

13th GNLU INTERNATIONAL MOOT COURT COMPETITION 2022

IN THE WORLD TRADE ORGANISATION PANEL



**VALARIA – MEASURES AFFECTING THE IMPORTATION
AND MARKETING OF COSMETIC PRODUCTS**

DANIZIA
(Complainant)

v.

VALERIA
(Respondent)

-WRITTEN SUBMISSION FOR THE COMPLAINANT-

TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....iv

INDEX OF AUTHORITIES vi

Treaties and Conventions vi

Panel Reports, Appellate Body Reports and Advisory Opinions vi

Books & Articlesviii

Miscellaneous Authorities..... ix

STATEMENT OF FACTS x

THE PARTIES x

THE SUSTAINABLE CONSUMPTION AND PRODUCTION INITIATIVE x

DISCUSSIONS AMONGST WTO TBT COMMITTEE..... xi

DANIZIA’S PANEL REQUEST xi

FURTHER ACTION xi

MEASURES AT ISSUE xiii

SUMMARY OF PLEADINGS..... 14

LEGAL PLEADINGS 16

1. ISLE OF NYSA’S REQUEST TO FILE AN AMICUS CURIAE BRIEF MAY BE ACCEPTED BY THE
PANEL 16

1.1. Interpretation of the “right to seek” conferred upon the Panel under Article 13.1 of the DSU 16

1.2 Discretion of the Panel to accept amicus curiae briefs..... 18

2. THROUGH THE LABELLING REQUIREMENT IN SECTION 6 OF THE ETHICAL COSMETICS ACT
2021, VALARIA APPLIES A TECHNICAL REGULATION WITH THE VIEW TO AND WITH THE
EFFECT OF CREATING UNNECESSARY OBSTACLES TO INTERNATIONAL TRADE, IN
VIOLATION OF ARTICLE 2.2 OF THE TBT AGREEMENT..... 19

2.1 That the labelling requiremnets amounts to a technical regulation..... 20

2.2 Technical Regulation of ECA does not seek to achieve a legitimate objective.....	21
2.3 That the measures are more trade-restrictive than necessary to fulfill a legitimate objective.	22
3. THROUGH THE EQUIVALENCY FEE IN SECTION 5 OF THE SUSTAINABLE TAXATION (AMENDMENT) ACT 2021, VALARIA SUBJECTS IMPORTED COSMETIC PRODUCTS TO INTERNAL TAXES OR OTHER INTERNAL CHARGES IN EXCESS OF THOSE APPLIED TO LIKE DOMESTIC PRODUCTS, IN VIOLATION OF ARTICLE III:2 OF THE GATT 1994.	26
3.1. Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with GATT Art III:2, first sentence.....	28
3.2. Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with GATT Art III:2, second sentence.....	31
4. THROUGH THE CERTIFICATION REQUIREMENT IN SECTION 8 OF THE ETHICAL COSMETICS ACT 2021, VALARIA SITES FACILITIES USED IN CONFORMITY ASSESSMENT PROCEDURES IN A MANNER SUCH AS TO CAUSE UNNECESSARY INCONVENIENCE TO APPLICANTS OR THEIR AGENTS, IN VIOLATION OF ARTICLE 5.2.6 OF THE TBT AGREEMENT.....	33
4.1. Valeria does not implement the obligations set out in Article 5.1.1 of TBT.....	34
4.2. Valeria’s acts are inconsistent with Article 5.1.2 of TBT.....	37
4.3. Valeria does not implement the obligations set out in article 5.2.6 of TBT.....	40
REQUEST FOR FINDINGS.....	xii

LIST OF ABBREVIATIONS

AB	Appellate Body
Annex	Annexure
Art.	Article
ECA	Ethical Cosmetics Act 2021
STA	Sustainable Taxation Act
Doc.	Document
DSR	Dispute Settlement Records
DSU	Dispute Settlement Understanding
EC/ECU	European Committees
EU	European Union
ECC	European Economic Committee
GATS	General Agreement on Trade and Services
GATT	General Agreement on Tariffs and Trade
TBT	Technical Barriers to Trade
TPP	Trans Pacific Partnership
Id.	Ibidem

13th GNLU International Moot Court Competition 2022

No.	Number
UN	United Nations
US	United Sates
Vol.	Volume
WT/DS	World Trade/ Dispute Settlement
WTO	World Trade Organization

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

1. Agreement on Technical Barriers to Trade 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 UNTS 120.
2. Dispute Settlement Rules: Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.Y.S 401, 33 I.L.M. 1226 (1994)
3. General Agreement on Tariffs and Trade 1994 art III, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187
4. Vienna Convention on the Law of treaties (22 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

PANEL REPORTS, APPELLATE BODY REPORTS AND ADVISORY OPINIONS

1. Appellate Body Report, *Australia – Certain Measures concerning Trademarks, Geographical Indications and other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS441/AB/R, adopted 29 June 2020.
2. Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, WT/DS18/AB/R adopted 6 November 1998.
3. Appellate Body Report, *Brazil - Certain Measures Concerning Taxation and Charges*, WT/DS472/AB/R; WT/DS497/AB/R
4. Appellate Body Report, *Canada — Certain Measures Concerning Periodicals*, WT/DS31/AB/R adopted 30 June 1997
5. Appellate Body Report, *China— Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audio-visual Entertainment Products*, WT/DS363/AB/R adopted 19 January 2010.
6. Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R adopted 5 April 2001
7. Appellate Body Report, *European Communities—Customs Classification of Frozen Boneless Chicken Cuts*, WT/DS269/AB/R, WT/DS286/AB/R adopted on 12 September 2005

8. Appellate Body Report, *Japan — Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R adopted 4 October 1996.
9. Appellate Body Report, *Korea – Measures Affecting Imports Of Fresh, Chilled And Frozen Beef Korean beef*, WT/DS161/AB/R, WT/DS169/AB/R adopted 11 December 2000
10. Appellate Body Report, *Russia - Measures Affecting the Importation of Railway Equipment and Parts thereof*, WT/DS499/AB/R, adopted 4 February 2020
11. Appellate Body Report, *Thailand - Customs and Fiscal Measures on Cigarettes from the Philippines*, WT/DS371/AB/R adopted 17 June 2011
12. Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R adopted 20 April 2005
13. Appellate Body Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, adopted 24 April 2012
14. Appellate Body Report, *United States – Measures Concerning The Importation, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, WT/DS381/AB/R adopted 16 May 2012
15. Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/RW, adopted on 16 May 2012
16. Appellate Body Reports, *Canada- Continued Suspension of Obligations in the EC-Hormones Dispute*, WT/DS321/AB/R adopted 16 October 2008
17. Appellate Body Reports, *European Communities-Trade description of Sardines*, WT/DS231/AB/R adopted 26 September 2002
18. Appellate Body Reports, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R adopted 12 October 1998
19. GATT Panel Report, *United States - Section 337 Of The Tariff Act Of 1930*, L/6439 - 36S/345 adopted 7 November 1989
20. GATT Panel Report, *United States—Taxes on Petroleum and Certain Imported Substances*, L/6175 adopted 17 June 1987
21. Panel Report *Argentina – Measures affecting the export of Bovine Hides and the Import of Finished Leather*, WT/DS155/R adopted on 19 December 2000
22. Panel Report, *Australia – Certain Measures concerning Trademarks, Geographical Indications and other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, WT/DS458/R, WT/DS441/R, WT/DS435/R, WT/DS467/R Add.1 and Suppl.1, adopted 27 August 2018.

