

INTERNATIONAL COURT OF JUSTICE

COMPROMIS

**BETWEEN THE INDEPENDENT REPUBLIC OF AZANIA AND
REPUBLIC OF ENRODA TO SUBMIT TO THE INTERNATIONAL
COURT OF JUSTICE THE DIFFERENCES ARISING BETWEEN
THE STATES CONCERNING THE INTERPRETATION OF THE
RAZVANA FREE TRADE AGREEMENT**

jointly notified to the Court on August 1, 2009

COUR INTERNATIONALE DE JUSTICE

COMPROMIS

**ENTRE LA REPUBLIQUE INDEPENDANTE D'AZANIA ET LA
REPUBLIQUE D'ENRODA POUR SOUMETTRE AU TRIBUNAL
INTERNATIONAL DE JUSTICE LES DIFFERENCES PRESENTES
ENTRE CES DEUX ETATS AU SUJET DE L'INTERPRETATION DE
L'ACCORD DE LIBRE-ECHANGE DE RAZVANA**

conjointement notifié au Tribunal le 1 août, 2009

**JOINT NOTIFICATION
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 1 August, 2009

On behalf of the Independent Republic Of Azania (“the Applicant”) and the Republic Of Enroda (“the Respondent”), in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honour to transmit to you an original of the Compromis for submission to the International Court of Justice of the Differences between the Applicant and the Respondent concerning the interpretation of The Razvana Free Trade Agreement, signed in New Delhi, India on August 1 , 2009.

Ambassador of the Independent Republic of Azania
to the Kingdom of The Netherlands

Ambassador of the Republic of Enroda
to the Kingdom of The Netherlands

COMPROMIS

**SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE
BY THE INDEPENDENT REPUBLIC OF AZANIA AND THE REPUBLIC OF
ENRODA
ON THE DIFFERENCES BETWEEN THEM
CONCERNING DIFFERENCES ARISING OUT OF THE INTERPRETATION
OF THE RAZVANA FREE TRADE AGREEMENT**

The Independent Republic of Azania and the Republic of Enroda,

Conscious that the Independent Republic of Azania and the Republic of Enroda are Members of the United Nations and the United Nations Charter which calls upon all Members to settle dispute international disputes by peaceful means.

Observing that the Independent Republic of Azania and the Republic of Enroda are parties to the United Nations Framework Convention on Climate Change and the Kyoto Protocol

Acknowledging that the Independent Republic of Azania and the Republic of Enroda are parties to the Razvana Free Trade Agreement

Bearing in mind the importance of free and fair trade to the economic development of the Independent Republic of Azania and the Republic of Enroda

Noting that the Independent Republic of Azania and the Republic of Enroda have been unable to settle their differences through a process of negotiation and mediation

Desiring that the International Court of Justice, hereinafter referred to as the Court, consider these differences

Have agreed as follows

Article I

The Parties submit to the International Court of Justice the questions contained in the Compromis (together with Clarifications to follow) to the International Court of Justice pursuant to Article 40(1) of the Statute of the International Court of Justice.

Article II

- (a) The Parties request the Court to decide this matter on the basis of the provisions of the Razvana Free Trade Agreement, rules and principles of general international law and all applicable treaties.
- (b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its Judgment on the questions presented with respect to the present dispute.

Article III

- (a) Questions of procedure and rules shall be regulated in accordance with the provisions of the Official Rules of the GIMC 2010.
- (b) The proceedings shall comprise written submissions and oral pleadings.

Article IV

- (a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the transmission of any Judgment, the Parties shall enter into negotiations on the modalities for its execution.

Article V

This special agreement shall enter into force upon signature.

Done at New Delhi, India, on the fifteenth day of July 2009, in two copies in the English language.

