRIBUTIONS

Abbreviation	Long Form
C. RYNGAERT (2007)	Cedric Ryngaert, <i>JURISDICTION IN INTERNATIONAL LAW: UNITED STATES AND EUROPEAN PERSPECTIVES</i> (Oxford University Press, 2007).
C.A. BRADLEY (2001)	Curtis A. Bradley, <i>Universal Jurisdiction and U.S. Law</i> , 2001(1) UNIVERSITY OF CHICAGO LEGAL FORUM 323-350 (2000)
D. COPPENS (2014)	Dominic Coppens, <i>WTO DISCIPLINES ON SUBSIDIES AND COUNTERVAILING MEASURES: BALANCING POLICY SPACE AND LEGAL CONSTRAINTS</i> (Cambridge University Press, 2014).
VAN DEN BOSSCHE and ZDOUC (2017)	Peter van den Bossche and Werner Zdouc, <i>THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION</i> (Cambridge University Press, 2017).
V. CROCHET and M. GUSTAFSSON (2021)	Victor Crochet and Marcus Gustafsson, <i>Lawful Remedy or Illegal Response? Resolving the Issue of Foreign subsidization under WTO Law</i> , 20(3) WORLD TRADE REVIEW 343 - 366 (2021).

## GENERAL PART

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).
--------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

## IV. OTHER MATERIALS

Abbreviation	Long Form
Draft Articles (1991)	Draft Final Act Embodying the results of the Uruguay Round of Multilateral Trade Negotiations, Trade Negotiations Committee, I.2, MTN.TNC/W/FA (20 December 1991).
WTO Trade Financing (2004)	WTO, 'Expert Group Meeting on Trade Financing – Note by the Secretariat', 16 March 2004, WT/GC/W/527.



**LIST OF ABBREVIATIONS**

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

## **SUMMARY OF ARGUMENTS**

### **I. The PoL is not a specific subsidy and is not inconsistent with ASCM Art. 3.1.**

- The PoL granted by Investrix is not a subsidy within the meaning of ASCM Art. 1.1 because it is not a financial contribution. Moreover, it was not granted by a public body within the territory of Alderaan. Finally, the PoL did not confer a benefit to Desertix, as the conditions offered were no better than those available on the market.
- *Arguendo*, the PoL does not constitute a prohibited subsidy under ASCM Art. 3.1(a) because it is not contingent in fact upon export performance of SaberLite PMGs.

### **II. The loan is not a specific subsidy, and neither causes serious prejudice as per ASCM Art 5.3, nor results in the loss of sales as per ASCM Art 6.3.**

- The loan granted by Zurix Bank to Desertix does not constitute a subsidy under ASCM Art. 1.1. Zurix is not a public body, as it is a private body that is neither entrusted nor directed by Alderaan. Moreover, the loan is not granted within the territory of Alderaan. Finally, the loan does not confer a benefit to the recipient, as it was not given on terms more favourable than what would be otherwise available to Desertix on the market.
- The loan is not a specific subsidy under ASCM Art. 2.1 because it was not granted within the territorial jurisdiction of the granting authority, namely Alderaan.
- The loan did not cause serious prejudice to the interests of Coruscant under ASCM Art. 5(c), as it did not result in a significant loss of sales of PMGs to Magnetix within the meaning of ASCM Art. 6.3(c). Kyber PMGs and neodymium PMGs do not compete in the same market as they are not substitutable, neither on the demand-side nor the supply-side. Moreover, there is no causal link between the loan and the prejudice, as neodymium prices would not have varied in the counterfactual scenario.

### **III. The export tax, export registration, and non-renewal and refusal of mining permits, do not constitute an overarching measure that is contrary to GATT Art. XI:1**

- The non-renewal and refusal of mining permits is an unwritten measure that can be challenged as an ongoing conduct. It is however not repeatedly applied and is unlikely to continue in the future. Therefore, it is not proven that it is an unwritten measure in the form of ongoing conduct.
- Alderaan's export tax, export registration requirement and non-renewal and refusal of mining permits do not constitute an overarching measure. The overarching character of the measure is not established, as a single measure does not exist distinct from its components

## SUBSTANTIVE PART

and there is no interaction between the components. Moreover, the alleged overarching measure is not systematically applied.

- The alleged overarching measure does not constitute a restriction on the exportation of neodymium from Alderaan under GATT Art. XI:1. The export tax does not fall under the scope of Art. XI:1. Moreover, a clear link between the export registration and the non-renewal and refusal of mining permits and the decrease of neodymium exports is not demonstrated.
- The alleged overarching measure is justifiable under GATT Art. XX(b) because it is designed to protect human, animal or plant life or health and is necessary. There were no reasonably available alternative measures that could have achieved the desired level of protection. Moreover, the measure is consistent with the *chapeau* of Art. XX, as it does not amount to arbitrary and unjustifiable discrimination, insofar as it is indiscriminate towards importing countries. Even if the measure is considered to be discriminatory, it is not arbitrary or unjustifiable because it has a reasonable connection with the policy objective pursued under Art. XX(b). The measure also does not constitute a disguised restriction on the international trade of neodymium, as there is no proof that it promotes other aims than those provided under Art. XX(b).

**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, which 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 – Investerix. Investerix ensures safety in the zone and develops infrastructure and connectivity in the JSDZ.
4. Investerix 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. The Alderaan government took necessary measures to reduce the negative effects related to the mining of neodymium, such as import taxes and administrative requirements. Furthermore, between January 2018 and December 2019, the Alderaan government decided not to renew the mining permits of some mining companies.
7. After unsuccessful consultations, Coruscant submitted a request for the establishment of a panel to the DSB.

**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 “the overarching measure”)**

**LEGAL PLEADINGS**

**I. THE POL IS NOT A SPECIFIC SUBSIDY AND IS NOT INCONSISTENT WITH ASCM ART. 3.1**

1. For a measure to be considered a prohibited subsidy, it must constitute a subsidy under ASCM Art. 1.1 and be inconsistent with ASCM Art. 3.1. The PoL does not fall within the definition of a “subsidy” under ASCM Art. 1.1 [1]. *Arguendo*, the PoL is not inconsistent with ASCM Art. 3.1 as the subsidy is not export-contingent [2].

**1. The PoL does not constitute a subsidy under ASCM Art. 1**

2. As per ASCM Art. 1, for a “subsidy” to exist, there must be a financial contribution which confers a benefit. The PoL by Investerix to Desertix is not a financial contribution [A]. The PoL does not grant a benefit to Desertix [B].

***A. The PoL is not a financial contribution***

3. A subsidy is a financial contribution when it is conferred by a government or public body within the territory of a member, as set out in ASCM Art. 1.1(a)(1). The PoL is granted by Investerix, which is neither a government nor a public body [a]. *Arguendo*, the PoL is not a provision of land under Art. 1.1(a)(1)(iii) [b]. Moreover, the PoL was not granted within the territory of Alderaan [c].