23. Panel Report, *European Communities – Trade Description of Sardines*, WT/DS231/R adopted 23 October 2002
24. Panel Report, *European Communities- Regime for the Importation, Sale and Distribution of Bananas (Recourse to Article 21.5 of the DSU by the United States)*, WT/DS27/RW/USA adopted 19 May 2008
25. Panel Report, *Russia – Measure affecting the importation of Railway Equipment and parts thereof*, WT/DS499/R adopted on 30 July 2018
26. Panel Report, *United States – Measures Affecting the Production & Sale of Clove Cigarettes*, WT/DS406/R adopted 2 September 2011
27. Panel Report, *United States – Standards for Reformulated and Conventional Gasoline* WT/DS2/R adopted 20 May 1996
28. Panel Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R, WT/DS401/R adopted on 25 November 2013
29. Panel Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/R / WT/DS386/R adopted 23 July 2012

BOOKS & ARTICLES

1. Gabrielle Marceau, *The New TBT Jurisprudence in US - Clove Cigarettes, WTO US - Tuna II, and US –COOL*, 8 ASIAN J. WTO & INT'L HEALTH L & POL'Y, 1, 11 (March 2013).
2. Hestermeyer, *Article III GATT 1994*, in 3 WTO – TECHNICAL BARRIERS AND SPS MEASURES 1, 5 (Rudiger Wolfrum et al. eds., 2007).
3. Neven, Damien J. (2001) 'How Should "Protection" Be Evaluated in Article III GATT Disputes?' 17 *European Journal of Political Economy* 421.
4. *The Law and Policy of the World Trade Organization Text, Cases and Materials*, pp. 320 - 400 <https://doi.org/10.1017/CBO9780511818394.006>, Cambridge University Press (2008), <https://www.cambridge.org/core/books/abs/law-and-policy-of-the-world-trade-organization/principles-of-nondiscrimination/2D5B5EC0DF14BD9BE4C20F5BDD820F95>
5. Peter Van Den Bossche, *The Law And Policy Of The World Trade Organization: Text, Cases And Materials* 820 (Cambridge University Press, 2008).
6. Sharif Bhuiyan, *National Law In WTO Law: Effectiveness And Good Governance In The World Trading System* 44-46 (1st Ed, 2007).

MISCELLANEOUS AUTHORITIES

1. Bryan A. Garner, Black's Law Dictionary, West Group, St. Paul, Minn., 1999, 7th edition, p. 83
2. Ministry of Economy, Trade and Industry, NATIONAL TREATMENT PRINCIPLE, <https://www.meti.go.jp/english/report/downloadfiles/gCT0322e.pdf>
3. WTO Technical Barriers and SPS Measures, 220 (Max Planck Commentaries on World Trade Law, Max Planck Institute for Comparative Public Law and International Law ed. 2007).

STATEMENT OF FACTS

THE PARTIES

The Federal Republic of Valaria (Valaria), is a developed nation located in the Catan region. Valaria is distinguished as one of the world's few mega diverse countries and being a founding member of WTO, it regularly advocates for initiatives that reconcile environmental sustainability, economic prosperity, and resilience at the WTO. Danizia is a large island nation in the Barando Ocean and a Member of the WTO. It is widely regarded as a hub for testing on marine animals for scientific and market purposes.

THE SUSTAINABLE CONSUMPTION AND PRODUCTION INITIATIVE

On 4 March 2014, Valaria adopted a resolution introducing a series of legislative reforms aimed at reducing carbon emissions by 50% within a 10 year period. The most significant of these was the Sustainable Taxation Act enacted on 1 April 2014, which established an internal tax for carbon emissions. The Act also applied carbon costs equivalent to those borne by local producers to importers with a view to prevent carbon leakage. In 2019, five years after the enactment of the Sustainable Taxation Act, a Regulatory Scrutiny Board constituted issued its report which made several findings about the achievements and shortcomings of the Act. Notably, the Board concluded that narrowing the coverage of the Act to fewer sectors during the initial stage of the implementation of the Act would have made its implementation more manageable. The Government of Valaria soon began considering the next phase of the SCPI. To better understand and consider the viewpoints of all stakeholders affected by the SCPI, a national online survey was held and following the results of this survey, the Valarian government decided to focus its efforts towards securing a high level of animal welfare and protection of biodiversity in the country. The MoFWC further conducted a survey and the results of the survey and consultations pointed at three product areas in which action to promote animal welfare was preferred and organized them in decreasing order of priority as follows: (i) housing appliances; (ii) food and clothing; (ii) drugs, cosmetics and household products.

A Special Committee of the Animal Welfare Board as directed by the MoFWC released its report on 28 September 2020. The committee noted the large-scale uses of animals in research and testing across a variety of sectors. As a result, the Valarian Parliament tabled the Draft Ethical Cosmetics Act 2021. On the same day, a draft amendment to the Sustainable Taxation Act was published, which established an internal tax for the use of animal test data and an equivalent import fee.

DISCUSSIONS AMONGST WTO TBT COMMITTEE

The draft Ethical Cosmetics Act 2021 was notified by Valaria on 23rd April 2021 to the TBT Committee of the WTO under Article 2.9.2 and 5.6.2 of the TBT Agreement, following which comments were received from several WTO Members. Of the Members that offered up comments, the People's Republic of Hyperborea, Isle of Nysa and Kingdom of Saturnalia put forth statements questioning the need for labelling requirements, conformity assessment procedures and certification requirements respectively. The Plurinational State of Arcadia however welcomed the steps taken by Valaria. Valaria reaffirmed its commitment not to develop, adopt or apply technical regulations that could lead to unnecessary barriers to international trade.

DANIZIA'S PANEL REQUEST

Danizia is a WTO Member widely regarded as a hub for testing on marine animals for scientific and market purposes. Danizia does not have laws prohibiting animal testing as industries, stakeholders have repeatedly expressed concerns that any measure affecting animal testing would hinder their ability to keep up with advancements in international research. Following the Valaria's draft law publication, Danizian exporters of cosmetic products expressed concerns that the Valarian labelling and tax measures were more burdensome than necessary to achieve the objectives it sought to pursue. Written comments were sent by Danizia, responding to Valaria's notification to the TBT committee and requesting that the laws on animal testing be reconsidered. On 17.10.2021, the Ethical Cosmetics Act, 2021 and the Sustainable Taxation (Amendment) Act, 2021 was enacted by Valaria and a list of accredited certification bodies was published. By December 2021, multiple certification agencies in countries with similarly progressive animal testing legislations were accredited as well. However, no other certification body in Danizia has been accredited. Seeking an amicable solution, Danizia initiated consultations with Valaria under Article 4 of the DSU and Article XXII of the GATT. Following this, consultations were held on 10.11.2021 which subsequently failed in resolving the dispute. Hence on 23.11.2021, Danizia requested that a panel be established pursuant to Articles 4 & 6 of the DSU.

FURTHER ACTION

Responding to Danizia's panel request, Valaria upheld that each of the measures Danizia put forth in the panel request was prepared and is being applied in conformity with its obligations under the TBT Agreement and the GATT 1994. On 17.12.2021, a panel was established by the DSB following the request of Danizia. Elysia, Hyperborea, Arcadia, Themiscyra and Saturnalia notified their interest in participating

in the proceedings before the panel as third parties. Isle of Nysa put forth its request for filing an amicus curiae brief to provide factual information concerning the lack of effectiveness of popular alternatives to animal testing and to demonstrate the necessity of retaining animal testing for a number of safety assessment procedures for which there are no alternative methods available. On 4.02.2022, Valaria objected to the acceptance and consideration of the request put forth by Isle of Nysa stating that they had not exercised their third party right.

MEASURES AT ISSUE

I

ISLE OF NYSA'S REQUEST TO FILE AMICUS CURIAE BRIEF CAN BE ACCEPTED BY THE
PANEL

II

THE LABELLING REQUIREMENTS UNDER SECTION 6 OF ECA IS VIOLATIVE OF ARTICLE 2.2
OF TBT.

III

SECTION 5 OF SUSTAINABLE TAXATION ACT IS IN VIOLATION OF ARTICLE III:2 OF GATT
1994

IV

THE CERTIFICATION REQUIREMENT UNDER SECTION 8 OF ECA CAUSES UNNECESSARY
INCONVENIENCE AND VIOLATION OF ARTICLE 5.2.6 OF TBT

SUMMARY OF PLEADINGS

I.