For the Independent Republic of Azania

/s/

Rasir Donnett

Minister for Foreign Affairs

For the Republic of Enroda

/s/

Rashmir Enka

Minister for Foreign Affairs

COMPROMIS

THE REPUBLIC OF AZANIA V. THE REPUBLIC OF ENRODA

The Case Concerning Razvana Free Trade Agreement

1. The Republic of Azania is a developing nation located in the continent of Razvana. Though a small nation in terms of geographical size, Azania is rich in natural resources, primarily iron ore and diamonds. Commercial exploitation of the natural resources on a large scale however started as late as 1950, when the first iron and steel manufacturing plant was set up in Ranzor, a small town on the western region of the country.
2. The Republic of Enroda is a developed nation located to the west of Azania. It is one of the largest countries of the world spanning over 1.7 million miles. Despite its geographical size, Enroda has extremely limited natural resources. This had however not curbed the natural enterprise of the Enrodean people. For centuries they imported iron ore and crude diamond from Azania and converted it into manufactured steel and polished diamonds in their factories. This led to a unique situation whereby, Enroda emerged in the early twentieth century as the largest manufacturer of iron & steel and polished diamonds despite its limited natural resources. The raw materials imported from Azania were usually at extremely low prices which kept the profit margins of Enrodean enterprises at a particularly high level.
3. The continent of Razvana comprises the independent nation states of Elduars, Randaz, Senteranna, Azania and Enroda which are located in close geographical proximity to each other. Geographical proximity facilitated regional trade in the region leading to increased interdependence within the nation states.
4. With the intent of regulating the regional trade within the Razvana the nation states in the continent of Razvana concluded the Razvana Free Trade Agreement (RFTA) in 1997. The RFTA comprises sixteen annex agreements which regulate various aspects of trade in goods among the member nations of the RFTA.

5. For centuries Azania was ruled by a monarchy. In 1940, King Ruzbin the King of Azania abdicated his throne to initiate a transition to democracy. In the first national elections held in 1940 the Azanian Democratic Party (ADP) came to power with an absolute majority. The ADP rule spanning over a period of thirty five years is described by many intellectuals as the worst period of Azanian history. The ADP succeeded in doing little than establish an absolute dominance in Azanian politics through a combined policy of violence and corruption. The absence of a credible opposition to challenge the inefficiency of the ADP ensured that the country was reduced to a one party rule.
6. In 1972, a hitherto unknown organization which referred to itself as the Azanian Students for Economic Self Reliance (ASESR) started gaining popularity. Its message of developing Azania into a strong state capable of being economically self reliant struck a chord not just among the younger masses but also among the older population who had for many years accepted the economic inferiority of their state.
7. The popularity of their movement spread to far flung areas of Azania. A rally organized by the ASESR in the capital city of Aztarang witnessed the participation of almost five lakh people comprising not just students but also industrial workers and farmers, many of whom had travelled for days to participate in the rally.
8. The ASESR was lead by Randon Sikka, a charismatic young economist who emphasized that the only way Azania could aspire to be a developed nation was through a process of industrialization. He wowed that the ASESR would organize itself into a political force to fight the inefficient government lead by the ADP.
9. In the national elections of 1975, ASESR registered itself as a political party with the Election Commission. The elections resulted in a complete route for the ADP with the ASESR getting an absolute majority in the National Senate winning seventy of the eighty seats.
10. In its first policy announcement, the ASESR introduced the Industrial Policy, 1976. The policy put forth a framework of industrialization with a stated goal of

- increasing the number of industries especially in the primary sector, like iron and steel to ten times its present number. The energy resources for the industry were to be met through the abundant resources of coal and natural gas in the country.
11. Iron ore which was exported to Enroda at cheap prices now began to be consumed in the domestic iron and steel industry of Azania. The effect of industrialization on the economic prosperity of Azania was enormous. The per capita income which had been abysmally low increased three times over a short period of ten years.
 12. Prosperity in Azania has come at a price of the environment. The vast use of thermal energy accompanied by the huge increase in vehicular pollution has led to a significant increase in the overall level of pollution in the country.
 13. The World Environment Conservation Agency in a survey carried out in 2000 noted that Azania was one of three largest emitter of green house gas in the world. It called upon Azania to contribute towards reducing greenhouse gas emissions through proactive steps to address climate change.
 14. Azania in part due to international pressure signed and ratified the United Nations Framework Convention on Climate Change, 1995 which it joined as a non Annex I member country. On its own initiative Azania has taken some steps to address the concern of climate change. The Government in 2003 introduced the Climate Change Executive Order, 9288 which introduced certain regulations with an objective of limiting emission of green house gases. Environmentalists while welcoming the Order as the first step in Azanian efforts were critical of the fact that industrial pollution which comprised the primary source of pollution in Azania was kept out of the purview.
 15. In a press release subsequent to the introduction of the Executive Order the Minister of Environment in Azania declared: *“We are committed to addressing international concerns on climate change. At the same time however we must reiterate that a developing nation such as ours is hardly in a position to impose harsh regulations on our infant industries which would make their survival difficult. The steps taken by us are unique and we hope that more developing*

