

Written Test for Team Members of 2025 FIAMC

Before reading the facts and questions, we would like to offer some kind suggestions to the candidates. You may not be familiar with the fields of international investment law and international arbitration, which is normal and well-understood. It should be noted that this written examination is for testing your capability of comprehending English texts, conducting English legal researches and organizing logical legal arguments. Do not be panicked, please enjoy the exploration of a novel field of international law. Good luck!

Facts:

1. This case study focuses on the Federal Reserve's actions related to the gold standard. All events are historical, unless otherwise stated. The arbitrations and facts in the Disputes section are fictional, as is the 1929 Swiss-U.S. BIT. Participants should assume that all international law sources and authorities as of June 1, 2025, apply to these events.

2. On December 23, 1913, President Wilson signed the Federal Reserve Act, creating the Federal Reserve and incorporating the gold standard. The Act required the Fed to maintain gold reserves backing U.S. dollars and exchange gold into U.S. Dollars at a statutory price of \$ 20.67 per ounce gold.

3. On October 24, 1929 (Black Thursday), the U.S. stock market crashed. During the subsequent Great Depression (1929-1933), Britain left the gold standard in 1931, sparking fears the U.S. would follow. This led to a large outflow of gold. In response, the Fed raised interest rates to attract foreign investment and stabilize gold reserves.

4. On 27 February 1933, Uebersee Finanz-Korporation Aktien Gesellschaft [in this Case-Study: "Uebersee"] acquired for use in its affairs gold coins of the United States of the face value of \$ 1,250,000.00, and known as double eagles. At \$ 20.67 per ounce, this amount equaled 60,474.12 ounces of gold.

5. On 2 March 1933, it caused these double eagles to be delivered to Ladenburg, Thalmann Co. for storage, and the latter, when it received the gold, agreed to return it to the complainant on demand. Ladenburg, Thalmann Co. is a U.S. private merchant bank.

6. On 9 March 1933, U.S. Congress passed the Emergency Banking Act. Sect. 2 stated:

“[T]he President may investigate, regulate, or prohibit hoarding gold or silver coin or bullion or currency, by any person within the United States or anyplace subject to the jurisdiction thereof.”

7. Section 3 of the Emergency Banking Act provided:

“The Secretary of the Treasury may require entities to surrender their gold holdings to the

U.S. Treasurer if necessary to protect the U.S. currency system, at the Secretary's discretion."

8. On 5 April 1933, President Roosevelt issued Executive Order No. 6102. The Order stated:

"Section 2. All persons are hereby required to deliver on or before 1 May 1933, to a Federal Reserve Bank or a branch or agency thereof or to any member bank of the Federal Reserve System all gold coin, gold bullion and gold certificates now owned by them or coming into their ownership on or before 28 April 1933 [...].

Section 3. Until otherwise ordered any person becoming the owner of any gold coin, gold bullion, or gold certificates after 28 April 1933, shall, within three days after receipt thereof, deliver the same in the manner prescribed in Section 2 [...].

Section 4: Upon receipt of gold coin, gold bullion or gold certificates delivered to it in accordance with Sections 2 or 3, the Federal Reserve Bank or member bank will pay therefor an equivalent amount of any other form of coin or currency coined or issued under the laws of the United States."

9. On 20 April 1933, President Roosevelt issued Executive Order No. 6111. Section 1 stated:

"Until further order, the earmarking for foreign account and the export of gold coin, gold bullion or gold certificates from the United States or any place subject to the jurisdiction thereof are hereby prohibited."

10. On 25 May 1933, "the Attorney General rendered an opinion to the effect that the Executive Order of 5 April 1933, No. 6102, had no concern with foreign owners of gold not within the United States. That opinion, however, by its very terms, did not purport to construe the [Emergency Banking Act], but only the Executive Order of 5 April 1933."

11. In May 1933, [Uebersee] desired to transfer the gold to its own domicile in Switzerland, and caused Ladenburg, Thalmann Co. to apply for a license from the Secretary of the Treasury to export the coins and to that end to have them placed to the credit of the Central Bank of Switzerland. The effect of exportation would have been to enable the complainant to realize upon the gold in its own country a value in excess of \$ 2,100,000.