The request put forth by the Isle of Nysa to submit an amicus curiae brief should be accepted by the Panel as there is nothing in the DSU that imparts a negative prohibition on Panels to consider information, whether it be unsolicited or not. The language of Article 13 of the DSU is not to be interpreted in too literal or formal a manner as it provides a Panel with wide discretion in accepting and rejecting amicus curiae briefs. Article 13 of the DSU confers a right on Panels to “seek” information and this authority is comprehensive in nature and should not be construed in a manner as to limit the discretionary power of the Panel. Danizia submits that the Panel accept the request of Isle of Nysa to file an amicus curiae brief as it seeks to provide factual information as well which is integral to the present matter at hand.

II.

The Labelling requirements under section 6 of ECA are inconsistent with Article 2.2 of the TBT Agreement. The requirements are not enforced to pursue a “*legitimate objective*” and is in all ways more “*trade restrictive*” than “*necessary*”. The measure at hand does not make a material contribution towards achieving the objective and is also an unnecessary restriction to International trade. It is also proved beyond reasonable doubt that no grave consequences arise from non-fulfillment of the objective. Additionally less restrictive trade alternatives are “*reasonably*” available. Thereby, it is proved that the labeling requirements under section 6 of ECA is inconsistent with Article 2.2 of the TBT agreement.

III.

The broad and fundamental purpose of Article III is to avoid protectionism in the application of regulatory measures. Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with Valeria’s obligations under Article III:2, first sentence and Article III:2, second sentence of the GATT.

IV.

The certification requirement in Section 8 of the Ethical Cosmetics Act 2021 fall within the scope of Article 5.1 of the TBT Agreement, as they concern conformity assessment by a central government body and a mandatory conformity assessment procedure. Article 5.2 indicates that in situations where a Member must implement the obligations set out in Article 5.1, it must

also implement those set out in Article 5.2, including the obligations contained in Article 5.2.6. It is submitted that Valeria does not implement its obligations under Article 5.1.1, Article 5.1.2 and under 5.2.6 of the TBT.

LEGAL PLEADINGS

1. ISLE OF NYSA’S REQUEST TO FILE AN AMICUS CURIAE BRIEF MAY BE ACCEPTED BY THE PANEL

1. Danizia humbly submits that the request put forth by Isle of Nysa to file an amicus curiae brief is valid and that the same can be accepted by the Panel in the present matter. Pursuant to Article 13.1 of the DSU, the discretion lies with the Panel to accept unsolicited amicus curiae briefs as the Panel possesses a comprehensive authority to do so. Moreover, Danizia humbly submits that the wordings of Article 13.1 DSU are to be construed in a liberal manner and a literal interpretation should not be applied. Danizia further submits to the Panel that the Appellate Body in *US/Canada- Continued Suspension* outlined the Panel’s authority to seek information and stated as follows: “Panels possesses ‘significant investigative authority’ under Article 13 of the DSU as well as Article 11.2 of the SPS Agreement and this provides the panel with broad discretion in exercising this authority.”¹
2. Black’s Law Dictionary defines the term ‘*amicus curiae*’ as “a person who is not a party to a lawsuit but who petitions the court or is requested by the court to file a brief in the action because that person has a string interest in the subject matter.”² Primarily, a reading of this definition of ‘*amicus curiae*’ goes to show that any ‘person who is not a party but who petitions the court’ can be considered as an *amicus curiae*. Danizia humbly submits that the Panel consider this definition as accorded to the term.

1.1. Interpretation of the “right to seek” conferred upon the Panel under Article 13.1 of the DSU

3. Article 13.1 of the DSU reads as follows: “*Each Panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel*

¹ Appellate Body Reports, *Canada- Continued Suspension of Obligations in the EC-Hormones Dispute*, ¶439, AB-2008-6, WT/DS321/AB/R (16 October 2008)

² Bryan A. Garner, *Black’s Law Dictionary*, West Group, St. Paul, Minn., 1999, 7th edition, p. 83

considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body or authorities of the Member providing the information”³ Keeping in view the wordings of this article, Danizia submits to

the Panel that it must interpret the article in such a manner that provides it with broad authority.

4. Danizia submits to the Panel that its authority to seek information in a dispute is of a “comprehensive nature” as has been stated by the Appellate Body in the *US-Shrimp*⁴ matter. The Appellate Body in this matter, emphasized on this comprehensive authority and stated that: “The thrust of Articles 12 and 13, taken together, is that the DSU accords to a panel established by the DSB, and engaged in a dispute settlement proceeding, ample and extensive authority to undertake and to control the process by which it informs itself both of the relevant facts of the dispute and of the legal norms and principles applicable to such facts. That authority, and the breadth thereof, is indispensably necessary to enable a panel to discharge its duty imposed by Article 11 of the DSU to ‘make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements...’”⁵
5. Danizia submits before the Panel that the wordings of Article 13.1 of the DSU should not be accorded a literal interpretation and the same is to be interpreted in a liberal manner. As has been submitted above, the Panel possesses comprehensive authority to seek information in a dispute and this comes from the reading of Article 13.1 of the DSU. The Panel in *EC-Bananas III (Article 21.5-US)*, stated that “under Article 13 of the DSU, the Panel has a broad right to seek information and may take into account evidence even if not provided by any of the parties”⁶
6. Furthermore, in *US-Shrimp*⁷, the Appellate Body noted that a panel has the right under Article 13 to “seek information” and this includes the power to *accept or reject* information or advice it may have sought and received.

³ Understanding on Rules and Procedures Governing the Settlement of Disputes, Art. 13.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU]

⁴ Appellate Body Reports, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, ¶104, WT/DS58/AB/R (12 October 1998) [hereinafter Appellate Body Report, *US-Shrimp*]

⁵ Appellate Body Reports, *US-Shrimp*, ¶106

⁶ Panel Report, *European Communities- Regime for the Importation, Sale and Distribution of Bananas (Recourse to Article 21.5 of the DSU by the United States)*, ¶ 6.33, WT/DS27/RW/USA (19 May 2008) [hereinafter *EC-Bananas III (Article 21.5-US)*]

⁷ Appellate Body Reports *US-Shrimp*, *supra* 3

7. Danizia submits that Article 12.2 of the DSU states that the “panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process”. The wordings of this article seem to confer that the panel proceedings in themselves must be *flexible* and that there must not be any unduly delay. Isle of Nysa’s request to submit an amicus curiae brief has been put forth prior to the *first substantive meeting* of the Panel and hence, no question arises herein as to any undue delay that may come about. Against the reading of Article 12.2 of the DSU which provides for flexibility in Panel procedures, Danizia submits that the word “seek” under Article 13.1 of the DSU not be interpreted in a literal sense nor be accorded such a technical interpretation. Danizia humbly submits that the Panel’s authority “to seek information” does not pose as a prohibition on accepting any information even if the same was not requested by the Panel.
8. Danizia submits that Article 13 of the DSU is the basis for allowing *amicus curiae* briefs in Panel proceedings and the Isle of Nysa “seeks to provide factual information concerning the lack of effectiveness of popular alternatives to animal testing”⁸. Under the ambit of the term ‘information or advice’, the submission of Isle of Nysa is to be considered as they seek to provide ‘factual information’ in the current matter.

1.2 Discretion of the Panel to accept amicus curiae briefs

9. Danizia submits that the Panel has the right and discretion to accept amicus curiae briefs from WTO Members. In *EC-Sardines*⁹ the Panel had determined that it possessed the authority to receive amicus curiae briefs from private individuals or organizations and *a fortiori* were entitled to accept such briefs from a WTO Member as well provided that no prohibition from doing so was found in the DSU. Danizia submits that in furtherance to the need for a requirement of ‘prohibition’ as laid down by the Panel in the case of *EC-Sardines*, there must be a provision in the DSU which can be understood to prohibit WTO Members from participating in a Panel or Appellate proceeding as an *amicus curiae* or how participation as an *amicus curiae* will be resulting in the contravention of the DSU. In order to clarify that such a contravention does not take place, Danizia throws light on Articles 10.2 of the DSU which provide for participation as third parties. On a perusal of this provision, Danizia submits

⁸ Para 4.10, ¶ 12, Moot Problem

⁹ Appellate Body Reports, *European Communities-Trade description of Sardines*, ¶ 164, WT/DS231/AB/R (26 September 2002)

that merely because the above provision stipulates when a Member may participate as a third party in a dispute settlement proceeding does not mean that the conclusion to be drawn from the same is that a Member is prohibited from participating as an *amicus curiae*. Danizia requests the Panel to not draw a negative inference from these provisions of the DSU.

