

China Moot COURT COMPETITION

ON WTO LAW CASE 2023

*Valoria – Certain Restrictive Measures relating to Outbound
Investment (Complainant: Mystoria)*

Background

1. Valoria has the largest economy in the Western Hemisphere, characterized by its diversity and strength across various industries, including technology, finance, healthcare, manufacturing, and entertainment. Valoria's companies have a significant presence in international markets, with foreign direct investment ("FDI") playing a key role in expanding their global footprint. Their overseas investments include acquisitions, joint ventures, and subsidiary establishments in various sectors. Major Valorian technology companies operate data centers, research facilities, and offices worldwide. They often establish R&D centers abroad to tap into local talent pools and gain insights into regional markets. This approach allows them to adapt products and services to local preferences.
2. Mystoria is a developing economy. It has experienced remarkable growth and transformation over the past few decades, evolving from a primarily agrarian economy to a global economic powerhouse. Mystoria is the second-largest economy in the Western Hemisphere after Valoria. The Mystoria's economy has maintained a high growth rate for several decades, with an average annual GDP growth rate of around 10% from the late 1970s to the early 2010s. The IMF predicts that Mystoria's GDP will surpass that of Valoria in 2030. Mystoria's economy is characterized by a diverse range of industries, including manufacturing, agriculture, services, and technology. Manufacturing has been a driving force, making Mystoria the world's largest exporter of goods. Mystoria has attracted substantial foreign direct investment from multinational corporations due to its vast consumer market and low manufacturing costs. Foreign companies often establish joint ventures or wholly-owned subsidiaries in Mystoria to tap into its market potential.
3. Valoria and Mystoria are both members of the WTO.

Artificial intelligence and telecommunications industry

4. Artificial Intelligence ("AI") refers to the simulation of human intelligence in machines, allowing them to perform tasks that typically require human cognitive processes. AI systems aim to mimic and replicate human abilities such as learning, reasoning, problem-solving, and decision-making. It represents a broad spectrum of technologies and approaches aimed at creating intelligent machines that can perform tasks and make decisions typically associated with human intelligence. It is a dynamic and rapidly

advancing field with the potential to reshape how human beings live and work in the future.

5. Artificial Intelligence has played a pivotal role in the development and evolution of the telecommunications industry. Its impact is felt across various aspects of the industry, contributing to improved efficiency, enhanced customer experiences, and the deployment of advanced technologies. AI-powered algorithms analyze large volumes of network data in real-time, enabling telecom companies to optimize their infrastructure. This includes better utilization of network resources, reducing latency, and improving overall network performance. AI analyzes customer data to offer personalized services and recommendations. Telecom companies can tailor pricing plans, content offerings, and promotions based on individual preferences and behaviors. Telecom companies that harness AI technologies are better equipped to meet the evolving demands of customers and remain competitive in a dynamic industry landscape.
6. Artificial Intelligence has significant implications for national security. AI can analyze vast amounts of data from various sources, including satellite imagery, social media, and communications intercepts, to provide valuable insights for intelligence agencies. It can identify patterns, anomalies, and potential threats more quickly and accurately than traditional methods. AI-powered cybersecurity systems can detect and respond to cyber threats in real-time, helping to protect critical infrastructure, government networks, and sensitive information from cyberattacks. AI-driven natural language processing can help analyze foreign-language communications, translating and interpreting them for intelligence and security purposes.

Competition between Valoria and Mystoria

7. Valoria is a global innovation hub, home to numerous tech companies, research institutions, and startups. It led in areas such as artificial intelligence, biotechnology, and renewable energy. The Valorian government recognizes the strategic importance of AI and has launched initiatives to support AI research and development. These initiatives aim to maintain Valorian leadership in AI technology. The Valorian Ministry of Defense is actively exploring the applications of AI in defense and national security, including autonomous systems, cybersecurity, and data analysis.
8. Mystoria has made substantial progress in various technology sectors and has emerged as a significant player in the field of artificial intelligence. Companies like Mytele, TechWiz, ByteNova, and RoboSynth have become global leaders

in telecommunications, e-commerce, and drone technology. Mytele and TechWiz are two prominent Mystorian telecom equipment manufacturers with a global presence. They supplied a wide range of telecommunications products using artificial intelligence to countries around the world. Mytele is a state-owned enterprise, with state-owned shares accounting for 70%; TechWiz is a private enterprise, but the shareholding proportions of its various shareholders have not been disclosed. Mystorian telecom companies, particularly Mytele, has made significant efforts to expand their presence in international markets, including Europe, Asia, Africa, and Latin America. At the same time, the Mystorian government has shown strong support for AI research and development through various initiatives and funding programs. The "Next Generation Artificial Intelligence Development Plan," launched in 2017, outlines Mystoria's ambition to become a global AI leader. This plan involves substantial government funding and policy support for AI-related projects. Not just the telecommunications industry, but also AI is being integrated into various sectors of the Mystorian economy, including healthcare, finance, autonomous vehicles, and smart cities. Mystoria has successfully created a thriving ecosystem of AI startups, attracting both domestic and international investments.