countries will join us in addressing climate change through measures which are sustainable and equitable”.

16. Since 1976, when Azania ventured on a path of industrialization, the supernormal profits made by manufacturers in Enroda have eroded, especially in the iron and steel sector. By 1992 exports of steel from Azania had started to compete with exports from Enroda in third country markets.
17. The production costs of the Enrodean industries marginally increased in light of the environmental regulations imposed by the Government on domestic producers. Enroda was one of the first countries to put in place a carbon tax mechanism to regulate carbon emission by industries in the year 1996. The carbon tax charged was on actual usage of coal, oil and other fossil fuels at a fixed rate. In 2005 the rate was increased by twenty five percent from 1996 levels.
18. The Government of Enroda with an objective of restoring Enrodean supremacy in the international steel market introduced the concept of Free Trade Zones (FTZ) in 2000.
19. Free Trade Zones were large tracts of land located near to port towns. Industries would be set up in the FTZ. The manufacturing units located in the FTZ would be allowed to import inputs used in the manufacturing process without payment of customs duty or any duty applicable on imports as long as the final product was destined for exports. The regulation of FTZ was to be through the Enroda Free Trade Zones Act, 2000 which was passed by the Parliament of Enroda.
20. The Free Trade Zones had the desired effect. Cost of production of the iron and steel industry decreased significantly while exports increased by almost five times over the next five years. Cheap exports from Enroda started to displace steel manufactured in Azania not only from third country markets but also the domestic market in Azania.
21. The domestic manufacturers of steel in Azania concerned with the surge in imports from Enroda petitioned the Azanian Commission in January 2007 to initiate a countervailing duty investigation against steel import from the country.

They alleged that duty exemptions given to imports of iron ore and other inputs constituted prohibited export subsidies. It was alleged in the petition of the domestic industry that the concessions granted constituted subsidies prohibited under the Razvana Agreement on Subsidies and Countervailing Measures. The petition alleged that the FTZ ACT did precious little to ensure that the duty exempt raw materials imported into the FTZ was used for the manufacture of destined exports thereby avoiding the possibility of excess remission.

22. In its finding the Azanian Commission determined that the exemption of duty on raw materials for steel manufactured in an FTZ did indeed comprise a prohibited export subsidy. It was further established that the subsidized import of steel from Enroda had caused material injury to the domestic industry of Azania. A countervailing duty of sixty percent – eighty percent was imposed on three exporters of steel products from Enroda.

23. The development evoked a sharp response from Enroda. The Trade Minister of Enroda in a press statement stated

“It is sad that Azania has decided to pursue this course of action. Duty exemption on goods destined for exports are accepted norms of international trade and is recognized as such by international trade organizations such as the World Trade Organization and indeed the RFTA. While there exists no mechanism for absolute correlation of inputs with the end product, the Free Trade Zones Act ensures that the importers respect the commitment for exports not only because they are required to do so, but as they are left by the Act with no other choice. We will enter into immediate consultations with our counterparts in Azania to address the concerns of our exporters.”

The consultations made little headway with both countries remaining adamant about their respective position.

24. On 25th November, 2008 the Carbon Tax Regulation Act was introduced in the Enrodean Parliament and passed by both houses of the Parliament. Section 17 of the Act provided for the imposition of a carbon tax on imports of goods equivalent to the level of tax charged to the domestic industry of the like goods.