10. Furthermore, Danizia submits that nothing in the DSU either expressly provides for or prohibits the acceptance or even the consideration of *amicus curiae* briefs, even if the same are unsolicited. It is submitted that to state that the Panel does not have the power to accept information, even if the same is unsolicited or not sought for by the Panel itself, would go as much as to unnecessarily limit the discretionary power conferred upon the Panel by the DSU in choosing the sources of information it can consider.
11. Danizia hereby submits that the Panel interpret Article 13.1 of the DSU in a broad manner such as to grant the Panel the discretion to accept and consider as well as reject any information or advice submitted to it, whether it was requested by the Panel or not. It is humbly submitted to the Panel that the request to file *amicus curiae* brief by Isle of Nysa be accepted as it will be a positive step depicting growth of judicial independence and openness of the dispute resolution system.

2. THROUGH THE LABELLING REQUIREMENT IN SECTION 6 OF THE ETHICAL COSMETICS ACT 2021, VALARIA APPLIES A TECHNICAL REGULATION WITH THE VIEW TO AND WITH THE EFFECT OF CREATING UNNECESSARY OBSTACLES TO INTERNATIONAL TRADE, IN VIOLATION OF ARTICLE 2.2 OF THE TBT AGREEMENT

12. For purposes of establishing that a measure is inconsistent with Article 2.2, a complainant must demonstrate that the measure at issue constitutes a "technical regulation" [2.1] within the meaning of the TBT Agreement.¹⁰ It is well established that for a measure to be consistent with Art 2.2 of the TBT Agreement, it must seek to achieve a legitimate objective [2.2], it should not be more trade restrictive than necessary to fulfill that legitimate objective [2.3]¹¹. Article 2.2 of TBT provides that Members shall not adopt any technical regulations which

¹⁰ Annex 1.1, TBT Agreement

¹¹ Panel Report, *United States – Measures Affecting the Production & Sale of Clove Cigarettes*, ¶ 7.333, WT/DS406/R (Sept. 2, 2011) [hereinafter *US-Clove Panel Report*]; *US-Tuna* Appellate Body Report, *supra* note 3, ¶¶ 314, 318.

create unnecessary obstacles to international trade [2.4]¹² It is submitted that in the present case, ECA does not fulfill any of the four conditions.

2.1 That the labelling requirements amounts to a technical regulation.

13. In order to qualify as a technical regulation, a document must lay down compliance with one or more characteristics for an identifiable product or group of products as a mandatory requirement.¹³ Annex 1.1 to the TBT Agreement defines a "technical regulation" as Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method. In *EC – Sardines*, the Appellate Body emphasized that product characteristics, whether positive or negative, include not only “*features and qualities intrinsic to the product*”, but also those that are related to it, such as means of identification.¹⁴ Therefore, a technical regulation regulates or imposes certain binding features or attributes on specific products.¹⁵ The Appellate Body in *EC- Asbestos* defined the term “technical regulation” as a “document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method”.¹⁶ Furthermore, the Appellate Body stated that a "technical regulation" has the effect of prescribing or imposing one or more "characteristics" – "features", "qualities", "attributes" or other “distinguishing mark¹⁷. It further stated that ““product characteristics" may, be prescribed or imposed with respect to products in either a positive or a negative form.

14. It submitted that the ECA identifies cosmetics of domestic and other countries as the relevant products. It also prescribes the characteristics of the packaging by regulating the text, size,

¹² Article 2.2, TBT Agreement.

¹³ Annex 1.1, TBT Agreement,

¹⁴ Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, ¶ 69, WT/DS135/AB/R (April 5, 2001) [hereinafter *EC – Asbestos* Appellate Body Report]; Panel Report, *European Communities – Trade Description of Sardines*, ¶ 7.44, WT/DS231/R (Oct. 23, 2002).

¹⁵ Appellate Body Report *EC – Asbestos*, ¶ 68.

¹⁶ Appellate Body Report *EC Asbestos*, para 61.

¹⁷ Appellate Body Report, *EC Asbestos*, para 68

marks and health warning on the display panel.¹⁸ Thus, it can be reasonably concluded that the labelling requirements under ECA is a technical regulation within the definition provided in Annex 1.1 of TBT.

2.2 Technical Regulation of ECA does not seek to achieve a legitimate objective

15. The regulation under Section 6 of ECA was formulated and adopted with a view to minimize animal testing to protect and safeguard the environment and wild species of Valeria. The objective of a technical regulation can be determined by considering the text of the statute, legislative history, and other evidence regarding the structure and operation of the measure.¹⁹ It must also be noted that the respondent member's characterization of the objective can also be taken into account. However, the Panel is not bound by such characterization. It may independently assess the legitimacy of the objective.²⁰
16. On the face of it, this regulation does seem like a legitimate objective sought to be pursued by the measure adopted by Valeria, under article 2.2 of TBT Agreement. However, the Valerian government had an ulterior objective behind formulating the measure, which cannot be termed as 'legitimate'. A 'legitimate objective' refers to an aim or target that is lawful, justifiable or proper.²¹ However, the actual objective of the Valerian government behind adopting this measure cannot be termed as lawful, justifiable or proper. Valeria formulated this measure in order to promote its domestic company, Sens, to obtain a monopoly in the sale of Cosmetics as Valeria's own Cosmetic Industry is struggling to stay afoot with imports as said by a Valerian government official in a report given by Valeria Herald.²² The objective of protection of domestic producer is not legitimate as it unjustifiable. Art. 2.1 of the TBT Agreement and Art. III: 4 of the GATT prohibit favorable treatment to domestic products. Additionally the labeling requirements under section 6 of the ECA is unreasonable as labeling a product as "HARMFUL" will out rightly imbibe fear in the minds of the consumers especially with regards to a sensitive industry like cosmetics causing unnecessary restriction to trade.

¹⁸ Annexure B, ¶ 21, Moot Problem

¹⁹ Appellate Body Report, *US-Tuna*, ¶ 314.

²⁰ Appellate Body Report *US-COOL*, ¶ 370.

²¹ Appellate Body Report, *United States – Measures Concerning The Important, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, ¶ 313, WT/DS381/AB/R (May 16, 2012).

²² Para 2.13, ¶ 6, Moot Problem

17. Thus, it is clear that the regulation is not legitimate and amounts to an unjustifiable discrimination or disguised restriction on international trade.

2.3 That the measures are more trade-restrictive than necessary to fulfill a legitimate objective.

18. The assessment of necessity of a measure under the Article is based on the test developed under Article XX of GATT 1994.²³ It requires weighing and balancing of factors such as the degree of contribution made by the measure at issue to the legitimate objective [2.3.1], the trade-restrictiveness of the measure [2.3.2] and the gravity of the consequences that would arise from non-fulfillment of the objective [2.3.3] pursued by the Member through the measure.²⁴ In a particular case determination of what is considered necessary will be based on a consideration of all these factors.²⁵

2.3.1 The technical regulation does not make any material contribution to the objective.

19. It is submitted that contribution exists when a genuine relationship of ends and means exists between the objective pursued and the measure at issue, assessed in quantitative or in qualitative terms.²⁶ Such contribution must not be marginal or insignificant; rather, the measure must be sufficient to make a material contribution to the achievement of its objective.²⁷ In preparing, adopting, and applying a measure in order to pursue a legitimate objective, a WTO Member articulates, either implicitly or explicitly, the level at which it pursues that objective.²⁸ That is, to what degree, if at all, the challenged technical regulation actually contributes to the achievement of the legitimate objective pursued by the member.²⁹

²³ Panel Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, ¶ 7.368, WT/DS406/R (April 24, 2012); Panel Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, ¶ 7.667, WT/DS384/R / WT/DS386/R (July 23, 2012).