9. Since artificial intelligence is a rapidly evolving field, other countries and regions around the world, including the European Union (EU) and Japan, have also been actively involved in AI research, development, and regulation. The EU has allocated significant funding for AI research and development through programs like Horizon 2020 and Horizon Europe. These initiatives support AI projects, innovation hubs, and collaboration between academia and industry. Japan has developed its AI strategy, known as the "AI Japan R&D Strategy." The strategy focuses on strengthening Japan's position in AI research and development, promoting AI adoption in various sectors, and addressing societal challenges through AI.
10. However, Mystoria's advancements in AI have raised geopolitical concerns, particularly regarding data privacy, surveillance, and the global competitiveness of Mystorian high-tech companies. This has led to debates and discussions about the implications of Mystoria's AI capabilities on a global scale. In particular, Mystoria's rapid technological advancement and its role as a global manufacturing hub have led to concerns in Valoria about the impact on Valorian industries, jobs and national security. Valoria views Mystoria as a technological threat from various perspectives due to a range of factors, including economic competition, national security concerns, traditions and cultures, and differences in political and social systems.

11. The competition between Mystoria and the Valoria in the field of artificial intelligence is a significant aspect of the broader technological and geopolitical rivalry between the two countries. Valoria sees Mystoria's AI advancement as a challenge to its technological leadership and innovation capabilities. There are concerns that Mystorian telecom equipment and technologies could be used for espionage or cyberattacks, posing a threat to Valorian national security.

Outbound investment restriction by Valoria

12. Despite the rapid development of artificial intelligence in Mystoria, its telecommunications industry heavily relied on Valorian companies for advanced AI systems or services, such as data and cloud services provided by Valorian tech giants like CloudSwift Labs, DataFusion, and InnovateX Technologies to access computing power, storage, and other resources for training AI models. At the same time, Mystorian researchers frequently collaborated with their Valorian counterparts, and many Mystorian students pursued AI-related degrees and conducted research in Valorian universities.
13. In order to restrict the development of Mystoria's AI capabilities, Valoria has adopted extensive export control measures against Mystoria since 2015, and has implemented security reviews on foreign investments from Mystoria in an effort to prevent Mystoria from obtaining artificial intelligence-related products or technologies.
14. Since the beginning of 2017, Valoria began to consider restrictive measures on the investment made by its nationals in Mystoria. Legislative efforts to create such a control mechanism first arose during the 2018 congressional debate on the establishment of a national security review mechanism for foreign investment. In early 2019, several bills were introduced with an aim to counter Mystoria's rise in the semiconductor and telecommunication industries. Members of the Valorian Congress have repeatedly requested the Valorian government to establish a program to address the national security threats emanating from outbound investments from Valoria in certain sectors that are critical for Valorian national security.
15. In response to pressure from the Congress, the Valorian government has been making ongoing efforts to shape an outbound investment control mechanism. In its 2021 National Security Strategy Report, the Valorian government specifically mentioned the "controlling program of outbound investment" as a new approach being pursued to address national security threats, revealing that such a program has gained wide support from the

government and Congress of Valoria.

16. On November 22, 2022, the Valorian Congress passed the Sensitive Technologies Act ("STA") with an aim to address Valorian investments in certain national security products and technologies in countries of concern. The STA directs the Valorian Ministry of Commerce ("the Commerce") to issue orders that identify categories of transactions involving products and technologies that pose a particularly acute national security threat to Valoria and prohibit Valorian persons from engaging in such transactions. The Annex to STA identified only one country, Mystoria, as a country of concern. The President of Valoria, Benjamin Parker, posted a message on Twitter:

Valoria already prohibits or restricts the export to Mystoria of many of the products and technologies under consideration for the new legislation (the STA). This new legislation would prevent Valoria's investments from helping accelerate the indigenization of these technologies in Mystoria, which undermines the effectiveness of our existing export controls and inbound investment screening programs which also seek to protect Valorian national security

