

**China Moot Court Competition**

**ON WTO LAW CASE 2022**

*Chimera – Extra-territorial Application of Certain Measures  
relating to Trade in Goods (Complainant: Avilia)*

## Background

1. Chimera and Savoy Saksa are Central American countries. They have been WTO members since 1 January 1995 and members of the GATT since 30 July 1948.
2. Chimera is a highly-developed and high-income economy, with a population of 126.2 million (as of the end of 2021). The per capita GDP of Chimera was \$35,278.42 USD in 2021 and equivalent to 279% of the world's average. Overseas investments play an important role in the economy with an estimated stock of outward investments of \$1,982 billion USD. In 2021, the outward investment accounted for 30% of GDP, while the inward FDI stocks were much smaller at 4%. The outward FDI has been increasing since 2012, while the inward FDI remains broadly stable, which has further enhanced the significant outward orientation of Chimera's investments.
3. Saksa is the largest Caribbean island, between the Caribbean Sea and the North Atlantic Ocean. Before 1920, Saksa was a colony of Chimera abounding with oil and agricultural products. A series of local rebellions and revolts took place during the colonial days. Independence from Chimera was the motive for a rebellion in the 1920s led by Thomas Savoy, a sugar planter, who freed his slaves to fight with him for a free Saksa. On 27 December 1928, he issued a decree condemning slavery and declaring free any slaves who agreed to military service. After 12 years of conflicts, Chimera decided to withdraw its army from Saksa in 1932 and the Kingdom of Savoy Saksa, an absolute monarchy ruled by the House of Savoy, was established. The king of Savoy Saksa serves as both head of state and head of government, and he exercises control over the executive, legislative, and judicial branches of government.

4. Unlike Chimera, Savoy Saksa is a less developed country, as reflected in the per capita GDP of around \$1,800 USD in 2019. Reducing poverty and the disparities between rural and urban areas are still among the Kingdom's main challenges. According to the most recent living standards survey, between 2014 and 2016 the national poverty rate was around 25%, while in the same period the extreme poverty rate rose from 6.3% to 8.9%. The World Bank predicts that the proportion of poor households below the international poverty line will rise from 13% in 2019 to 15% in 2022 chiefly as a result of the impact of the COVID-19 pandemic.

### **Savoy Saksa's Nationalization of the Oil Industry**

5. Despite deep-rooted historical disputes and political mistrust between Chimera and Savoy Saksa, the two countries developed close economic connections over the past decades. Up to 2008, the Chimeran companies invested over \$70 billion USD in the Savoy Saksan oil industry. It was a situation known as "cold politics, hot economics".
6. In 2009, due to the financial crisis and economic recession, the Savoy government was facing high levels of debt and hyperinflation. In 2011, Savoy Saksa was late in making some bond payments, and the main rating agencies declared the country in selective default. In addition to approximately \$34 billion USD in debt concerning traded bonds, Savoy Saksa owes \$16 billion USD to creditors and \$14 billion USD in commercial loans.
7. In early 2012, Savoy Saksa announced a nationalization plan to its oil industry and created Petroleos de Savoy S.A., a state-operated oil and natural gas company. Savoy Saksa claimed that "the foreign investment in the oil sector was a legacy of colonialism. Savoy Saksan people should be compensated by foreign investors, in particular the companies from Chimera." As a result, any oil rights owned by or concession agreements

granted to foreign companies were canceled or terminated by Savoy Saksa without compensation. It is estimated that Chimeran investors have directly lost more than \$70 billion in investment as a result of Savoy Saksa's nationalization policy. According to news reported by Saksan Broadcasting Corporation (SBC), a publicly financed broadcasting system, some Chimeran nationals who refused to transfer their control over the investments were arrested and later expelled due to clashes with the local government in Savoy Saksa.

### **Chimera's Sanctions on Savoy Saksa**

8. The nationalization measures immediately provoked strong opposition and criticism from Chimera. In a speech, the Chimeran President Theodore Rusk proclaimed that "the hostile measures taken by Savoy Saksa are a threat to the democracy of Chimera. ... [T]o be safe, democracy must kill its enemy when it can and where it can. The world cannot be half democratic and half autocratic." As a response, the Congress of Chimera enacted an act to sanction Savoy Saksa, which provided as follows:

#### **SAFEGUARDING INTERNATIONAL COMMUNITY ACT of 2015**

To seek international sanctions against the Savoy monarchy, to plan for support of a transition government leading to a freely elected government in Saksa, and for other purposes.

##### **Section 1. Findings.**

(1) The Savoy monarchy has made it abundantly clear that the government of Savoy Saksa will not engage in any substantive political reforms that would lead to liberty, a market economy, or an economic recovery.

(2) The repression on the Saksan people, including a ban on free and fair elections, and continuing violations of fundamental international principles, have isolated the Savoy Saksan regime as the only completely non-liberal government in the World.

(3) As long as free elections are not held in Savoy Saksa, the economic condition of the country and the welfare of its people will not improve in any significant way.