- The tax was to be charged at the border and would be charged on goods originating in countries included in Annex A of the Act. Annex A countries comprised all nations included in Annex I of the UNFCCC, developed nations not part of the UNFCCC as well as developing nations in an advance stage of development. Azania was categorized as an Annex A state.
25. The Government of Azania reacted to the development with absolute fury. In his statement to the press on 26th November, 2008 the Minister for Trade of Azania described the Carbon Tax Regulation Act as nothing more than a disguised barrier to trade, a violation of the scheduled commitments undertaken by Enroda and a reaction to the justified steps taken by Azania to impose countervailing duties on subsidized steel from Enroda.
 26. With an objective of finding an amicable settlement to the trade dispute between the two nations, the Trade Minister of Azania invited his counterpart in Enroda to negotiate a settlement to this impasse. The consultations made little headway as Enroda insisted on removal of countervailing duties on steel which had been imposed by Azania, a step Azania declared would result in justifying an act prohibited by the RFTA.
 27. After the failure of consultations, negotiations and mediations to resolve the dispute, the parties agreed to submit their dispute to the International Court of Justice on March 2009.
 28. The parties have raised the following issues before the International Court of Justice.

Azania

- a. The duty exemptions on import of raw materials for the steel industry is a subsidy prohibited under the Razvana Agreement on Subsidies and the imposition of a countervailing duties is consistent with the provisions of the Agreement.

- b. The imposition of a border tax on imports is in violation of the market access commitments undertaken by Enroda and is not justified by the General Exceptions to the Razvana Agreement on Trade in Goods.

Enroda

- a. The duty exemptions on import of raw materials for the steel industry is not a subsidy prohibited under the Razvana Agreement on Subsidies and the imposition of a countervailing duties is inconsistent with the provisions of the Agreement.
- b. The imposition of a border tax is justified under the General Exceptions to the Razvana Agreement on Trade in Goods

ANNEXURE I

RAZVANA FREE TRADE AGREEMENT

AGREEMENT ON SETTLEMENT OF DISPUTES ARISING OUT OF THE RFTA

(EXCERPTS)

ARTICLE 27: RULES OF INTERPRETATION

1. The RFTA shall be interpreted in accordance with the rules of treaty interpretation under public international law.
2. The decision of the WTO Panel & Appellate Body, other international tribunals and “the general principles of law recognized by civilized nations” shall serve as a subsidiary source of law in the interpretation of the provisions of the RFTA.

ARTICLE 31: DISPUTE RESOLUTION

1. Any differences which may arise between the Member States of the RFTA concerning the interpretation or application of the RFTA or any agreement annexed thereof, shall, as far as possible, be settled amicably between the Member States. Wherever necessary Member States may refer their dispute to the International Court of Justice or any international tribunal set up by mutual agreement between the Member States.

RAZVANA AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

1. The provisions of Razvana Agreement on Subsidies and Countervailing Measures are pari materia with the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

RAZVANA AGREEMENT ON TRADE IN GOODS

(EXCERPTS)

ARTICLE 3

Schedules of Concessions

1. (a) Each Member of the RFTA shall accord to the commerce of the other Member treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.

(b) The products described in the Schedule relating to any Member state, which are the products of territories of other Member State, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.
2. Nothing in this Article shall prevent any Member State from imposing at any time on the importation of any product:
 - (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of Article III of the RFTA in respect of the like domestic product or in respect of an article from which the imported product has been manufactured or produced in whole or in part;
 - (b) any anti-dumping or countervailing duty applied consistently with the provisions of this Agreement;
 - (c) fees or other charges commensurate with the cost of services rendered.
3. No Member State shall alter its method of determining dutiable value or of converting currencies so as to impair the value of any of the concessions provided for in the appropriate Schedule annexed to this Agreement.
4. If any Member State establishes, maintains or authorizes, formally or in effect, a monopoly of the importation of any product described in the appropriate Schedule annexed to this Agreement, such monopoly shall not, except as provided for in that Schedule or as otherwise agreed between the parties which initially negotiated the concession, operate so as to afford protection on the average in

excess of the amount of protection provided for in that Schedule. The provisions of this paragraph shall not limit the use by Member State of any form of assistance to domestic producers permitted by other provisions of this Agreement.