***a. Investerix is not a public body***

4. As per ASCM Art. 1.1(a)(1), a financial contribution should be made by a government or any public body. Public bodies are entities that possess, exercise or are vested with governmental authority.<sup>1</sup> Governmental authority is vested when there is a close relationship to a government. This is proven by the existence of meaningful control of the government over the entity, and the exercise of functions that can be classified as governmental in the legal order.<sup>2</sup> The mere fact that a government has a majority stake in an entity does not imply that the government has meaningful control over its operations, let alone that the government has conferred it with governmental authority.<sup>3</sup>

---

<sup>1</sup> ABR, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ [285, 317-318].

<sup>2</sup> Ibid; ARB, *US - Carbon Steel (India)*, ¶ [4.29].

<sup>3</sup> Ibid.

## SUBSTANTIVE PART

5. The Alderaan government does not exercise meaningful control over Investrix, even though its shares are owned by the government. Investrix is an industrial land developer, who acts in line with its own commercial practice, and is not obliged to follow any governmental policies. Moreover, Investrix's economic activities consist of selling and providing land and infrastructure for its own private profits. Thus, the economic activity of Investrix cannot be classified as governmental activity.
6. In conclusion, the Alderaan government does not exercise meaningful control. Furthermore, Investrix does not perform any activities that can be classified as governmental activity. This indicates that Investrix is not a public body, but a private entity.

### b. The PoL does not constitute a provision of land

7. A measure is a financial contribution when it corresponds to one (or more) types of financial contributions provided in ASCM Art. 1.1(a)(1).<sup>4</sup> Coruscant may argue that the PoL falls within the ambit of Art. 1.1 (a)(1)(iii). However, not every governmental falls within this ambit.<sup>5</sup> There must be a reasonably proximate relationship between the governmental act of providing the goods, and the use or enjoyment of the goods by the recipient.<sup>6</sup> In assessing this relationship, the panel has reasoned that there is a difference between a "general governmental act that facilitates the mining operation" and a "grant of the mining rights by the recipient" which leads directly to the use of those minerals by the recipient.<sup>7</sup> Only the latter constitutes a proximate relationship.
8. Investrix sold a plot of land in the JSDZ to Desertix, where they enrolled the production of SaberLite PMGs. There are uncertainties regarding the permission to mine kyber as the Land Sale Contract does not explicitly grant this mining right to Desertix. Despite the land provided, the amount of work required by Desertix in extracting the kyber is still high. Therefore, the PoL only facilitates the economic activity of Desertix. Thus, there is no proximate relationship between the PoL and the use or enjoyment by Desertix.
9. To conclude, the PoL does not constitute a financial contribution as there is no proximate relationship between the sale of land in the JSDZ and the Alderaan government's acts.

### c. The PoL is not granted within the territory of Alderaan

---

<sup>4</sup> ABR, *US – Large Civil Aircraft* (2nd complaint), ¶ [614].

<sup>5</sup> ABR, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ [ 285]; ABR, *EC and certain member States – Large Civil Aircraft*, ¶ [965]; Ibid,

¶ [52]; ARB, *US -Carbon Steel (India)*, ¶ [4.68-4.69].

<sup>6</sup> Ibid.

<sup>7</sup> PR, *US – Softwood Lumber IV* ¶ [7.238].

## SUBSTANTIVE PART

10. ASCM Art. 1.1(a)(1) states that the financial contribution must be provided within the territory of the Member. There has been no WTO ruling on the term “within the territory”. The AB has recognized Art. 31 and Art. 32 VCLT as providing a “customary rule of interpretation of public international law”.<sup>8</sup>
11. VCLT Art. 31(1) includes the interpretation by the ordinary meaning of the wording considering the context, object, and purpose of the wording. To establish the ordinary meaning of a term, the AB has accepted reference to dictionary definitions.<sup>9</sup>
12. The Cambridge Dictionary defines “territory” as “an area of land, or sea, that is considered as belonging to or connected with a particular country or person”.<sup>10</sup> The Oxford Dictionary provides a similar definition: “land that is under the control of a particular country”.<sup>11</sup> In both these definitions, the land is under the control or connected to a particular country. Moreover, the ordinary meaning of “within” is “inside or not beyond a particular area”.<sup>12</sup> Therefore, “within the territory” must be interpreted as “inside a particular country”.
13. Under VCLT Art. 32, *travaux préparatoires* can be drawn upon as supplementary means of interpretation. Historically, subsidies were created to support industrialization and create economic growth in specific sectors.<sup>13</sup> Therefore, the ASCM was drafted to “address situations where a WTO member is subsidizing the production or sale of its own goods”.<sup>14</sup>
14. Considering the above, “within the territory” implies that a subsidy must be granted to a recipient within the territory of the subsidizing Member. Thus, the subsidy must be conferred within the Alderaan borders. Although the PoL is granted by Investrix, an Alderaan company, it was not granted within the territory of Alderaan. The recipient of the PoL is in fact Desertix, a Tatooine company, located in Tatooine. Therefore, it is not conferred within the territory of Alderaan.
15. In conclusion, the PoL is not made by a government or public body and, does not confer a financial contribution. Moreover, the PoL was not provided within the territory of Alderaan.

---

<sup>8</sup> ABR, *US – Gasoline*, ¶ [17]; ABR, *Japan-Alcoholic Beverages II*, ¶ [10]; ABR, *US-Shrimp*, ¶ [114].

<sup>9</sup> ABR, *US – Offset Act (Byrd Amendment)*, ¶ [248].

<sup>10</sup> Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/territory>.

<sup>11</sup> Oxford Dictionary, <https://www.oxfordlearnersdictionaries.com/definition/english/territory>.

<sup>12</sup> Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/within>.

<sup>13</sup> V. CROCHET and M. GUSTAFSSON (2021), 344.

<sup>14</sup> WTO Trade Financing (2004), 5.

***B. The PoL does not confer a benefit to Desertix under ASCM Art. 1.1(b)***

16. As per ASCM Article 1.1(b), for a subsidy to exist, it should also confer a benefit. A benefit must be determined by establishing “whether the recipient has received a financial contribution on terms more favourable than those available to the recipient in the market”.<sup>15</sup>
17. The land sold by Investrix to Desertix does not confer a benefit. As stipulated in the Land Sale Contract, Desertix was able to buy 182,108 sq m of land in the JSDZ from Investrix. The price for full ownership of land in Tatooine’s other Industrial Zones, e.g., the MEIZ are on average \$235 per sq m. Desertix paid a price of \$215 per sq m for the land in the JSDZ. This price difference derives from the difference in geographical location of the industrial zones. The MEIZ is located next to Tatooine’s largest port, providing them direct access to the seaways. The JSDZ is located right in the centre of Tatooine’s desert, which entails that higher transportation costs will be incurred. Because of the considerable amount of civil unrest in Tatooine’s inland due to secessionist infighting, there is an additional cost to secure the transportations of goods out of the JSDZ. These less favourable conditions and their additional costs are clearly reflected in the price.
18. Therefore, the PoL does not confer a benefit to Desertix. The land was sold for a price that corresponds to the economic value of the land. The conditions of the sale were not more favourable than those that would be available to Desertix in the market.
19. In this regard, the PoL is not a subsidy as per ASCM Art. 1, as it is not a financial contribution and does not confer a benefit to Desertix.