(4) The totalitarian nature of the government of Savoy Saksa has deprived its people of any peaceful means to improve their condition and has led thousands of its people risk or lose their lives

in the dangerous attempts to escape from Savoy Saksa in pursuit of freedom.

(5) Chimera has shown a deep commitment, and considers it a moral obligation, to promote and protect the international community and fundamental freedoms.

## **Section 2. Purposes.**

The purposes of this Act are—

(1) to assist the Saksan people in regaining their freedom and prosperity, as well as in joining the community of liberal countries that are flourishing in the World;

(2) to strengthen international sanctions against the Savoy monarchy;

(3) to provide for the continued national security of the Chimera in the face of continuing threats from the violence of the Savoy monarchy, theft of property from Chimera nationals by the Savoy monarchy, and the political manipulation by the Savoy monarchy of the desire of Saksan people;

(4) to encourage the holding of free and fair elections in Saksa, conducted under the supervision of internationally recognized observers;

(5) to provide a policy framework for Chimera support to the Saksan people in response to the formation of a transition government or a freely elected government in Saksa;

and

(6) to protect Chimera nationals against confiscatory takings and the wrongful trafficking in property confiscated by the Savoy monarchy.

## **Section 3. Enforcement of the Economic Embargo of Savoy Saksa.**

(1) Policy.—

(a) Restrictions by Other Countries.

—The Congress hereby affirms that the President should encourage foreign countries to restrict trade and credit relations with Savoy Saksa in a manner consistent with the purposes of this Act.

(B) Sanctions on Other Countries.

—The Congress further urges the President to take immediate steps to apply the sanctions described in this Act against countries assisting Savoy Saksa.

(2) Prohibition on Import of and Dealings in Savoy Saksan Products.—

The Chimeran Government prohibits, unless exceptions granted by the Secretary of the Treasury, the entry of, and dealings outside the Chimera in, merchandise that—

(a) is of Savoy Saksa origin;

(b) is or has been located in or transported from or through Savoy Saksa; or

(c) is made or derived in whole or in part of any article

which is the growth, production, or manufacture of Savoy Saksa.

#### **Section 4. Civil Penalties**

(1) A civil penalty of not to exceed \$50,000 may be imposed by the Secretary of the Treasury on any person who violates any license, order, rule, or regulation issued in compliance with the provisions of this Act.

(2) Any property, funds, securities, papers, or other articles or documents, or any vessel, together with its tackle, apparel, furniture, and equipment, that is the subject of a violation under paragraph (1) of this Section shall, at the direction of the Secretary of the Treasury, be forfeited to Chimeran Government.

9. In practice, if the Treasury of Chimera suspected a person or entity might be acting in violation of economic sanctions, it would open enforcement proceedings. Based on evidence considered in its investigation, the Treasury might issue a finding of no violation; a request for further information; a cautionary letter; a finding of a violation; or a finding of a violation with civil monetary penalty. Where relevant, the Treasury may also revoke, suspend, modify, withhold, or deny licenses to engage in certain transactions.

#### **Economic Impact to Avilia**

10. Avilia is a South American country that acceded to the WTO on 1 October 1998. The Avilian economy is outward-oriented, with aggregate two-way trade in goods and services representing about 75% of GDP in 2021. International trade and foreign direct investment trends reflect the continued importance of Chimera as Avilia's main supplier and a key destination market.
11. Avilia also has a close trade relationship with Savoy Saksa. Affected by the Chimera's sanction measures to Savoy Saksa, Avilian firms have to bear more direct costs in terms of fines levied by the Chimeran Government due to perceived or actual contravention of the Safeguarding International Community Act of 2015. Because of the difficulty in proving violations of sanctions, it usually took years before the closure of a case. In a number of

cases, substantial fines were imposed on Avilian firms. For example, Avilian Sugar Co. was fined nearly \$500 million USD for its transactions involving Savoy Saksan companies; Avilian E-Automobile ING paid a fine of \$619 million USD for purchasing certain raw materials from Savoy Saksa in 2018.

12. The overall exports from Avilia to Chimera had gone up in the 2000s together with an increase in imports. However, there was a steep decline in exports to Chimera after the promulgation of the Safeguarding International Community Act of 2015.

### **The UN Resolution of 2017**

13. Savoy Saksa and some other countries, including Avilia, strongly oppose the sanction measures taken by Chimera. They submitted a proposal for a resolution by the United Nation to demand the end of the Chimeran economic blockade on Savoy Saksa in 2017 (“The UN Resolution of 2017”). The UN Resolution of 2017 has obtained overwhelming backing from the international community and has been approved, with Chimera and another two countries voting against it. The resolution is provided as follows:

#### **RESOLUTION ADOPTED BY THE GENERAL ASSEMBLY**

Necessity of ending the economic, commercial and financial embargo imposed by Member States against Savoy Saksa

The General Assembly,

Determined to encourage strict compliance with the purposes and principles enshrined in the Charter of the United Nations,

