

World Trade Organization Moot Court Problem

August 19, 2022

Morany – Trade Restrictions on Certain Goods and Services from Agovia (Complaint by Agovia)¹

Agovia, Viktima and Morany are founding (original) members of the WTO. They are neighbors. In the WTO, Morany acts as a developed country member, while Agovia and Viktima have the status of developing country members. There is no regional trade agreement (FTA or customs union) between these countries.

Viktima is a federal country, bordered by Agovia in the north and by Morany in the east. Viktima consists of five provinces. A northern province ('Northern Viktima') is populated predominantly by ethnic Agovians, an ethnic group which accounts for 8% of Viktima's population (the remaining 92% are made up mostly by ethnic Viktimans). Northern Viktima is strategically important for its abundance of natural resources and proximity to major international transportation routes. Under Viktima's constitution (1980), Northern Viktima has the status of an 'autonomous province' without the right to unilateral secession from the country. Thus, it enjoys nearly complete freedom in conducting its internal policies but is under the central government's control with respect to external affairs.

For the last decade, Viktima's economy has been in a deep slump. Amid the worsening economic conditions in the country, there have been increasing calls in North Viktima's society for secession from Viktima. Over the last five years, a widespread independence movement in Northern Viktima has severely destabilized the political situation in the province and put the constitutional order of Viktima as a whole at risk. In order to fight separatism in the province, Viktima's authorities deployed additional police/military forces there, introduced strict censorship in the local mass media, prohibited large gatherings, and carried out massive-scale

¹ This moot court problem is a product of its author's imagination and written for mooted purposes only.

arrests and imprisonments of political activists.

Northern Viktima borders Agovia. Agovia has the largest army in the region and regularly organizes drills to demonstrate its military superiority. Because of the ethnic commonality, Agovia has traditionally promoted social and cultural exchanges with Northern Viktima. Deeply worried by the recent ‘anti-separatism’ actions against ethnic Agovians, Agovia, on a number of occasions, condemned Viktima for its ‘brutal acts of violence’ against the ethnic minority. Agovia raised this issue in the United Nations and some regional forums to seek collective pressure on Viktima. However, international reactions were largely divided, with some countries echoing Agovia’s concerns and others endorsing Viktima’s efforts to maintain public order in the country.

Meanwhile, the independence movement in Northern Viktima intensified, provoking frequent clashes between the police and local fighters, with large numbers of casualties being left on both sides. As the situation deteriorated rapidly, on December 23, 2021, Agovia officially recognized the independence of Northern Viktima and sent its troops there – as it explained – in order to ‘restore peace’ and ‘free’ ethnic Agovians from Viktima’s rule. Soon, Northern Viktima became a theater of war between Agovia and Viktima. Many in Northern Viktima fled to Morany and other countries to seek refuge.

Viktima condemned Agovia’s act of ‘aggression’ and ‘military invasion’ and imposed a complete economic embargo vis-à-vis Agovia. By a majority of the votes cast (80% in favor, 10% opposing, and 10% abstaining), the UN General Assembly issued Resolution No. UN/GA.Res/02/2022 (January 10, 2022) that called for an immediate withdrawal of Agovia’s troops from Viktima and a peaceful solution to the current crisis. Morany was among the countries that denounced Agovia’s invasion.

As a multi-ethnic country, Morany has been home to ethnic Viktimans and Agovians, among others. Its constitution (1960) expressly declares the country’s neutrality in international armed conflicts and strongly supports peace and pacifist values.² Its economy is dominated by

² In particular, Morany’s constitution emphasizes the peace-loving policy of the country (the preamble), keeps the national armed forces for the country’s self-defense only and bans their participation in overseas conflicts

manufacturing and services industries. Most of Morany's land is unsuitable for farming, so it heavily depends on imports of agricultural products. Agovia is the largest supplier of farm products to Morany, accounting for 20% of Morany's agricultural imports (with 10 other countries covering the remaining 80%). In turn, Morany is No. 1 trading partner for Agovia. Agovia's exports to Morany include agricultural products (constituting 40% of its merchandise exports to Morany), textiles and clothing (25%), fuels and mining products (15%), fish (10%), and other products (10%).