**2. The PoL is not a prohibited subsidy under ASCM Art. 3.1(a)**

20. A subsidy within the meaning of ASCM Art. 1 is prohibited under Art. 3.1(a) when it is contingent in fact upon export performance. To establish contingency in fact, there must be a proven link between the subsidy and the export performance.<sup>16</sup> The standard for demonstrating this link is only met if the subsidy is designed to increase the enterprise’s ratio of export sales to domestic sales.<sup>17</sup>
21. The AB has ruled that the standard of “in fact contingency” is met if the facts demonstrate that the subsidy is “in fact tied to actual or anticipated exportation”.<sup>18</sup> To establish such a contingency these relevant facts should be considered: i) the ratio-analysis; ii) adopting of

---

<sup>15</sup> ABR, *US – Large Civil Aircraft (2<sup>nd</sup> complaint)*, ¶ [635–636], ¶ [662] and ¶ [690]; ABR, *Canada – Aircraft*, ¶ [157].

<sup>16</sup> ABR, *Canada – Aircraft*, ¶ [167]; ABR, *Canada – Autos*, ¶ [99].

<sup>17</sup> ABR, *EC – Large Civil Aircraft*, ¶ [1044]; D. Coppens, p. 121.

<sup>18</sup> ABR, *Canada – Aircraft*, ¶ [170].



## SUBSTANTIVE PART

new technology; and iii) favouring a recipient's export sales over its domestic sales.<sup>19</sup> Moreover, although "objectively reviewable expressions of a government's policy objectives for granting a subsidy" can constitute relevant evidence, ascertaining a government's reason is not *per se* sufficient.<sup>20</sup>

22. First, the ratio-analysis is a comparison between the ratio of anticipated export and domestic sales of the PMGs that would be the consequence of the granted subsidy, and the situation in the absence of the subsidy. However, the subsidized product is a new product, SaberLite PMGs, for which no historical data exists. Therefore, the performance that Desertix would hypothetically be expected to achieve in the export and domestic markets in the absence of the subsidy must be considered. The PMG market is rising globally due to the increased demand for green energy. Therefore, even if the subsidy was not granted to Desertix, it would still have been able to obtain land use rights in the JSDZ and enrol the SaberLite PMG production site. Desertix would still export most of its production since the demand for PMGs is tremendously high globally and still increasing.
23. Second, the panel has held that subsidies granted for a general purpose such as adopting new technology does not give rise to an export contingency in fact.<sup>21</sup> The subsidy here enables Desertix to further develop and establish the production of PMGs based on their new SaberLite Technology. The subsidy is thus granted for a general purpose.
24. Third, export-contingent subsidies must "preferentially support a recipient's export sales over domestic sales".<sup>22</sup> This occurs if they are designed to persuade a recipient "to export in a manner that is not simply reflective of the conditions of supply and demand in the domestic and export markets."<sup>23</sup> The global demand for PMGs is high. Thus, the high level of exportation of SaberLite PMGs is based on the high demand in the export markets. There is no indication that the PoL is designed to achieve a higher degree of exportation than the mere reflection of the conditions of supply and demand of SaberLite PMGs.
25. The statements made about the PoL by the Ambassador of Alderaan to Tatooine alone are not enough objective evidence to demonstrate contingency upon export performance.
26. Therefore, the PoL is not tied to the anticipated exportation of PMGs as its objective is merely to enable the economic activity of Desertix in the JSDZ. Therefore, there is no contingency upon exportation in fact.

---

<sup>19</sup> ABR, *EC and certain member States – Large Civil Aircraft 21.5 – US*, ¶ [6.702]; PR, *Australia – Automotive Leather II*, ¶ [9.55].

<sup>20</sup> ABR, *EC – Large Civil Aircraft*, ¶ [1050-1051].

<sup>21</sup> PR, *Canada – Aircraft*, ¶ [9.337-9.339].

<sup>22</sup> ABR, *EC – Large Civil Aircraft*, ¶ [1053, 1045, 1098].

<sup>23</sup> *Ibid.*

## SUBSTANTIVE PART

27. In conclusion, the PoL is not a subsidy as per ASCM Art. 1, and is not inconsistent with ASCM Art. 3.1 since it is not contingent upon export performance.

### **II. THE LOAN IS NOT A SPECIFIC SUBSIDY AND DOES NOT CAUSE SERIOUS PREJUDICE AS IT HAS NOT RESULTED IN LOSS OF SALES**

28. For a measure to cause serious prejudice under ASCM Art. 5, it must constitute a subsidy under ASCM Art. 1 and demonstrate specificity under ASCM Art. 2. Moreover, as per ASCM Art. 6.3, the conditions of lost sales must be fulfilled.

29. Zurix Bank, a private bank established in Alderaan, granted a loan to Desertix. The loan does not constitute a subsidy [1], and is not specific [2]. Furthermore, the loan is not an actionable subsidy as it does not cause serious prejudice to the interests of Coruscant and has not resulted in lost sales of PMGs in market of Naboo [3].

#### **1. The loan does not constitute a subsidy under ASCM Art. 1**

30. As per ASCM Art. 1, for a subsidy to exist there must be a financial contribution which confers a benefit. The loan is not a financial contribution [A]. Furthermore, the loan does not grant a benefit to Desertix [B].

##### ***A. The loan is a not a financial contribution***

31. A subsidy is a financial contribution when it is conferred by a government or public body within the territory of a member, as per ASCM Art. 1.1(a).<sup>24</sup> One such type of financial contribution is a direct transfer of funds (e.g., a loan) under ASCM Art. 1.1(a)(1)(i).

32. Zurix Bank granted a loan to Desertix. Alderaan does not dispute that the loan constitutes a financial contribution. However, the loan is not granted by a public body as Zurix Bank is a private bank [a]. Furthermore, Zurix Bank is not entrusted or directed by the Alderaan government [b]. The loan was also not granted within the territory of Alderaan [c].

##### ***a. Zurix Bank is not a public body***

33. As per ASCM Art. 1.1 (a)(1), the granting of a loan only constitutes a financial contribution when it is granted by a government or a public body (para. 4).

34. Zurix Bank is a private bank fully owned and operated by private investors. The Alderaan government holds no shares in it. Additionally, the board of directors are appointed by the bank's shareholders. And even though the bank directors must be approved by the Alderaan's Finance Ministry, they act in their independent capacity. The approval is based on objective criteria such as past experiences and qualifications. As Zurix Bank is fully

---

<sup>24</sup> ABR, *US – Softwood Lumber IV*, ¶ [52].

## SUBSTANTIVE PART

owned by private investors and the directors are independent, there is no meaningful control by the Alderaan government.

35. Moreover, the granting of loans is part of the core business of Zurix Bank in line with their commercial interests. Therefore, the granting of the loan to Desertix cannot be classified as governmental in the legal order of Alderaan.

36. Thus, Zurix Bank is not a public body as Alderaan does not exercise meaningful control over it and the granting of the loan is not a governmental function.