²⁴ Appellate Body Report *Korea-Beef*, *supra* 29, ¶ 164; Gabrielle Marceau, *The New TBT Jurisprudence in US - Clove Cigarettes, WTO US - Tuna II, and US – COOL*, 8 ASIAN J. WTO & INT'L HEALTH L & POL'Y, 1, 11 (March 2013).

²⁵ Appellate Body Report, *Korea – Measures Affecting Imports Of Fresh, Chilled And Frozen Beef Korean beef*, ¶ 178, WT/DS161/AB/R, WT/DS169/AB/R (December 11, 2000) and Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶¶ 306, 308, WT/DS285/AB/R (April 20, 2005).

²⁶ Appellate Body Report *Brazil – Retreaded Tyres* Appellate Body Report, *supra* 80, ¶¶ 145-146; PETER VAN DEN BOSSCHE, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS* 820 (Cambridge University Press, 2008).

²⁷ Appellate Body Report *Brazil – Retreaded Tyres*, ¶ 150.

²⁸ Appellate Body Report, *United States- Certain Country of Origin Labelling (COOL) Requirements*, ¶ 390, WT/DS384/AB/R, WT/DS386/AB/R (June 29, 2012).

²⁹ Appellate Body Report, *United States – Measures Concerning The Important, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, ¶ 317, WT/DS381/AB/R (May 16, 2012); *See also* Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audio-visual*

20. In the present case, the legitimate objectives stated by the Valerian government is protection of environment and welfare of animal species. However, the government fails to explain as to how putting up such unreasonable regulations on labeling of a product help in reduction of animal testing thereby helping in the welfare of the animals. As long as the government fails to establish this relationship, it is clear that the intention behind implementation of the labeling requirements is not protection for animals or achievement of goals but rather cause severe hindrance to international trade.

2.3.2 The technical regulation is more trade restrictive than necessary

21. A measure is termed as trade-restrictive when it has “*limiting effects on trade*”³⁰. Under article 2.2, what is actually prohibited are those restrictions on international trade that exceed what is necessary to achieve the degree of contribution that a technical regulation makes to the achievement of a legitimate objective.³¹ In order to show that a measure is trade-restrictive, *actual impact on trade* need not be proved. A measure that causes restrictions on the competitive opportunities available to imported products is also said to be trade-restrictive.³² A measure will not be considered necessary if there is an alternate less trade-restrictive measure which can contribute as effectively to the objective.³³

22. The technical regulation in the present case does not make any notable contributions towards the achievement of the objective that is, safety and protection of environment in Valeria. What the regulation purposes at doing, is making the consumers aware of the fact that the cosmetic product has been tested on Animals. In no way does adding a label of said nature³⁴ will help the Valerian government achieve its so called objective of protection of animals but rather will only affect the consumer’s preference of the product by adding an unfair and unreasonable label thereby causing hindrance to trade. Even if we assume consumer awareness as being a legitimate objective, then the contribution made by the measure/regulation towards the achievement of this objective, can also be made through by using only “TESTED ON

Entertainment Products, ¶ 252, WT/DS363/AB/R (January 19, 2010).

³⁰ Appellate Body Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, ¶ 375, WT/DS384/AB/R / WT/DS386/AB/R (July 23, 2012) [hereinafter *US – COOL* Appellate Body Report].

³¹ Appellate Body Report, *United States – Measures Concerning The Importation, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, ¶ 319, WT/DS381/AB/R (May 16, 2012).

³² Panel Report *US-COOL*, ¶ 7.572.

³³ Panel Report *US-Tuna*, ¶ 7.456.

³⁴ Annexure B, ¶ 21, Moot Problem

ANIMALS OR ‘ NOT TESTED ON ANIMALS’” instead of adding words that will be misinterpreted. Moreover, the specifications of the packaging says that it shall be placed on the principal display panel of the product package on the upper main front facing area covering at least 40% of the container.³⁵ The display of words such as “HARMFUL”³⁶ prescribe under section 6 of the Act , in the front display of the product will undoubtedly have a negative impact on the consumers which will prevent them from buying the product.

23. Additionally, it is submitted that there are less trade-restrictive measures which can achieve the same objective. For instance, if ECA had been interpreted differently, such as, to avoid barriers to trade, Valaria could grant partial exemptions for certain substances and mixtures used in cosmetic products, especially if no alternatives to animal tests were available. The Plurinational State of Arcadia also recommended that the implementation of the requirement to furnish a “certificate of recognition” be postponed by at least one year to allow supply chains to adjust,³⁷ then the measure would have been less trade-restrictive, while achieving the same objective. Alternatively, the government could have mandated the producers to run advertisement campaigns to make consumers aware of the purpose of labels used and also about scientific animal testing. This would not have denied them competitive opportunities. These measures would have effectively contributed to the objective of protection of environment and consumer awareness by helping them make informed decisions. Therefore, it is humbly submitted that the measure is more trade restrictive than necessary.

2.3.3 No grave consequences occur from non-fulfillment of the objective.

24. A final requirement under article 2.2 is that the members must take into account the risks non-fulfillment of the legitimate objective would create when assessing the trade restrictiveness of the regulation.³⁸ Consideration of risks created by non-fulfillment involves a comparison of the challenged measure with possible alternative measures in light of the nature of the risks at issue and the gravity of the consequences that would arise from non-fulfillment of the legitimate objective.³⁹

³⁵ Id

³⁶ Id

³⁷ Para 4.17, ¶ 9, Moot Problem

³⁸ WTO Technical Barriers and SPS Measures, 220 (Max Planck Commentaries on World Trade Law, Max Planck Institute for Comparative Public Law and International Law ed. 2007).

³⁹ Appellate Body Report *US-Tuna*, ¶ 321.

25. In the present scenario, the only objective being fulfilled by the regulation is making the consumers know whether or not the product is tested on Animals which in no way helps in reduction of animal testing or protection of environment and wild species. The legitimate objective pursued through the measure is creating consumer awareness, which is only the first step towards the much wider objective of protection of environment by reducing animal testing.
26. However, it is pertinent that citizens of Valeria are clearly aware about the importance and necessity of environmental protection and preservation of wildlife and also the individual steps that they can take to achieve the same, which is clear from the surveys taken by the Valerian government.⁴⁰ Looking at the present objective of consumer awareness, the non-fulfillment of it would not give rise to any risks, because even if this objective were further pursued through the present measure, it would hardly result in any notable or fruitful results towards the protection of wildlife by reducing animal testing. This is because, no other reliable and safe alternative to animal testing has been discovered yet by any authorities and considering the fact that products like cosmetics which are used by humans cannot be brought into market or sold to people without effective testing, the countries including Valeria does not have any other option than to resort and continue with humane animal testing's. However, if the objective is pursued, then it would result in unnecessary obstacles to international trade, especially in the background of the availability of a reasonable alternative to the proposed technical regulation of labeling requirements.
27. Hence, it is clear that even if ECA is not implemented, it will not have any adverse consequences. The measure, in its present form, is not necessary to achieve the objective.

2.3.4 Reasonable and less trade-restrictive alternatives are available

28. Possible alternatives must be compared to determine whether a less trade restrictive measure exist which provides an equivalent contribution, if not greater, to the achievement of the objective pursued⁴¹. The comparison with reasonably available alternative measures is a "conceptual tool" to be used for the purpose of ascertaining whether a challenged measure is more trade restrictive than necessary.⁴² An alternative measure, however, as to be less trade

⁴⁰ Para 2.6, ¶ 3, Moot Problem

⁴¹ Appellate Body Report *Brazil – Retreaded Tyres*, ¶ 156.