Reaffirming, among other principles, the sovereign equality of states, non-intervention and non-interference in their internal affairs and freedom of trade and international navigation, which are also enshrined in many international legal instruments,

Concerned about the promulgation and application by Member States of laws and regulations whose extraterritorial effects affect the sovereignty of other states and the legitimate interests of entities or persons under their jurisdictions, as well as the freedom of trade

and navigation,

Having learned of the recent promulgation of measures of that nature aimed at strengthening and extending the economic, commercial and financial embargo against Savoy Saksa,

1. Calls upon all States to refrain from promulgating and applying laws and measures of the kind referred to in the preamble to the present resolution in conformity with their obligations under the Charter of the United Nations and international law and with the commitments that they have freely entered into in acceding to international legal instruments that, inter alia, reaffirm the freedom of trade and navigation;

2. Urges States that have such laws or measures to take the necessary steps to repeal or invalidate them as soon as possible in accordance with their legal regimes.

Plenary meeting of 2017  
24 November 2017

14. The Foreign Minister of Savoy Saksa Miguel Parrilla, present during the vote in the General Assembly Hall, said that the blockade was a “massive, flagrant and unacceptable violation of the human rights of the Saksan people.” He added that the embargo amounted to “an economic war of extraterritorial scope against a small country”. Meanwhile, the Political Coordinator for the Chimera Mission, Rodney Rose, said during the vote that sanctions were “one set of tools in the Chimera's broader effort toward Savoy Saksa to advance liberty, promote respect for human rights, and help the Saksan people to exercise fundamental freedoms”.

### **WTO Dispute Settlement Proceeding**

15. Due to the negative impact on trade and the concern for its sovereignty, on 14 April 2022, the Government of Avilia requested a consultation with the Government of Chimera pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994). After two months, the consultations ended without a mutually satisfactory solution. On 15 June 2022, Avilia requested the establishment of a Panel.



16. At the DSB meeting of 27 June 2022, the representative of Avilia said that what it was really concerned about was not the objectives of the legislation but the extraterritorial means chosen to achieve those objectives and their adverse effects on Avilian trade in goods; the economic embargo provisions were fully operational and in use; those provisions were applied against Avilian ships trading with Savoy Saksa as well as goods from Savoy Saksa, even if such goods had been transformed into different products of Avilian origin. The representative of Chimera responded that the Safeguarding International Community Act of 2015 reflected the abiding Chimeran foreign policies and security concerns with regard to Savoy Saksa; the WTO had been established to deal with trade relations between Member governments rather than diplomatic or security relations that might have incidental effects on trade or investment.

17. By reserving its third-party rights, the representative of Savoy Saksa clarified certain aspects of the facts. He said that:

“Savoy Saksa never organized military force to invade or to take any kind of hostile action against Chimera nor allowed terrorist groups to act against Chimera from its territory. By contrast, Chimera is one of the most powerful countries in the world. Savoy Saksa was colonized by Chimera for more than a century. The Chimeran Congress adopted legislation having influences on the Savoy Saksa's sovereign rights. Savoy Saksa is in a better position than the Chimera to resort to Article XXI of GATT 1994 referring to national security concerns.”

18. The Panel was established at the DSB meeting on 30 July 2022. In its request for the establishment of a Panel, Avilia argued that the Safeguarding International Community Act of 2015, as such, breached

Article XI:1 of the GATT 1994, because of the extraterritorial application of Chimeran embargo of trade with Savoy Saksa in so far as it restricted trade between Avilia and Savoy Saksa or between Avilia and Chimera.

19. In response to the Avilia's Panel Request, Chimera denied the claim raised by Avilia and requested that the Panel should reject the claim in its entirety. At the same time, Chimera invoked Article XXI:(b)(iii) of the GATT to justify its measure.

### **Indicative Cases and Materials**

Panel Report, *India – Measures Affecting the Automotive Sector*, WT/DS146/R, WT/DS175/R and Corr.1, adopted 5 April 2002

Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007

Panel Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R

Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011

Appellate Body Reports, *Argentina – Measures Affecting the Importation of Goods*, WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R, adopted 26 January 2015

Panel Reports, *Argentina – Measures Affecting the Importation of Goods*, WT/DS438/R / WT/DS444/R / WT/DS445/R / and Add.1, adopted 26 January 2015, as modified (WT/DS438/R) and upheld (WT/DS444/R / WT/DS445/R) by Appellate Body Reports WT/DS438/AB/R / WT/DS444/AB/R / WT/DS445/AB/R

Appellate Body Report, *Peru – Additional Duty on Imports of Certain Agricultural Products*, WT/DS457/AB/R and Add.1, adopted 31 July 2015

Panel Report, *European Union and its member States – Certain Measures*

*Relating to the Energy Sector*, WT/DS476/R and Add.1, circulated to WTO Members 10 August 2018

Panel Report, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R and Add.1, adopted 26 April 2019

Panel Report, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, WT/DS567/R, circulated to WTO Members 16 June 2020

GATT Panel Report, *EEC – Import Regime for Bananas*, DS38/R, 11 February 1994, unadopted