### *b. Zurix Bank is not entrusted or directed by Alderaan*

37. Under ASCM Art. 1.1 (a)(1)(iv), it is possible for a measure to be an indirect financial contribution conferred through a private body. The government must have entrusted or directed the private body to carry out a type of function under (i)–(iii). “Entrustment” refers to delegation and responsibility given to a private entity. “Direction” refers to any circumstance in which the government exercises control over a private entity.<sup>25</sup>

38. Entrustment or direction implies that there should be a sufficiently strong link between government and private-sector behavior.<sup>26</sup> The AB emphasized that entrustment or direction involves some threat or inducement, and an act of a private body against its own commercial interests.<sup>27</sup> Furthermore, the AB stated that policy pronouncements are insufficient, and that entrustment and direction “implies a more active role than mere acts of encouragement”.<sup>28</sup>

39. First, there is no form of threat or inducement from Alderaan to Zurix Bank as the appointment of the bank directors by the MoF is based on objective criteria and each director acts in an independent capacity. Moreover, the banks are not penalized if their yearly reports show that they do not adhere to Alderaan’s strategic priorities. Second, Zurix Bank acts in compliance with its commercial strategies as each loan is granted based on the merits of the applicant. The loan was granted to Desertix which is a promising company operating in an emerging market of SaberLite PMGs. Lastly, the policy announcements regarding the GHS are mere acts of encouragement as the MoE publicly stated that she has not taken an active role in the Bank’s decision to grant the loan.

---

<sup>25</sup> ABR, *US – Countervailing Duty Investigation on DRAMs* (2005), ¶ [116].

<sup>26</sup> *Ibid.*, ¶ [112].

<sup>27</sup> ABR, *Japan – DRAMs (Korea)*, ¶ [138]; PR, *Japan – DRAMs (Korea)*, ¶ [7.70]; PR, *EC –*

*Countervailing Measures on DRAM Chips*, ¶ [7.59].

<sup>28</sup> ABR, *US – Countervailing Duty Investigation on DRAMs* (2005), ¶ [114].

## SUBSTANTIVE PART

40. There is not a sufficiently strong and demonstrable link between the government of Alderaan and the granting of the loan by Zurix Bank to Desertix. Thus, Zurix Bank is not entrusted or directed by Alderaan.

### *c. The loan is not granted within the territory of Alderaan*

41. The financial contribution must be granted within the territory of Alderaan, where Zurix Bank is established. However, the loan is granted to Desertix, which is located in Tatooine. Therefore, the loan is granted outside the territory of Alderaan.

42. In conclusion, Zurix Bank is neither a public body nor a private body that was entrusted and directed by the Alderaan. The loan was not granted within the territory of Alderaan. Therefore, the loan is not a financial contribution under ASCM Art. 1.1(a)(1).

### ***B. The loan does not confer a benefit to Desertix under ASCM Art. 1.1(b)***

43. As per Art. 1.1(b), for a subsidy to exist, it should also confer a benefit. The loan granted by Zurix Bank to Desertix does not confer a benefit as per ASCM Art. 1.1(b).

44. ASCM Art. 14(b) states that a government loan only confers a benefit when there is a discrepancy between the amount paid on the government loan and the amount paid for a comparable commercial loan obtained on the market by the entity receiving the loan.<sup>29</sup> This comparison must be done at the time that the recipient received the loan.<sup>30</sup> The AB considers that ASCM Art. 14(b) does not expressly specify geographical or national scope to determine the relevant “market” for comparison.<sup>31</sup> Therefore, the AB indicates some relevant factors for establishing a benchmark: the timing, structure, maturity, size, and currency of the comparable commercial loan.<sup>32</sup>

45. Zurix Bank granted a ten-year loan of \$93,372,000 to Desertix at an interest rate of 4% per annum. The overall cost of the loan is \$96,720,000. As the loan is granted by an Alderaan bank, the average long term interest rates in Alderaan must be considered to calculate whether a benefit was conferred. The long-term interest rate for loans in Alderaan is 2%. The overall cost of this loan is \$94,860,000, which is almost two million US Dollars less than the overall cost of the loan granted by Zurix Bank to Desertix.

46. The amount that Desertix paid under the loan granted to it by Zurix Bank is considerably higher than the amount Desertix would pay for a comparable commercial loan. Therefore, the loan does not confer a benefit to Desertix under ASCM Art. 1.1(b).

---

<sup>29</sup> ABR, *EC and certain member States – Large Civil Aircraft (2011)*, ¶ [835].

<sup>30</sup> *Ibid*, ¶ [835-836].

<sup>31</sup> ABR, *US – Anti-Dumping and Countervailing Duties (China)*, ¶ [475-480].

<sup>32</sup> ABR, *US – Softwood Lumber IV*, ¶ [96].

## SUBSTANTIVE PART

47. In sum, the loan is not a subsidy as the financial contribution is conferred by Zurix Bank, an entity not entrusted or directed by the Alderaan government. The loan was not granted within the territory of Alderaan. Moreover, there is no conferral of benefit to Desertix.

### **2. The loan lacks specificity under ASCM Art. 2**

48. Pursuant to ASCM Art. 1.2, a subsidy is only actionable insofar as it is specific under ASCM Art. 2. Art. 2.1 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 located outside the jurisdiction of Alderaan [B].

#### ***A. The government of Alderaan is the granting authority***

49. When a subsidy is granted by a private body, the granting authority is the governmental authority that entrusts or directs such body.<sup>33</sup> The granting authority in the present case can only be Alderaan, if it is found to have entrusted or directed Zurix Bank.

#### ***B. The loan was granted to an entity outside the jurisdiction of Alderaan***

50. Under ASCM Art. 2.1, a subsidy can only be specific to enterprises “within the jurisdiction of the granting authority”. The WTO DSS never ruled on the term “within the jurisdiction”. “Jurisdiction” should be interpreted in accordance with its ordinary meaning as per VCLT Art. 31(1). The Oxford Dictionary defines “jurisdiction” as “[t]he extent or range of judicial or administrative power; the territory over which such power extends”.<sup>34</sup> This definition indicates a territorial view of jurisdiction, whereby the jurisdiction of the granting authority first and foremost corresponds to the territory of this authority.

51. This territorial meaning is substantiated by ASCM’s *travaux préparatoires*, which can be used as supplementary means of interpretation under VCLT Art. 32. The legislative history of ASCM Art. 2.1 indicates that the parties intended a territorial meaning of jurisdiction.<sup>35</sup> This is evident from the 1991 Draft ASCM, where, instead of “within the jurisdiction of the granting authority”, Art. 2.1 read “within the territory of the subsidizing country”.<sup>36</sup>

52. Moreover, under customary international law “jurisdiction” is also territorial.<sup>37</sup> Extraterritorial jurisdiction is prohibited in the absence of a permissive rule.<sup>38</sup>

<sup>33</sup> ABR, *United States–Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, ¶ [4.167]; ABR, *US–Anti-Dumping Duty on DRAMs*, ¶ [116].

<sup>34</sup> Oxford Dictionary, <https://www.oxfordlearnersdictionaries.com/definition/english/jurisdiction>.

<sup>35</sup> V. CROCHET and V. HEGDE (2020), 11.

<sup>36</sup> Draft Articles (1991).

<sup>37</sup> PR, *EC- Biotech*, ¶ [7.67]; PR, *Korea – Procurement*, ¶ [7.96]; ABR, *United States–Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, ¶ [308-309].

<sup>38</sup> C. RYNGAERT, 38; C.A BRADLEY, 323.

