

LEX ORBIS

International Trade Law Moot Court Competition 2019

MOOT PROBLEM¹

Between

Procrasti Nation	Complainant
	<i>And</i>	
Siesta	Respondent

1. Siesta is a sovereign country with a population of 100 million. It is in the process of undergoing industrialisation and is categorised as a developing economy. 75% of the population is between the ages of 16-25 years. The young population is vibrant and looking for jobs. Rapid industrialisation using coal as the main fuel has caused widespread pollution in the country. The World Health Organisation (WHO) signaled a health warning and advised the Government agencies to take steps to curb the pollution. The Government has the challenge of fulfilling the job aspirations of the young population on one hand and tackling the issue of air pollution on the other. The Government set up the “Anti-Pollution Regulator” (APR) to monitor the industries that cause pollution.

2. In the meanwhile, a scientist by name Snore Murthy invented a device of the size of a mobile smart phone. The device could generate electricity required for the lighting of a house with 4 LED bulbs. The specialty of this invention is that the electricity is generated whenever there are sound vibrations around the device. Snore Murthy demonstrated his invention to the President of the country. The President was impressed with the invention. Snore Murthy told the President that he was ready to secretly disclose the “detailed description” of his invention to the Government on certain conditions. The conditions were:

- a) The Government had to manufacture the device through a Public Sector Enterprise;
- b) The Government had to market the device through a scheme named after the scientist;
- c) The Government is not supposed to disclose the “detailed description” of his invention to any private agencies; and
- d) The device is to be used for the benefit of the common public and no profits should be made by selling the device.

3. The President put the proposal before the Industries Minister and proposal of the scientist was accepted by the Government. A Public Sector Enterprise by name “Sonoelectric Limited” was created for manufacturing the device. The device was named as “SnoreGenerate”. The device was manufactured and distributed through

¹ Moot problem prepared by Dr. Gagan K, Assistant Professor, SDM Law College, Mangalore, India. Any attempt to contact the author of the moot problem will result in disqualification of the team.

“Snore Murthy Electricity Scheme”. The device contained two main parts Core Module System (CMS) and Accessory Module System (AMS). Scientist Snore Murthy’s invention is found in CMS part. The CMS part was manufactured secretly by Sonuelectric Limited. The manufacturing of AMS part was proposed to be outsourced to private firms. Under the Snore Murthy Electricity Scheme, the Government announced a special subsidy to those private firms who agreed to manufacture and supply the AMS parts. The special subsidy was in the form of reduced electricity tariff and tax benefits.

4. Some private companies saw a huge economic opportunity in manufacturing the AMS part of the device. The Government however laid down a condition that the subsidy is given to only those firms who strictly adhere to the conditions. Several private firms started manufacturing the AMS parts and supplying them to “Sonuelectric Limited” and made huge profits.

5. In the meanwhile, the Anti-Pollution Regulator (APR) noticed high levels of pollution being caused by those industries that were manufacturing AMS parts. The expert team from the “Siesta Institute of Science”² gave a report that the pollution was caused due to the use of a mineral “Procrastium”³ in manufacturing the AMS parts. It also gave a suggestion that if an alternative mineral - “Lethargium”⁴ was used to manufacture AMS part, the pollution could be brought down to a large extent.

6. The Government revised the conditions for the subsidy. The revised condition mentioned that only those firms manufacturing the AMS part by using “Lethargium” were entitled to the Government subsidies. The private firms found out that if they used Lethargium to manufacture the chips, their profit margin would be too narrow. They requested the Government to change the policy. However, the Government did not agree to the request.

7. The mineral Lethargium, over a period of time had lost market value and the labourers working in the mining fields of Lethargium were not getting proper wages. The Government saw this as an opportunity to boost the sales of Lethargium and also to improve the living standards of the labourers.

8. Procrasti Nation is a developed capitalist economy. It is the largest exporter of the mineral “Procrastium”. Siesta imported record quantity of Procrastium due to the manufacturing of AMS parts. When Siesta made it mandatory to use Lethargium for the manufacturing of AMS part, the exports of Procrastium from Procrasti Nation came down. Procrasti Nation lost considerable amount of international trade due to this. Procrasti Nation communicated to Siesta that the steps taken by Siesta are not in the spirit of international trade. Procrasti Nation and Siesta decided to hold consultations as per Article 4 of the Dispute Settlement Understanding (DSU). The consultations failed.

9. After unsuccessful consultations, Procrasti Nation requested to form a Dispute Settlement Body (DSB) under Article 6 of Dispute Settlement Understanding (DSU). Procrasti Nation has complained in the terms of reference, that the policy in “Snore

² Premier Research Institute of Siesta.

³ Procrastium is a mineral found abundantly in the country Procrasti Nation. It is not found in Siesta.

⁴ Lethargium is a special mineral found only in the territory of Siesta.

Murthy Electricity Scheme” violated the principles of WTO and GATT. Siesta has maintained that it has obligations to produce electricity in a clean manner and reduce the pollution in its country. The matter is now before the DSB.

Note:

1. Arguments should be made purely on the basis of issues of law.
2. Facts given in the problem are fixed and shall not be disputed.
3. Teams are required to frame relevant issues from each side.