12. On 6 July 1933, the Acting Secretary of the Treasury, in reply to the application by Ladenburg, Thalmann Co. for the export license, stated that, in the opinion of the Attorney General, the Executive Order of 5 April 1933 [...] forbidding the hoarding of gold, did not apply to persons who had not subjected themselves to the jurisdiction of the United States, but added that the Executive Order of 20 April 1933 [...] prohibited the export of gold by any person except in certain specific cases enumerated in that order.

13. By October 1933, the economy stalled despite a 30% drop in the dollar. Roosevelt followed Professor Warren's advice to further devalue the dollar by having the government buy gold.

14. On 30 January 1934, the U.S. Gold Reserve Act entered into force. The Act stated:

“Section 3. The Secretary of the Treasury shall [...] prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and, (c) for such other purposes as in his judgment are not inconsistent with the purposes of this Act. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by and subject to the conditions prescribed in, or pursuant to, such regulations.

Section 4. Any gold withheld, acquired, transported, melted or treated, imported, exported, or earmarked or held in custody, in violation of this Act [...] or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and maybe seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition, any person failing to comply with the provisions of this Actor of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred. [...]

Section 5. No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: Provided, however, That coinage may continue to be executed by the mints of the United States for foreign countries [...].All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct.

Section 6. Except to the extent permitted in regulations which may be issued hereunder by the Secretary of the Treasury with the approval of the President, no currency of the United States shall be redeemed in gold. [...]

Section 17. All Acts and parts of Acts inconsistent with any of the provisions of this Act are hereby repealed.”

15. On 18 April 1934, [Uebersee], through its president, executed in Switzerland an application to the Secretary of the Treasury [...] for a license to have the gold coins transferred to the Federal Reserve Bank of New York, to be held in custody for Banque Nationale Suisse, the central bank of Switzerland.

16. This application was filed with the Treasury Department on 9 May 1934, by Ladenburg, Thalmann Co., pursuant to instructions of [Uebersee].

17. On 18 February 1935, the U.S. Supreme Court announced its judgments in two separate

matters, holding that the 1933 Emergency Banking Act was constitutional.

18. “On 8 May 1935, Ladenburg, Thalmann Co. received a letter from Acting Secretary of the Treasury T.J. Coolidge, stating that the application to have the gold coins transferred to the Federal Reserve Bank of New York to be held in custody for the Banque Nationale Suisse had been denied, that the applicant had been directed to deliver such gold to the Federal Reserve Bank of New York for the account of the Treasurer of the United States against payment, and that, if such gold was then in the possession of Ladenburg, Thalmann Co., or under their control, they were directed to deliver it forthwith to the Federal Reserve Bank of New York for the account of the Treasurer of the United States.”

19. The letter set the payment at “*the dollar face amount.*” That is, the Secretary for the Treasury decided that in compensation for its gold coins Uebersee would receive \$ 1,250,000.

20. “From time to time subsequent to 4 May 1935, and as a result of discussions between counsel for [Uebersee] and representatives of the Treasury, the Department indicated that it would temporarily refrain from taking action, in respect of its demand, for certain limited periods which were successively extended until 15 June 1935.

21. On 14 June 1935, the attorneys for [Uebersee], anticipating the termination of further forbearance, demanded that Ladenburg, Thalmann Co. deliver to Mr. Kresel, [Uebersee’s] solicitor, the gold coins in its possession. This demand was refused, and Ladenburg, Thalmann Co. commenced to have the gold loaded into a truck for delivery to [Ladenburg, Thalmann Co.] and transfer by it to the Treasurer of the United States.”

22. Afterwards, Uebersee sued Ladenburg, Thalmann Co., and the Federal Reserve in the U.S. District Court for the Southern District of New York. Uebersee argued that the payment of a mere \$ 1,250,000 would be insufficient because the gold would have been worth \$ 2,100,000 in Switzerland. Moreover, it requested that the court order the Federal Reserve to transfer the gold to Uebersee or its designee if it had received the gold and enjoin the defendants from transferring the gold to any party other than the plaintiff during the litigation. The court dismissed this request.