## SUBSTANTIVE PART

53. Based on the submissions made above, “jurisdiction” in ASCM Art. 2.1 should be interpreted as territorial, extending only to the territory of the granting authority. As Alderaan is the granting authority, the loan must be given to an enterprise located in its territory. The loan was given to Desertix, an enterprise established in the territory of Tatooine. Thus, the loan was not granted within the jurisdiction of Alderaan.
54. In conclusion, the loan lacks specific under ASCM Art. 2.1 as the loan was not granted within the jurisdiction of Alderaan.

### **3. The loan does not cause serious prejudice under ASCM Art. 5(c) and 6.3(c)**

55. Pursuant to ASCM Art. 5(c), a subsidy has adverse effects on the interests of another Member when the subsidy causes serious prejudice to the interests of that Member. Serious prejudice exists if one of the conditions of Art. 6.3 is fulfilled.<sup>39</sup> ASCM Art. 6.3(c) indicates that serious prejudice may arise when, *inter alia*, the effect of the subsidy is loss of sales in the same market. First, “market” under Article 6.3 necessitates the demarcation of the relevant market for a serious prejudice analysis. Second, a two-step approach may be used to determine whether the conditions for a loss of sales in Art. 6.3(c) are fulfilled. This approach asserts that there is a significant loss of sales in the same market and there is a causal link between the subsidy and the loss of sales.<sup>40</sup>
56. The loan does not cause serious prejudice as the products are not competing in the same market [A]. The loss of sales is not significant [B]. Furthermore, there is no causal link between the loan and the alleged prejudice [C].

#### ***A. The products are not competing in the same market***

57. The AB defined a “market” as “a collection of items in a certain geographic region that are in real or potential rivalry with one another”.<sup>41</sup> The determination of products competing in the same market involves an assessment of the competitive relationship between these products. Only if two items are market substitutes may they impose a competitive restriction on each other. To assess the substitutability of two products both the demand and supply sides should be considered.<sup>42</sup>
58. Both Magnetix and Desertix are manufacturers of PMGs. Magnetix produces PMGs using the harmful material neodymium. Desertix developed the SaberLite Technology to produce

---

<sup>39</sup> PR, US – Upland Cotton, ¶[10.255].

<sup>40</sup> ABR, EC – Large Civil Aircraft, ¶ [1163–1164].

<sup>41</sup> ABR, EC – Large Civil Aircraft, ¶ [1119].

<sup>42</sup> ABR, EC and certain member States – Large Civil Aircraft, ¶ [1.121].

## SUBSTANTIVE PART

its PMGs using kyber. Neodymium PMGs and SaberLite PMGs are not substitutable on the demand-side [a]. Moreover, they are not substitutable on the supply-side [b].

### a. Demand-side substitutability

59. Demand-side substitutability arises when two products are considered substitutable by consumers.<sup>43</sup> The elements that help to determine whether products are like products are considered relevant. The AB found that “physical characteristics, end-uses, and consumer preferences may assist in deciding whether two products compete in the same market”.<sup>44</sup>

60. As set out in the table, the physical characteristics of SaberLite PMGs and neodymium PMGs differ.

61. When comparing consumer preferences for both types of PMGs, consumers would generally prefer SaberLite PMGs over neodymium PMGs because of former’s superior product characteristics. This was further evidenced by the fact that Ventix Generatix chose to use Desertix’s SaberLite PMGs for its windmill production, instead of Magnetix’s neodymium PMGs, when both were offered at identical prices.

PMG	SaberLite PMG	Neodymium PMG
Material	Kyber: sustainable & harmless	Neodymium: harmful
Weight	Lower	Higher
Necessary windspeed	Lower	Higher

62. Although the end-uses of SaberLite PMGs and neodymium PMGs are similar as they are both used in windmills, this is not dispositive for determining “likeness”. The criteria are tools to assist in analysing the likeness of particular products.<sup>45</sup>

63. Thus, it is established that SaberLite PMGs and neodymium PMGs are not like products because of their very different product characteristics and the difference in consumer preferences. This indicates that SaberLite PMGs and neodymium PMGs are not substitutable on the demand side.

### b. Supply-side substitutability

64. Supply-side substitutability can be evidenced when a supplier can switch its production at limited or prohibitive cost from one product to another product in a short period of time.<sup>46</sup>

<sup>43</sup> Ibid.

<sup>44</sup> Ibid, ABR, *Canada – Renewable Energy*, ¶ [5.171]

<sup>45</sup> ABR, *EC – Asbestos*, ¶[102].

<sup>46</sup> ABR, *EC and certain member states – Large Civil Aircraft*, ¶ [1.121]; ABR, *Canada – Renewable Energy / Feed-in Tariff Program*, ¶ [5.171].

## SUBSTANTIVE PART

65. Special Electrix has been investing heavily in the research and development of SaberLite PMGs. It was only by late 2017 that Special Electrix was able to replace neodymium with kyber to produce their PMGs. It took a few years for Special Electrix to achieve this breakthrough. It will not be possible for other PMG producers to switch from neodymium PMGs to SaberLite PMGs in a short period of time. Moreover, it is impossible for other PMG producers than Special Electrix to procedure SaberLite PMGs as Special Electrix holds a patent on SaberLite PMGs. Therefore, SaberLite PMGs and neodymium PMGs are not substitutable on the supply side.

66. As such, neodymium and SaberLite PMGs do not compete in the same product market.

### ***B. The loss of sales was not significant***

67. “Significant” is understood as “important, notable or consequential”.<sup>47</sup> The panel has identified several factors to determine the significance of lost sales. The loss of sales is significant in the light of the volume and price involved in the sales (i); their strategic importance (ii); the learning effects and economies of scale generated (iii); and the advantages of the incumbent supplier provided by the sales (iv).<sup>48</sup>

68. First, it is not possible to infer whether the contract concerned many PMGs since the number of PMGs involved in the contract with Ventix Generatix is not exactly determined. Similarly, the price that Ventix would pay for the sale is not determined. Thus, it is impossible to prove that there is a large sum involved in the sales.

69. Second, the strategic importance for Desertix of winning the contract with Ventix is absent as Ventix is one of many windmill manufacturers. There are no factors that indicate the importance of the contract with Ventix in particular.

70. Third, as Magnetix is established in Naboo, and exclusively produces neodymium PMGs, a change to other production methods including the use of kyber to win this contract would be impossible. In this regard, the winning of this contract would not provide any learning opportunities for Magnetix in terms of its production methods.

71. Last, Desertix has no real advantage as the incumbent supplier for subsequent sales with Ventix. The contract with Ventix is an exclusive five-year contract, but after this contract Ventix is free to choose any other supplier of PMGs. It is possible that in that time other PMG manufacturers will have entered the market with new technologies and Ventix may choose any of these as their suppliers after the contract with Desertix ends.

---

<sup>47</sup> ABR, *US-Washing Machines*, ¶ [5.62].

<sup>48</sup> PR, *EC – Large Civil Aircraft*, ¶ [7.1845]; ABR, *EC – Large Civil Aircraft*, ¶ [1212, 1219].