5. If any Member State considers that a product is not receiving from another Member State the treatment which the first Member State believes to have been contemplated by a concession provided for in the appropriate Schedule annexed to this Agreement, it shall bring the matter directly to the attention of the other Member State. If the latter agrees that the treatment contemplated was that claimed by the first Member State, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such Member State so as to permit the treatment contemplated in this Agreement, the two Member State, together with any other Member State substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.
7. The Schedules annexed to this Agreement are hereby made an integral part of this Agreement.

Article 4

National Treatment on Internal Taxation and Regulation

1. The Member State recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.
2. The products of the territory of any Member State imported into the territory of any other Member State shall not be subject, directly or indirectly, to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products. Moreover, no Member State shall otherwise apply internal taxes or other internal charges to imported or domestic products in a manner contrary to the principles set forth in paragraph 1.
3. The products of the territory of any Member State imported into the territory of any other Member State shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

5. No Member State shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no Member State shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.
6. No internal quantitative regulation relating to the mixture, processing or use of products in specified amounts or proportions shall be applied in such a manner as to allocate any such amount or proportion among external sources of supply.

Article 20

General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) necessary to protect human, animal or plant life or health;
- (c) imposed for the protection of national treasures of artistic, historic or archaeological value;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

Schedule of Concessions

Participants are requested to note the following

1. The bound rate of duty undertaken by Enroda as well as the applied rate of duty is 10 percent for all non agricultural goods relevant to the present dispute.
2. The imposition of a border tax adjustment is going to result in imposition of a tax at the border which at the very least is going to be above 10 percent.

ANNEXURE II

THE ENRODA FREE TRADE ZONES ACT, 2001

Section 2 (a) - A Free Trade Zone (FTZ) is an enclave of units operating in a well defined area within the geographical boundary of a country where certain economic activities are promoted by a set of policy measures that are not generally applicable to the rest of the country.

Section 15: (a) any goods removed from a Free Trade Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the relevant laws of Enroda, where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Free Trade Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

Section 16: The grant of exemption on import duties on imports of raw material and inputs utilized in the manufacturing process by a manufacturing unit in the Free Trade Zone shall be subject to the following conditions

(a) The Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earnings;

(b) Every Unit and Developer shall maintain proper accounts, financial year wise, and such accounts which should clearly indicate in value terms the goods imported or procured from the domestic market of Enroda, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Free Trade Zone.

(c) In the event of a theft of duty exempted raw materials and inputs on its way to the free trade zones or under any other circumstances which may so arise, the manufacturing unit shall within a period of one month of such theft pay to the Government of Enroda through the Free Trade Zones officers so designated a sum commiserate to the duty exemption availed by it.

Where manufacturing unit does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed by it.

(d) The unit should be able to account for the entire quantity of each category of homogenous goods imported / procured duty free, by way of exports, sales/supplies in DTA or transfer to other units in the FTZ and balance in stock. However, at no point of time the units shall be required to co-relate every import consignment with its exports, transfer to other units in the FTZ, sales in the DTA and balance in stock.

ANNEXURE III

AZANIA CLIMATE CHANGE EXECUTIVE ORDER, 9288

EXCERPTS

ORDER 13: POLLUTION RESULTING FROM VEHICULAR EMISSION

- A. Commercial vehicles including stage and contract carriers registered with the Enroda Motor Vehicles Authority are forbidden from using vehicles which have been manufactured in Azania or in their country of origin prior to 1st January, 1990.
- B. Commercial vehicles including stage carriers, contract carriers and goods carriers registered with the Enroda Motor Vehicles Authority are instructed to shift to compress natural gas within a period of 365 days commencing from the date of the order.
- C. All vehicles registered for personal use with the Enroda Motor Vehicles Authority are instructed to shift to compress natural gas within a period of 730 days commencing from the date of the order.
- D. Failure to abide by the Order shall result in seizure of the vehicle accompanied by the imposition of a fine to be accompanied by a fine of 90, 000 Azania Dollars or simple imprisonment for a period of two years or both.