⁴² Appellate Body Report, United States – Measures Concerning The Important, Marketing And Sale Of Tuna

restrictive than the challenged measure, makes an equivalent contribution to the relevant objective and is reasonably available.⁴³

29. In addition to the points cited in [2.3.2], Valaria has completely ignored the inclusion of cephalopods in the ECA draft as there is research to show that they are not sentient beings and are insensitive to pain. Ethical Cosmetics Act 2021 arbitrarily equated humane and inhumane animal testing conditions without consideration for the fact that the former adequately balanced animal welfare concerns with the advancement of scientific research.⁴⁴ If animal welfare was the main concern of Valeria, the government had options of adopting these less trade restrictive measures to achieve their objective rather than resorting to trade restrictive unreasonable measures knowing the fact that a cosmetic product cannot be put in market without appropriate testing and research failure of which can cause threat to public health and life which is also an important legitimate objective under Article 2.2 of TBT.

3. THROUGH THE EQUIVALENCY FEE IN SECTION 5 OF THE SUSTAINABLE TAXATION (AMENDMENT) ACT 2021, VALARIA SUBJECTS IMPORTED COSMETIC PRODUCTS TO INTERNAL TAXES OR OTHER INTERNAL CHARGES IN EXCESS OF THOSE APPLIED TO LIKE DOMESTIC PRODUCTS, IN VIOLATION OF ARTICLE III:2 OF THE GATT 1994.

30. Non-discrimination is a key concept in WTO law and policy.⁴⁵ WTO Agreements have distinguished between two components of this principle: Most Favoured Nation Principle and National Treatment Obligation.⁴⁶ The National Treatment Obligations requires that Members' goods should not be treated inferior to domestic goods.⁴⁷ This principle is incorporated in Art.

And Tuna Products (Mexico), ¶ 320, WT/DS381/AB/R (May 16, 2012).

⁴³ Appellate Body Report, *Korea – Measures Affecting Imports Of Fresh, Chilled And Frozen Beef Korean beef*, ¶ 166, WT/DS161/AB/R, WT/DS169/AB/R (December 11, 2000) and Appellate Body Report, *Australia – Measures Affecting Importation of Salmon*, ¶ 194, WT/DS18/AB/R (November 6, 1998). Appellate Body Report, *United States – Measures Concerning The Important, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, ¶ 320-322, WT/DS381/AB/R (May 16, 2012).

⁴⁴ Para 4.2, ¶ 10, Moot Problem

⁴⁵ *The Law and Policy of the World Trade Organization Text, Cases and Materials*, Cambridge University Press (2008) pp. 320 – 400 <https://www.cambridge.org/core/books/abs/law-and-policy-of-the-world-trade-organization/principles-of-nondiscrimination/2D5B5EC0DF14BD9BE4C20F5BDD820F95>

⁴⁶ Hestermeyer, *Article III GATT 1994*, in 3 *WTO – TECHNICAL BARRIERS AND SPS MEASURES* 1, 5 (Rudiger Wolfrum et al. eds., 2007).

⁴⁷ *Id* at ¶ 6.

III of the GATT.⁴⁸ The national treatment requires that internal taxes, charges, laws and regulations must not be applied in a manner that treats imported products less favourably than domestic ones.⁴⁹ This obligation applies to both *de jure* and *de facto* discrimination.⁵⁰

31. The broad and fundamental purpose of Article III is to avoid protectionism in the application of regulatory measures.⁵¹ The Appellate Body in *Canada — Periodicals*,⁵² held that ‘*the fundamental purpose of Art. III of the GATT 1994 is to ensure equality of competitive conditions between imported and like domestic product*’. Art. III of the GATT protects the requirement and the expectation of equality of competitive relationship⁵³. Regulatory measures according an advantage to domestic products over imported products are therefore, inconsistent with the principle of equality of competition enshrined in Art. III.
32. In relation to internal taxes or other internal charges, Article III:2 stipulates that WTO Members shall not apply standards higher than those imposed on domestic products between imported goods and “like” domestic goods, or between imported goods and “a directly competitive or substitutable product.”⁵⁴
33. In *Canada – Periodicals*, the Appellate Body addressed the distinction between the first and second sentence of Article III:2: “[T]here are two questions which need to be answered to determine whether there is a violation of Article III:2 of the GATT 1994: (a) whether imported and domestic products are like products; and (b) whether the imported products are taxed in excess of the domestic products. If the answers to both questions are affirmative, there is a violation of Article III:2, first sentence. If the answer to one question is negative, there is a need to examine further whether the measure is consistent with Article III:2, second sentence.”⁵⁵ The second sentence examines whether (i) products are directly competitive or

⁴⁸ General Agreement on Tariffs and Trade 1994 art III, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187 [hereinafter GATT 1994].

⁴⁹ Id

⁵⁰ Sharif Bhuiyan, National Law In Wto Law: Effectiveness And Good Governance In The World Trading System 44-46 (1st Ed, 2007).

⁵¹ GATT Panel Report, *United States - Section 337 Of The Tariff Act Of 1930*, ¶ 5.10, L/6439 - 36S/345 (Nov. 7 1989).

⁵² Appellate Body Report, *Canada — Certain Measures Concerning Periodicals*, ¶ 18, WT/DS31/AB/R (Jun. 30, 1997).

⁵³ Appellate Body Report, *Japan — Taxes on Alcoholic Beverages*, ¶ 16, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (Oct. 4, 1996).

⁵⁴ Ministry of Economy, Trade and Industry, NATIONAL TREATMENT PRINCIPLE, <https://www.meti.go.jp/english/report/downloadfiles/gCT0322e.pdf>

⁵⁵ Appellate Body Report, *Canada – Periodicals*, ¶. 22-23.

substitutable; (ii) not similarly taxed, and (iii) the dissimilar taxation is applied so as to afford protection to domestic production.⁵⁶

34. In light of the above, the following arguments are advanced to prove that Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with Valeria’s obligations under [3.1.] Article III:2, first sentence and [3.2] Article III:2, second sentence of the GATT.

3.1. Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with GATT

Art III:2, first sentence

35. The STA, 2021 violates Art. III:2, first sentence, since [3.1.1] Danizia’s cosmetic products and Valeria’s Cosmetic products are not products and [3.1.2] the imported product, namely Danizian cosmetic products, are taxed “in excess” of the domestic product, namely Valeria’s cosmetic products.

3.1.1. Danizia’s cosmetic products and Valeria’s cosmetic products are ‘like products’

36. Danizia argues that its cosmetic products(hereinafter referred as “imported products”)” and Valeria’s cosmetic products(hereinafter referred as domestic product) are ‘like’ based on the ‘nature and extent of the competitive relationship between them’⁵⁷ in Valeria’s market. The category of ‘like’ products in Art III:2, first sentence, is determined on a case-by-case basis, according to: physical characteristics, nature and quality, end-uses, consumer tastes and preferences, and tariff classification.⁵⁸
37. Danizia submits that the *consumer preferences* in particular indicate a close competitive relationship between the two products.⁵⁹ This is shown by the fact that imports were consumed more by the Valerian citizens and hence the market share of imports was allegedly dependant on the same. ⁶⁰
38. For products to be considered as like it must be shown that they share similar *physical properties*.⁶¹Section 2(g) of the Ethical Cosmetics Act states that ““cosmetic products” or “cosmetics” means any substance or mixture intended to be placed in contact with any external part of the human body, including the mucous membranes of the oral cavity or the teeth, with

⁵⁶Appellate Body Report,, *Japan-Alcoholic Beverages*, ¶ 24.

⁵⁷Appellate Body Report,, *US – Clove Cigarettes*, ¶ 120.

⁵⁸Appellate Body Report,, *Japan—Alcoholic Beverages II*, 20–1.

⁵⁹ Para 2.15, ¶ 6, Moor Problem

⁶⁰ Id

⁶¹ Appellate Body Report,*EC — Asbestos*, ¶ 101.

a view to altering the odours of the body, changing its appearance, cleansing it, maintaining it in good condition, perfuming it, or protecting it, but does not include a substance or mixture intended to be implanted, ingested, inhaled, or injected into the human body”⁶².