72. When all the above factors are weighed, the loss of sales by Magnetix is not significant.

***C. The causal link between the loan and the alleged prejudice cannot be demonstrated***

73. ASCM Art. 6.3(c) provides that the effect of the challenged subsidies must be the loss of sales. According to the AB, the term “effect” implies that a causal link needs to be proven between the subsidy and its alleged market effects.<sup>49</sup> There needs to be a genuine and substantial relationship of cause and effect,<sup>50</sup> and that the link must not be diluted because of other causal factors.<sup>51</sup> These elements must be analysed through a counterfactual analysis.<sup>52</sup> The loss of sales of the Magnetix must be compared with a counterfactual scenario in which Desertix would not have received the challenged loan.

74. Ventix opted for Desertix as it offered a lower price for its SaberLite PMGs in comparison with the higher price of the neodymium PMGs of Magnetix. The loan only granted Desertix the ability to mine kyber but did not have an impact on the mining or price of neodymium. If the loan was not granted to Desertix, the price of neodymium PMGs would be the same as if the loan was granted. Thus, there is no causal link between the higher price of neodymium PMGs, the loss of the offer and the granted loan.

75. Moreover, there are other components that caused the loss of sales and the higher price, such as the global shift towards the use of sustainable materials. Therefore, the use of neodymium will be limited. These factors dilute the link between the loan and the loss of sales by Magnetix as the factors are in no way connected with the loan.

76. Thus, the loan does not cause serious prejudice to the interests of Coruscant under ASCM Art. 5(c) and 6.3(c). The products are not competing in the same market. The loss of sales is not significant and there is no causal link between the loan and the alleged prejudice.

**III. THE EXPORT TAX, EXPORT REGISTRATION, AND NON-RENEWAL AND REFUSAL OF MINING PERMITS, DO NOT VIOLATE GATT ART. XI**

77. Prior to assessing a violation under GATT Art. XI:1, the existence of a measure must be established. The export tax and the export registration are written measures. However, the existence of the non-renewal and refusal of mining permits as an unwritten measure consisting of an ongoing conduct is not proven [1]. Moreover, these separate events do not constitute an overarching, systematically violative measure, as claimed by Coruscant [2].

<sup>49</sup> ABR, *US – Upland Cotton (2005)*, ¶ [435].

<sup>50</sup> Ibid ¶ [374, 438]; ABR, *US – Large Civil Aircraft (2nd complaint)*, ¶ [913]; ABR, *EC and certain member States – Large Civil Aircraft*, ¶ [1232].

<sup>51</sup> ABR, *EC and certain member States – Large Civil Aircraft*, ¶ [914 and 1232].

<sup>52</sup> Ibid.

Even if the existence of such a measure is accepted, it is not a quantitative restriction under GATT Art. XI:1 [3]. Moreover, the measure can be justified under GATT Art. XX(b) [4].

**1.The existence of the non-renewal and refusal of mining permits as an unwritten measure consisting of an ongoing conduct is not proven**

78. 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.<sup>53</sup> 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 the conduct (iii); and the likelihood of future application (iv).<sup>54</sup>

79. Coruscanit concedes that the non-renewal and refusal of mining permits is attributable to Alderaan, and its precise content is proven. However, the non-renewal and refusal of mining permits is not repeatedly applied [A] and is unlikely to continue in the future [B].

***A. The non-renewal and refusal of mining permits is not repeatedly applied***

80. The AB stated that 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.<sup>55</sup>

81. The mining permits are granted or refused based on compliance with MA Art. 2-3. It is the responsibility of the individual mining firms to ensure compliance with the conditions of public health, environment, safety, and operational standards as provided in these provisions. The granting of a mining permit to firms who comply with these provisions is not prohibited. The MMID Minister emphasized that the firms whose mining permits were renewed have taken extra measures to prevent dust and toxic waste.

82. Thus, the fact that mining permits were renewed based on this reason proves that the non-renewal and refusal of mining permits have not been applied repeatedly.

***B. The non-renewal and refusal of mining permits is unlikely to continue in the future***

83. 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.<sup>56</sup>

84. Alderaan has never taken a specific decision on the future of granting all mining permits in the country. Its decisions to renew or grant the permits of the mining firms are issued on a case-by-case basis. Indeed, there has been an instance where an initial refusal was

---

<sup>53</sup> C. VALLES, V. POGORETSKY, T. YANGUAS (2019), 464.

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

<sup>55</sup> ABR, *US – Zeroing (EC)*, ¶ [191-197].

<sup>56</sup> ABR, *US – Supercalendered Paper*, ¶ [5.44].

## SUBSTANTIVE PART

overturned after the mining firm's compliance with the mentioned provisions. Thus, the future application of the conduct cannot be demonstrated.

85. In conclusion, the non-renewal and refusal of mining permits does not constitute an unwritten measure as cannot be demonstrated as an ongoing conduct.

### **2. The existence of an overarching, systematically applied measure is not proven**

86. Coruscant describes the challenged measure as an overarching single measure which is systematically applied. However, the existence of the single measure is not proven [A] and the alleged measure is not systematically applied [B].

#### ***A. The existence of a single measure cannot be proven***

87. A single measure is a measure whereby there is interaction between the different components.<sup>57</sup> Furthermore, the single measure must have a functional life of its own.<sup>58</sup> The different components do not constitute a single measure [a]. The measure does not have a functional life of its own [b].

##### ***a. The different components do not constitute a single measure***

88. The interaction between the components should be established by a common policy objective.<sup>59</sup> In this dispute, the components serve distinct policy objectives.

89. In 2002, MA Arts. 2 and 3 were introduced by Alderaan. Based on these provisions and breaches of safety standards, Alderaan refused to renew and grant some mining permits. In September 2017, Alderaan levied an export tax of 25% on neodymium. Alderaan customs authorities also imposed an export registration to monitor the exports of neodymium. First, some mining permits were refused, and the renewal of others was denied to limit the mines health and environmental impact. Second, an export tax was implemented in the light of the GHS. Third, the export registration was used as a tool to monitor exports of neodymium.

90. In this regard, there is no interaction between the components since they have no common policy objective. The components do not operate together as part of a single measure.

##### ***b. The single measure does not have a functional life of its own***

91. 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, i.e., that it would have to do something concrete, independently of any other instruments".<sup>60</sup>

---

<sup>57</sup> ABR, *Argentina - Import Measures*, ¶ [5.108; 5.126, 5.132].

<sup>58</sup> Ibid.

<sup>59</sup> Ibid; ABR, *US – Zeroing (EC)*, ¶ [202]; PR, *US - Anti-Dumping Methodologies (China)*, ¶ [7.309-7.310].

<sup>60</sup> PR, *United States – Measures Treating Exports Restraints as Subsidies (US-Export Restraints)*, ¶ [8.85].

## SUBSTANTIVE PART

92. Every above-mentioned event (paras 89) has its own consequences and objectives.

Therefore, it is not possible to determine a single measure with its own functional life.

93. Therefore, the conditions for an unwritten overarching measure are not fulfilled as there is no interaction among the different components. Moreover, the existence of a single measure with a functional life of its own cannot be proven.