17. On November 30, 2022, The Valorian Ministry of Commerce issued a Notice of Proposed Order seeking public comment related to the implementation of the STA. Comments on the Notice were due by December 30, 2022. At the same time, as required by STA, the Commerce consulted with other relevant agencies on the scope of products and technologies. On January 23, 2023, the Commerce issued Prohibition Order No.7 ("the PO7") announcing that, Valorian persons were prohibited from investing in five categories of products or technologies under the authorization of STA, as follows:

- quantum computers and their components;
- quantum sensors and quantum networking and communication systems that could enable capabilities that compromise encryption;
- cyber security controls and military communications;
- hardware components infused with artificial intelligence capabilities;
- artificial intelligence in telecommunications.

18. PO7 was effective from February 1, 2023. The Valorian Minister of Commerce Liam Harrison said in an explanatory note accompanying the order: "According to the provisions of the STA, this order currently only applies to the investments in Mystoria. The scope of products and technologies applicable to the order may overlap, mainly to prevent loopholes in implementation. The Valorian Government is committed to keeping Valoria safe and defending Valoria's national security through appropriately

protecting technologies that are critical to the next generation of military innovation. The Valorian Ministry of Commerce will review the order one year after its implementation and recommend amendments to the Congress. With the approval of the Congress, any country that threatens the rights and interests of Valorian workers and national security may be included in the STA Annex."

19. Since Mystoria's telecommunications service providers can no longer cooperate with Valorian technology companies in the field of artificial intelligence, their legitimate rights and interests will be seriously infringed and it will be difficult for them to compete with telecommunications service providers from other countries in international markets.
20. The Valorian Ministry of Commerce's prohibitive order was strongly opposed by the Mystorian Government. The Mystorian Ambassador to Valoria Stephen Long told the media: "Valoria's accusations against Mystoria and its alleged national security threats have no factual basis. It is unacceptable that the Government of Valoria restricts the overseas investment of its own companies and engages in 'decoupling and disconnection' in the investment field under the guise of 'risk removal,' which seriously deviates from the principles of market economy and fair competition that Valoria has always advocated. The PO7 affects the normal business decisions of enterprises, undermines international economic and trade order, and seriously disrupts the security of global industrial and supply chains."

WTO Dispute Settlement Proceeding

21. On April 10, 2023, the Government of Mystoria requested a consultation with the Government of Valoria pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article XXII:1 of the General Agreement on Trade in Services (GATS) with respect to prohibitive measures against overseas investment in artificial intelligence maintained by Valoria affecting Mystorian telecommunication suppliers. After two months, the consultations ended without any mutually satisfactory solution.
22. On June 13, 2023, Mystoria requested the establishment of a Panel. The Panel was established at the DSB meeting on July 28, 2023. In its request for the establishment of a Panel, Mystoria argued that the Sensitive Technologies Act ("STA") and the Prohibition Order 7 ("PO7") and their subsequent amendments, as such, breached Article II:1 and VI:1 of the GATS, because Mystoria's telecommunications service suppliers cannot obtain investment

from Valoria in artificial intelligence products or technologies, and they are treated unfairly by Valoria.

23. In response to Mystoria's Panel Request, Valoria denied the claims raised by Mystoria and requested that the Panel should reject the claims in their entirety.

Appendixes

I. The Sensitive Technologies Act passed by the Congress of Valoria

II. Valoria - Final List of Article II (MFN) Exemptions

III. Valoria - Schedule of Specific Commitments

Note

The Participants are not required to make any arguments relating to the defense under Article XIV bis [Security Exceptions] of the GATS.

Indicative Cases and Materials

Appellate Body Report, *European Communities - Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted 25 September 1997

Panel Report, *Mexico – Measures Affecting Telecommunications Services*, WT/DS204/R, adopted 1 June 2004

Appellate Body Report, *United States - Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, adopted 20 April 2005

Panel Report, *United States – Measures Affecting the Cross Border Supply of Gambling and Betting Services*, WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R

Panel Report, *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413/R and Add.1, adopted 31 August 2012

Panel Report, *European Union and its Member States — Certain Measures Relating to the Energy Sector*, WT/DS476/R and Corr.1, circulated to WTO Members 10 August 2018

Rudolf Adlung, "Export Policies and the General Agreement on Trade in Services", World Trade Organization, Economic Research and Statistics Division, WTO Working Paper ERSD-2014-09, 21 July 2014