39. In the given case, the imported products and domestic products are both cosmetic products within the purview of the Act and are hence share similar physical properties. Chemically, the imported products and domestic products have exactly the same physical characteristics and by definition, they are like products.⁶³ Both the cosmetic products would be made of similar raw materials, and hence would be considered to to have similar physical properties as held by the Panel in *Japan-Alcoholic Beverages II*⁶⁴.
40. It is submitted that the imported and domestic products are identical in their primary *end uses*. As defined by the Respondents themselves, “End use” means a purpose to which the substance or mixture can be applied by a consumer or a professional.⁶⁵ It is submitted that since both products are cosmetic products under the purview of the Act, they both cater to the same purpose by which the substance or mixture can be applied by consumers. Moreover, since both of these products have a competitive nature in the market, it is pertinent to note that they have the same end use and are used interchangeably by the consumers in the market.
41. Finally, the identical Harmonized Tariff classification of RecycloFuel and ForestFuel under the international harmonized system suggests that the products are alike⁶⁶. It is submitted that both the imported as well as domestic product are “cosmetic products” within the purview of the Ethical Cosmetics Act. Hence, they fall within the product classification under Chapter 33 of the Harmonized Tariff Schedule.⁶⁷
42. Taken together, these factors favor the finding that the imported and domestic products are like products under Art. III:2, first sentence.

⁶² ¶ 14, Moot Problem

⁶³ Panel Report, *United States – Standards for Reformulated and Conventional Gasoline* (“US – Gasoline”), WT/DS2/R(20 May 1996) para. 6.17

⁶⁴ Panel Report, *Japan – Alcoholic Beverages II*, para. 6.23.

⁶⁵ Section 2(h), Ethical Cosmetics Act, ¶ 14, Moot Problem

⁶⁶ Appellate Body Report, *Japan—Alcoholic Beverages II*, ¶ 21-22.

⁶⁷ Para 3.1, ¶ 7, Moot Problem

3.1.2. Danizia's cosmetic products are charged in excess of Valeria's cosmetic products

43. It is submitted that Danizia's cosmetic products are charged in excess of Valaria's cosmetic products. The Appellate Body in *Japan – Alcoholic Beverages II* established a strict standard for the term "in excess of" under Article III:2, first sentence that even the smallest amount of 'excess' is too much. The prohibition of discriminatory taxes in Article III:2, first sentence, is not conditional on a "trade effects test" nor is it qualified by a *de minimis* standard.⁶⁸
44. It is submitted that the Section 5 of the Sustainable Taxation (Amendment) Act is a blatant violation of Article III:2, first sentence as the system of discriminatory taxing is evident through the provision of "equivalency refund" offered to Valarian exporters⁶⁹ whereas at the same time, an added tax is imposed on the Danizian imports in the form of an "equivalency fee".⁷⁰
45. A determination of whether an infringement of Article III:2, first sentence, exists must be made on the basis of an overall assessment of the actual tax burdens imposed on imported products, on the one hand, and like domestic products, on the other hand.⁷¹ It is evident that the tax burden imposed on Danizian importers is much higher than the tax burden on Valarian exporters or manufacturers as they are not subject to the added cost of equivalency fee and are even provided an equivalency refund which constitutes discriminatory taxing. Manufacturers or resellers of Danizian imports are subject to an equivalency fee whereas domestic manufacturers/exporters, due to a complete exemption from the equivalency fee, are not. Reliance may be placed on *Thailand – Cigarettes (Philippines)*, where the Appellate Body found that "Resellers of imported cigarettes are subject to VAT liability in defined circumstances under Thai law, whereas resellers of domestic cigarettes, due to a complete exemption from VAT, are not."⁷² On this basis, the Appellate Body agreed with the Panel that Thailand subjected imported cigarettes to internal taxes in excess of those applied to like domestic cigarettes within the meaning of Article III:2, first sentence.

⁶⁸ Appellate Body Report, *Japan – Alcoholic Beverages II*, ¶ 23, Panel Report *Argentina – Hides and Leather*, para. 11.243.

⁶⁹ Section 5(1), Sustainable Taxation (Amendment) Act, 2021, ¶ 24, Moot Problem

⁷⁰ Section 5(2), Sustainable Taxation (Amendment) Act, 2021, ¶ 25, Moot Problem

⁷¹ Panel Report, *Argentina – Hides and Leather*, paras. 11.182-11.184.

⁷² Appellate Body Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, ¶ 45, WT/DS371/AB/R (17. Jun. 2011) para. 116

46. Moreover, it is submitted that the imported Danizian cosmetic products are taxed in excess of like Valerian cosmetic products since the tax payment of tax for the imports is upfront while the local Valerian cosmetic products were subject to a tax exemption by way of the equivalency refund. The Appellate Body in *Brazil – Taxation* agreed with the Panel's reasoning and upheld the finding that imported intermediate products were taxed in excess of the like domestic incentivised intermediate products, since the purchase of the former was subject to a payment of tax upfront, whereas the latter were subject to a tax exemption or reduction⁷³.
47. Hence, Danizia's cosmetic products are charged in excess of Valeria's cosmetic products. In light of the arguments advanced above, it is submitted that Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with GATT Art III:2, first sentence.

3.2. Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with GATT Art III:2, second sentence.

48. It is submitted that Section 5 of the Sustainable Taxation (Amendment) Act 2021 is inconsistent with GATT Art III:2, second sentence. In *Japan – Alcoholic Beverages II*⁷⁴, the Appellate Body explained the test to be used under Article III:2, second sentence as follows: The imported products and the domestic products are [3.2.1] directly competitive or substitutable products [3.2.2] not similarly taxed [3.2.3] applied so as to afford protection to domestic production.⁷⁵

3.2.1. Danizia's cosmetic products and Valeria's cosmetic products are directly competitive and substitutable

49. As Danizia's imported cosmetic products and Valeria's local cosmetic products fall within the subset of like products they necessarily fall within the superset of directly competitive or substitutable products.⁷⁶ As the AB noted in *Korea-Alcohol*, while "like products" under III:2, first sentence "are a subset of directly competitive or substitutable products, the category of directly competitive or substitutable products is broader."⁷⁷

⁷³ Appellate Body Report, *Brazil - Certain Measures Concerning Taxation and Charges*, ¶ 31, WT/DS472/AB/R ; WT/DS497/AB/R paras. 5.41-5.42.

⁷⁴ Appellate Body Report, *Japan – Alcoholic Beverages II*, ¶. 16 at p. 110,113

⁷⁵ Appellate Body Report, *Japan – Alcoholic Beverages II*, , ¶ 24.

⁷⁶ Appellate Body Report, *Korea—Alcoholic Beverages*, pp 114,118; ABR, *Canada—Periodicals*, 28.

⁷⁷ Appellate Body Report, *Korea—Alcoholic Beverages*, ¶ 118.

50. Therefore, even if this Panel decides that Danizian cosmetic products and Valerian cosmetic products are not “like products,” it may still find them to be directly competitive or substitutable. To make this determination, the Panel should examine the products’ end-uses, consumer tastes and habits, and the “marketplace,” i.e. the elasticity of demand.⁷⁸ As described in 2.1.1, both products have identical end-uses. Additionally, the consumer preferences in particular indicate a close competitive relationship between the two products,⁷⁹ as evidenced by the fact that imports were consumed more by the Valerian citizens and hence the market share of imports was allegedly dependant on the same.⁸⁰ The ability of the imported products to accurately match the local cosmetic products at a much lower cost is what underlines their competitiveness. This very same factor goes on to indicate elasticity of demand as direct substitution of the products are possible, based on factors like increase or decrease in prices.

51. Danizia’s cosmetic products and Valeria’s cosmetic products have a “strong potentially direct competitive relationship”⁸¹ and therefore must be considered directly competitive or substitutable products.