23. Subsequently, Uebersee appealed the judgment. On appeal, “it [was] argued [by Uebersee] that [the Emergency Act of 9 March 1933’s] provisions did not affect the complainant if the latter, as is claimed, was not in business or, to use the common legal terms, was not ‘found’ or ‘present’ within the United States.” The U.S. Court of Appeals rejected Uebersee’s appeal, and the U.S. Supreme Court confirmed the decision of the Court of Appeal in full.

The Dispute

24. On 1 January 1929, the Agreement on the Reciprocal Promotion and Investments between Switzerland and the U.S. (the “BIT”) entered into force.

25. In 1935, Uebersee’s gold was delivered to and confiscated by the Federal Reserve.

26. On 28 August 1939, Uebersee finally received payment of \$ 1,250,000 by the Federal Reserve for Uebersee's gold delivered to and confiscated by the Federal Reserve.

27. On 21 March 1940, Uebersee sent a letter to the President of the U.S., the State Department and the Treasury, notifying the U.S. that Uebersee considers the conduct of the Federal Reserve to be in violation of the Swiss-U.S. BIT, that Uebersee claims damages and that Uebersee invites the U.S. to settle the dispute amicably. Uebersee also informed that it accepted the offer to arbitrate under Article 10(4) lit. c Swiss-U.S. BIT. Uebersee did not receive any answer.

28. On 1 October 1940, Uebersee (**CLAIMANT**) filed a Statement of Claim against the U.S. (**RESPONDENT**). Claimant requested the Tribunal to declare that the United States breached its Treaty obligations through the Measures and to order the United States to pay damages valued as of the Award date.

The argument of RESPONDENT:

i. The U.S. objects to the Tribunal's jurisdiction *ratione materiae*. The gold allegedly purchased by the Claimant does not constitute an *Investment* within the meaning of the BIT. First, in U.S. courts, the Claimant itself asserted that it "was not in business" in the U.S. Second, the mere hoarding of gold does not meet the criteria set out in Article 1 *lit.* a,b BIT. Third, the BIT must exclude purely commercial transactions from its scope of application, *inter alia*, because it also included the option of ICSID arbitration.

The argument of CLAIMANT:

i. Claimant's gold is an *Investment* under Article 1 *lit.* a BIT, because the gold is an asset; the gold was Claimant's property; the gold was acquired for indefinite duration; and the gold involved a substantial amount of risk given the gold's value. Contrary to the U.S.' assertions, Article 1 *lit.* a BIT does not include any further requirement to contribute to the host State's economy.

Issue:

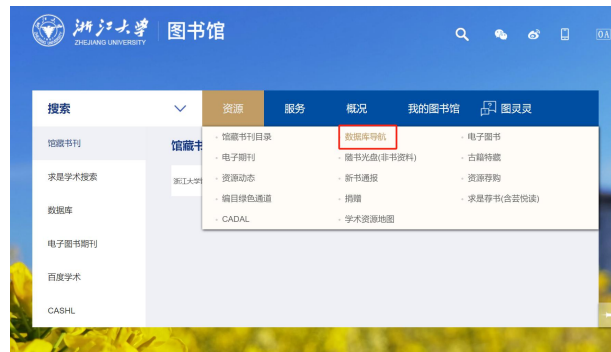
Please analyze: whether the Arbitral Tribunal has **jurisdiction *ratione materiae*** in the case. Choose one party, do legal research and write a memo around the party's argument.

Requirements and suggestions:

1. It will be preferred if the written memo contains clear argument, along with detailed reasoning and solid supporting authority. The word count of the memo will not be deemed as an important factor when evaluating the quality of memo.
2. Several databases are recommended for the legal researches.
 - 1) Kluwer Arbitration: <https://www.kluwerarbitration.com/>
 - 2) Heinonline: <https://heinonline.org/HOL/Welcome>
 - 3) Investment Claims: <https://oxia.ouplaw.com/>

[Please browse the above websites under ZJU Internal WIFI]

You may also use the website of ZJU Library to access these websites:



3. For the convenience of this written test, the facts of the original case file have been simplified. You may refer to the original case file in the attached zip file for further details.
4. Please send the written memo **by the end of January 20th** to 3220102598@zju.edu.cn.