### ***B. There is no systematic application***

94. For a measure to have a systematic application, it must aim at achieving a particular policy or result. Furthermore, it must be done according to a system, plan, or organized method or effort.<sup>61</sup> According to the AB, the systematic nature of the measure is evidenced by the application to economic operators in various sectors within the policy framework.<sup>62</sup>

95. The components of the alleged measure are introduced for their own distinct policy objectives (paras 89). Moreover, they only apply to economic operators in the neodymium mining and distributing sector. Thus, the measure is not systematically applied.

96. Therefore, the export tax, the export registration, and the non-renewal of mining permits, do not constitute one single overarching measure that is systematically applied.

### **3. Arguendo, the measure is not a quantitative restriction under GATT Art. XI**

97. To establish that the alleged overarching measure is inconsistent with GATT Art. XI it must fall within the scope of the measures covered under Art. XI:1. Furthermore, the measure must constitute a prohibition or restriction on the importation or exportation or sale for export of any product.<sup>63</sup> The export tax does not fall within the scope of GATT Art. XI:1 [A]. Moreover, the overarching measure is not a quantitative restriction [B].

#### ***A. The export tax does not fall within the scope of GATT Art. XI:1***

98. The scope of GATT Art. XI:1 excludes “duties, taxes and other charges”.<sup>64</sup> The tax of 25% on all neodymium exports falls within this exclusion. Thus, the export tax is explicitly excluded from the scope of GATT Art. XI:1.<sup>65</sup>

#### ***B. The alleged overarching measure is not a quantitative restriction***

99. The AB has defined “prohibition” as a legal ban on the trade, importation, or exportation of a specified commodity.<sup>66</sup> The term “restriction” refers to something that has a limiting effect.<sup>67</sup> GATT Art. XI prohibits both *de jure* and *de facto* quantitative restrictions.

<sup>61</sup> PR, *Russia – Railway Equipment*, ¶ [7.947].

<sup>62</sup> ABR, *Argentina–Import Measures*, ¶ [5.142]; PR, *Russia–Tariff Treatment*, ¶ [7.309].

<sup>63</sup> PR, *EU-Energy Package*, ¶ [7.243]; ABR, *Argentina – Import Measures*, ¶ [5.216-5.218].

<sup>64</sup> ABR, *Argentina – Import Measures*, ¶ [5.220].

<sup>65</sup> Ibid.

<sup>66</sup> ABR, *China – Raw Materials*, ¶ [319-320].

<sup>67</sup> Ibid.

## SUBSTANTIVE PART

100. For a *de jure* quantitative restriction to exist, the legal instrument establishing the measure must contain an explicit numeric ceiling.<sup>68</sup> None of the components of the alleged overarching measures include a numeric ceiling for the exportation of neodymium in their legal instrument. Thus, the overarching measure is not a *de jure* quantitative restriction.

101. For a *de facto* quantitative restriction, the AB has ruled that not every condition or burden placed on exportation is inconsistent with GATT Art. XI, but only those that limit the exportation of products.<sup>69</sup> The export registration is an administrative requirement and does not limit the quantity of export of neodymium. The non-renewal of mining permits is based on the inability of the mining companies to comply with the health, safety, and environmental standards. The health and environmental risk for the mining of neodymium is so extensive that the mining standards that must be complied with are extremely strict. Therefore, the non-renewal of the mining permits is isolated from a quantitative mining restriction of neodymium but is a consequence of protecting human and environmental health and safety in Alderaan. Thus, none of the components of the imposed measure cause a *de facto* quantitative restriction on the exportation of neodymium.

102. Therefore, even if the alleged overarching measure is found to exist, the measure is not a quantitative restriction under GATT Art. XI:1.

### **4. The alleged overarching measure is justifiable under GATT Art. XX(b)**

103. Under GATT Art. XX, a measure is justifiable if it satisfies a two-tier test under a subparagraph and complies with the requirements of the *chapeau*.<sup>70</sup> The alleged overarching measure is justified under GATT Art. XX(b) because it is necessary to protect human, animal or plant life or health [A]. This measure meets the requirements of the *chapeau* because it neither causes arbitrary or unjustifiable discrimination nor does it amount to a disguised restriction on international trade [B].

#### ***A. The measure is necessary to protect human, animal or plant life or health***

104. The measure is justified under GATT Art. XX(b) because it is designed to pursue the policy objective thereunder [a] and is necessary [b].

##### **a. The measure is designed to protect human, animal or plant life or health**

105. In assessing whether a measure is designed to protect human, animal or plant life, the policy objective of the measure needs to be analysed considering its design and structure.<sup>71</sup> For this, there needs to be evidence of the risk the measure is designed to address.

---

<sup>68</sup> Ibid.

<sup>69</sup> ABR, *Argentina – Import Measures*, ¶ [5.217].

<sup>70</sup> AB, *US – Gasoline*, ¶ [20].

<sup>71</sup> PR, *US – Gasoline*, ¶ [6.20].

## SUBSTANTIVE PART

106. In *EC - Asbestos*, considerable deference was accorded to a WHO report on the health risks posed by asbestos.<sup>72</sup> In the present case, a WHO report has documented the risks neodymium mining carries, explaining that the extraction process creates dust and toxic waste.<sup>73</sup> The 2017 export tax was introduced with a view to limit reliance on neodymium on account of its toxicity, as explained by MoE. Likewise, the decisions of non-renewal between January 2018 and December 2019 were taken, as stated by Alderaan’s MMID, “first and foremost, in order to limit these mines’ health and environmental impact”. Therefore, the measure falls under the scope of Art. XX(b) since it was designed to tackle a proven risk to health and the environment.

### *b. The measure is necessary*

107. To determine necessity, three elements must be fulfilled under Art. XX(b): the measure must produce a material contribution to the objective (i); there must be no reasonably available alternatives (ii); and the relevant factors are weighted and balanced in favour of the measure (iii). The overarching measure meets the requirements and is necessary.

#### *i. The measure produces a material contribution*

108. The AB held that a measure contributes to the achievement of its objective “when there is a genuine relationship of ends and means between the objective pursued and the measure at issue”,<sup>74</sup> and that “a risk may be evaluated either in quantitative or qualitative terms”.<sup>75</sup>

109. The alleged overarching measure is apt to produce a material contribution to the achievement of the objectives pursued since it has been able to minimize neodymium mining. This is evidenced by the fact that, between Q1 2018 and Q4 2020, the number of mining firms extracting neodymium has been greatly reduced, from 28 to 6, and Alderaan’s domestic production of neodymium has plunged from 35.1 thousand metric tons to 7.9 thousand metric tons. This quantitative analysis suffices to establish the material contribution of the measure to the envisioned objective.

#### *ii. There were no reasonable alternatives to the measure*

110. It is the claimant’s burden to present alternatives to the contested measure.<sup>76</sup> Even the most-restrictive measure available, such as a ban, would be justifiable if commensurate with the level of protection envisaged by policy. The AB has ruled that a Member could not be reasonably expected to employ alternative measures such as controlled use if that measure would involve a continuation of the very risk that the measure seeks to “halt”.<sup>77</sup>

---

<sup>72</sup> ABR, *EC - Asbestos*, ¶ [162].

<sup>73</sup> *Ibid.*, ¶ [2].

<sup>74</sup> *Ibid.*, ¶ [145].

<sup>75</sup> ABR, *EC - Asbestos*, ¶ [167].

<sup>76</sup> ABR, *US - Gambling*, ¶ [309-311].