In protest against Agovia's invasion of Northern Viktima, on January 12, 2022, the government of Morany unilaterally imposed a number of measures affecting its trade with Agovia. These include:

- (A) prohibition on the importation of textiles and clothing from Agovia;
- (B) closure of all retail textiles/clothing shops in Morany, run by investors from Agovia, and seizure of their related assets;
- (C) the tightening of the existing export control and licensing requirements for dual-use goods (in the categories of electronics, computers, telecommunications and information security) destined for Agovia to better ensure that they are not intended for military use there;³
- (D) removal of Agovia from the list of beneficiaries under Morany's generalized system of preferences (GSP) that provides non-reciprocal tariff preferences (i.e., below-MFN tariff advantages) for developing countries;⁴ and
- (E) termination of all ongoing technical assistance under the 2007 Morany–Agovia Inter-Governmental Agreement on Bilateral Cooperation on Technical Barriers to Trade.⁵

(Article 5), recognizes ethnic, cultural, and religious diversity in society (Article 10), stresses the importance of social cohesion and peaceful co-existence of all ethnic groups (Article 15), prohibits the acts of violence against peaceful demonstrators (Article 25), guarantees human rights and freedoms (Chapter 2), and so on.

³ As a result of measure (C), these dual-use goods destined for Agovia, as compared to other countries, are now subject to longer and more complex screening procedures, stricter documentation requirements, and higher administrative processing fees.

⁴ Morany's GSP (and all subsequent changes thereof) was duly notified to the WTO as a GSP within the meaning of paragraph 2(a) of the Enabling Clause in accordance with the requirements of the WTO Transparency Mechanism for Preferential Trade Arrangements (WT/L/806, December 16, 2010).

⁵ The 2007 agreement in question was concluded between Morany and Agovia to implement Article 11 of the

Agovia brought a complaint against Morany to the WTO. In both the request for consultations and the request for the panel establishment, Agovia alleges that:

- measure (A) violates Article XI of the GATT;
- measure (B) violates Article XVI of the GATS (see the excerpt of Morany's Schedule of Specific Commitments);
- measure (C) violates Articles I and XI of the GATT;
- measure (D) violates Article I of the GATT and the Enabling Clause⁶; and
- measure (E) violates the provisions of Article 11 (paragraphs 1 and 2) of the TBT Agreement.

But Morany counters that these measures are neither discriminatory nor trade-restrictive. Even if the measures from (A) to (E) are found to violate any WTO provisions as Agovia is arguing, they are still justifiable under the WTO security exceptions. Alternatively or additionally, all these measures can be justified as being necessary to protect 'public morals' or to maintain 'public order', as set forth under the relevant general exceptions, namely Article XX(a) of the GATT and Article XIV(a) of the GATS. But Agovia disagrees with all justifications on several grounds. Among other things, Agovia insists that its military operations actually pursue peacemaking purposes in Viktima.

TBT Agreement in regard to all aspects of technical advice and assistance covered by Article 11. This bilateral agreement provides that advising and technical assistance can be terminated by mutual consent of the parties and that any dispute arising under this agreement will be resolved through the WTO proceedings. By January 12, 2022, Morany, under this agreement, had been assisting Agovia with the preparation of technical regulations on renewable energy and the establishment of a national standardizing body specializing in renewable energy.

⁶ Decision of 28 November 1979 (L/4903), 'Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries'.

MORANY – SCHEDULE OF SPECIFIC COMMITMENTS

Mode of delivery: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

| Sectors and sub-sectors | Limitations on market access | Limitations on national treatment | Additional commitments |
|---|--|--|------------------------|
| Distribution Services | | | |
| The commitments below do not apply to distribution services related to pharmaceutical and medical goods and cosmetics | | | |
| B. Wholesale trade services (CPC 622) | [...] | [...] | [...] |
| C. Retailing services (CPC 631+632+6111+6113+6121) | (1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section. | (1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section. | |

Note: CPC numbers in this schedule correspond to the references and explanatory notes under the 1991 UN Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economics and Social Affairs, Statistical Office of the United Nations, New York, 1991).

As an initial legal action, Agovia requested, on February 8, 2022, consultations with Morany in accordance with Article 4 of the Dispute Settlement Understanding. However, the consultations failed to reach a mutually acceptable solution. The WTO Dispute Settlement Body established a panel for the dispute on April 18, 2022, which was subsequently composed by appointing three panelists from third countries. Parties’ submissions are due by July 20, 2022. The oral hearing of the panel is scheduled to take place in Geneva on August 19, 2022. Two governments are now preparing legal briefs to be submitted to the panel. They are also preparing for the oral hearing in this dispute. During the WTO dispute proceedings, the armed conflict in Northern Viktima was still going on. /END/