<sup>77</sup> ABR, *EC - Asbestos*, ¶ [174].

## SUBSTANTIVE PART

111. Given Alderaan's objective to protect human and environmental health to the highest level possible, even a complete ban on neodymium mining would be justified. However, in the present case the export registration, export tax and refusal of certain mining permits do not even amount to a ban. Alderaan did renew the mining permits of three neodymium mining firms because of their compliance with the safety measures. Any less restrictive standards would entail continuing the risk neodymium mining poses. Alderaan cannot reasonably be expected to employ such alternatives because this would mean the continuation of the very risk the current measures seek to halt.

112. Thus, alternatives to the disputed measure would not attain the same level of protection.

*iii. After weighing and balancing all the factors, the measure was necessary*

113. The AB has identified the relevant factors to be weighed and balanced against each other: the importance of the interest or values at stake, the contribution of the measure to the objective it pursues and the trade-restrictiveness of the measure.<sup>78</sup>

114. The measure aims to protect human health and the environment from the harmful effects of neodymium. The AB holds the protection of human health as "both vital and important in the highest degree",<sup>79</sup> and environmental protection as "important".<sup>80</sup>

115. The measure materially contributes to the objectives it pursues (para. 109). The measure is not particularly trade restrictive as it does not entail a full ban on neodymium export. Even if this were to be the case, the AB has accepted that a ban, "by design as trade-restrictive as can be" can be necessary as per of Art. XX (b) in some circumstances.<sup>81</sup>

116. In conclusion, the weighing and balancing of the above-mentioned factors establish the necessity of the measure under Art. XX (b).

***B. The measure does not cause arbitrary or unjustifiable discrimination and does not amount to a disguised restriction on international trade***

117. The alleged overarching measure is justifiable under GATT Art XX *chapeau* because it does not cause arbitrary or unjustifiable discrimination [a] and does not amount to a disguised restriction on international trade [b].

*a. The measure does not cause arbitrary or unjustifiable discrimination*

118. Under GATT Art. XX, three elements must exist for a measure to constitute an arbitrary and unjustifiable discrimination: the application of the measure must result in discrimination (i), the discrimination must be arbitrary or unjustifiable (ii) and must occur

---

<sup>78</sup> ABR, *EC- Seal Products*, ¶ [5.214].

<sup>79</sup> ABR, *EC-Asbestos*, ¶ [172]; ABR, *Brazil - Retreaded Tyres*, ¶ [179].

<sup>80</sup> ABR, *Brazil - Retreaded Tyres*, ¶ [179].

<sup>81</sup> *Ibid*, ¶ [150].

## SUBSTANTIVE PART

between countries where same conditions prevail (iii).<sup>82</sup> The overarching measure does not constitute a discrimination [i]; *arguendo*, the discrimination is not arbitrary or unjustifiable [ii]. Moreover, different conditions prevail in the relevant countries [iii].

*i. The measure does not result in discrimination*

119. The application of the measure does not result in discrimination because it does not cause differences in treatment between Members. All the measures are unrelated to the destination of the neodymium, therefore, indiscriminate in relation to importing Members.

*ii. Any discrimination is not arbitrary or unjustifiable in character*

120. *Arguendo*, it is not arbitrary or unjustifiable in character. The AB held that discrimination is arbitrary and unjustifiable “when the reasons given for this discrimination bear no rational connection with the objective falling within any paragraph of Article XX”.<sup>83</sup> The alleged overarching measure pursues health and environment protection in line with Art. XX(b). Any discrimination of the measure is not arbitrary or unjustifiable.

*iii. Different conditions prevail in the relevant countries*

121. The conditions regarding the exportation of neodymium are not the same in the different exporting and importing countries. Alderaan is the biggest exporter of neodymium, with 60% of the world’s neodymium reserve. As neodymium causes the greatest risk during the extraction process, countries who mostly import are not exposed to the same risks. Thus, there are different conditions in Alderaan, an exporting country, in comparison with Coruscant, an importing Member.

*b. The measure does not amount to a disguised restriction on international trade*

122. The measure does not amount to a disguised restriction on international trade. “Disguised restriction” comprises of actions that, under the appearance of protecting one of the reasons stated in the sub-paragraphs of GATT Art. XX, aim to promote other interests.<sup>84</sup> The measure primarily serves the objective of protecting human, animal and plant life or health. There is no indication of other disguised aims, hence no disguised restriction on the international trade of neodymium.

123. Thus, the alleged overarching measure is justified under GATT Art. XX(b) as the overarching measure is necessary to protect human, animal, plant life and health. Moreover, the measure does not cause an arbitrary or unjustifiable discrimination and does not amount to a disguised restriction on trade.

---

<sup>82</sup> ABR, *US – Shrimp*, ¶ [150].

<sup>83</sup> ABR, *Brazil – Tyres*, ¶ [227].

<sup>84</sup> PR, *EC-Asbestos*, ¶ [8.236].



**REQUEST FOR FINDINGS**

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

**I. that the PoL granted to Desertix by Investrix:**

1. is not a **subsidy** as per ASCM Art. 1 as it;
  - a. is not a financial contribution as per ASCM Art. 1.1(a)(1) because:
    - i. Investrix is not a public body;
    - ii. the PoL not a provision of goods as per ASCM Art. 1.1(a)(1)(iii);  
and
    - iii. is not granted within the territory of Alderaan.
  - b. and does not confer a benefit within the meaning of ASCM Art. 1.1(b) to Desertix.
2. is a not a **prohibited subsidy** under ASCM Art. 3.1(a) since it is not contingent upon exportation of PMGs in fact.

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

1. is a not a **subsidy** as per ASCM Art. 1 as it:
  - a. is not a financial contribution as per ASCM Art. 1.1(a)(1) because:
    - i. Zurix Bank is not a public body;
    - ii. Zurix Bank is not entrusted or directed by Alderaan, within the meaning of ASCM Art. 1.1(a)(1)(iv); and
    - iii. is not granted within the territory of Alderaan, as it is granted to Desertix, located in Tatooine.
  - b. does not confer a benefit within the meaning of ASCM Art. 1.1(b) to Desertix.
2. Is a not a **specific subsidy** as per ASCM Art. 2.1 as it:
  - a. is not granted within the jurisdiction of Alderaan.
3. does not cause **serious prejudice** under ASCM Art. 5(c) as:
  - a. the products are not competing in the same market;
  - b. the loss of sale has not been significant under ASCM Art. 6.3(c); and
  - c. the causal link between the loan and the alleged prejudice cannot be demonstrated.

**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 not **measures** as the existence of the non-renewal and refusal to grant mining permits as an ongoing conduct is not proven;
2. do not constitute an **overarching measure** that is **systematically** applied;
3. do not violate **GATT Art. XI:1**, as there is no *de facto* quantitative restriction on the exportation of neodymium; and
4. the overarching measure is **justified** under GATT Art. XX(b):
  - a. as it is designed to protect human, animal or plant life or health and is necessary under GATT Art. XX(b); and
  - b. it meets the requirements of the *chapeau* of GATT Art. XX because it does not cause arbitrary and unjustifiable discrimination and does not constitute a disguised restriction on the international trade of neodymium.