3.2.2. Danizia’s cosmetic products and Valeria’s cosmetic products are not similarly taxed

52. In light of arguments advanced in Para 2.1.2, it is submitted that Danizia’s cosmetic products and Valeria’s cosmetic products are not similarly taxed. Moreover, the term ‘not similar’ in *Ad Art III* implies a *de minimis* threshold, which must be determined on a case-by-case basis in light of the context of Art III:2.⁸² For Art III:2 to provide consistent protection⁸³, the *de minimis* threshold must be directly related to the level of competition, as differential taxes may alter that relationship to different degrees.⁸⁴ It is submitted that the difference of cost has a large effect on consumer preference. Thus, the dissimilar taxing between Danizia’s cosmetic products and Valeria’s cosmetic products affects their competitive relationship between; it is not *de minimis*, and is inconsistent with Art III:2.

⁷⁸ Appellate Body Report, *Japan—Alcoholic Beverages II*, ¶ 25.

⁷⁹ Para 2.15, ¶ 6, Fact sheet

⁸⁰ *Id*

⁸¹ Appellate Body Report, *Korea—Alcoholic Beverages*, ¶ 124

⁸² Appellate Body Report, *Japan—Alcoholic Beverages II*, 27; ABR, *EC—Frozen Chicken*, [238]; VCLT, Art 31(1).

⁸³ GATT Panel Report, *US—Superfund*, [5.1.9]; ABR, *Japan—Alcoholic Beverages II*, ¶ 16.

⁸⁴ Neven, Damien J. (2001) ‘How Should “Protection” Be Evaluated in Article III GATT Disputes?’ 17 *European Journal of Political Economy* 421.

3.2.3. Section 5 of the Sustainable Taxation (Amendment) Act 2021 is applied so as to afford protection to domestic production.

53. Art III:2, second sentence, explicitly refers to Art III:1, incorporating the obligation not to apply a measure ‘so as to afford protection to domestic production’. Adherence to this obligation is tested objectively, according to the ‘design, architecture and revealing structure’ of the measure.⁸⁵ It is submitted that while the Sustainable Taxation Act claims to be enacted to restrict the use of animal test data, in pursuance of Valeria’s objectives of animal welfare and sustainable development, it is evident that the Act which imposes a higher burden of tax on imports is a step to restrict the inflow of such imports. It is pertinent to note that such “animal welfare” measures are not taken in a similar manner in the pharmaceutical sector where the same practice of animal testing is rampant. This measure is an attempt to protect Valeria’s own cosmetic industry which was “struggling to stay afoot with imports.”⁸⁶ The design of the Sustainable Taxation Amendment Act reveals an overwhelming favouring of domestic production, in light of the equivalency provisions.
54. It is submitted that since Danizia’s cosmetic products and Valeria’s cosmetic products are directly competitive or substitutable, Section 5 of the Act contorts in a manner that protects domestic production, and controverts the anti-protectionist principles embodied in Art. III, and violates the specific requirements of Art. III:2, second sentence.

4. THROUGH THE CERTIFICATION REQUIREMENT IN SECTION 8 OF THE ETHICAL COSMETICS ACT 2021, VALARIA SITES FACILITIES USED IN CONFORMITY ASSESSMENT PROCEDURES IN A MANNER SUCH AS TO CAUSE UNNECESSARY INCONVENIENCE TO APPLICANTS OR THEIR AGENTS, IN VIOLATION OF ARTICLE 5.2.6 OF THE TBT AGREEMENT

55. Article 5 of the TBT Agreement relates to procedures for the assessment of conformity.⁸⁷ Annex 1.3 to the TBT Agreement defines "conformity assessment procedures" as "any procedure used, directly or indirectly, to determine that relevant requirement in

⁸⁵ Appellate Body Report, *Japan—Alcoholic Beverages II*, Para 27, 29.

⁸⁶ Para 2.13, ¶ 6, Moot Problem

⁸⁷ Appellate Body Report, *Russia - Measures Affecting the Importation of Railway Equipment and Parts thereof*, WTO Doc. WT/DS499/AB/R, (4 Feb. 2020)

technical regulations or standards are fulfilled". Pursuant to the explanatory note to Annex 1.3, conformity assessment procedures "include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations".⁸⁸ It is submitted that Section 8 of the Ethical Cosmetics Act lays down a conformity assessment procedure to Section 6 of the Act, within the meaning of the term as per Annex 1.3 of TBT.

56. Danizia submits that the certification requirement in Section 8 of the Ethical Cosmetics Act 2021 fall within the scope of Article 5.1 of the TBT Agreement, as they concern conformity assessment by a central government body and a mandatory conformity assessment procedure. Article 5.2 indicates that in situations where a Member must implement the obligations set out in Article 5.1, it must also implement those set out in Article 5.2, including the obligations contained in Article 5.2.6. It is submitted that Valeria does not implement its obligations under [4.1] Article 5.1.1, [4.2] Article 5.1.2 and [4.3] Valeria does not implement its obligations under 5.2.6 of the TBT in the following manner:

4.1. Valeria does not implement the obligations set out in Article 5.1.1 of TBT

57. The Panel in *Russia – Railway Equipment* noted that two requirements must be met for a conformity assessment procedure to be covered by Article 5.1.1: (a) it must concern procedures for the assessment of conformity by central government bodies and (b) it must concern a situation where a positive assurance of conformity with technical regulations or standards is required (i.e., a mandatory conformity assessment procedure).⁸⁹
58. Danizia submits that the compliance of labelling requirements as per Section 6 is certified through the Cosmetic Accreditation Authority (CAA) or from one which has been appointed by the Ministry of Industry and Chemicals, which brings in under the purview of central government body. The labelling requirements concern positive assurance of conformity with standards.
59. Additionally, it is submitted that the obligations set out under Article 5.1 of the TBT are not complied with by the Respondent. An importing Member would act inconsistently with the non-discrimination obligations in Article 5.1.1 in respect of a covered conformity assessment

⁸⁸Appellate Body Report, *Russia – Railway Equipment*, ¶ 71 , para. 5.210..

⁸⁹ Panel Report, *Russia – Railway Equipment*, para. 7.249

procedure if three elements are established: [4.1.1]The suppliers of another Member who have been granted less favourable access are suppliers of products that are *like* the products of domestic suppliers or suppliers from any other country who have been granted more favourable access [4.1.2] the importing Member (through the preparation, adoption or application of a covered conformity assessment procedure) *grants access* for suppliers of products from another Member *under conditions less favourable* than those accorded to suppliers of domestic products or products from any other country [4.1.3]the importing Member grants access under conditions less favourable for suppliers of like products in a *comparable situation*.⁹⁰

4.1.1 Valeria's cosmetic products and Danizia's cosmetic products are like products

60. The same criteria that are applied for determining whether products are "like" in the context of Article 2.1 of the TBT Agreement are applicable in the context of Article 5.1.1.⁹¹ Valeria submits that 'nature and extent of the competitive relationship'⁹² between the Valerian suppliers of cosmetic products and Danizian suppliers of cosmetic products support a conclusion that they are 'like' under Art. 2.1 TBT. This competitive relationship is determined on the basis of a non-exhaustive list of four criteria, namely the product's *physical characteristics*, their *end-uses*, *consumer preferences*, and the *products' international tariff classification*.⁹³

61. Danizia submits that it has advanced arguments in support of its above-mentioned contention Para 35-42 of this Written Submission.

4.1.2. Valeria does not grant access and under conditions less favourable

62. It is submitted that Danizian suppliers have not been given the possibility to have the conformity of their products assessed under the rules of the relevant conformity assessment procedures, and are unable to exercise that right⁹⁴ as per Section 8 of the Ethical Cosmetics Act. Hence, they are not "granted access" within the meaning of Article 5.1.1, TBT. If the

⁹⁰ Panel Report, *Russia – Railway Equipment*, para. 7.251.

⁹¹ Panel Report, *Russia – Railway Equipment*, para. 7.254.

⁹² Appellate Body Report, *US – Clove Cigarettes*, para 120.

⁹³ Appellate Body Report, *EC – Asbestos*, para 101.

⁹⁴ Panel Report, *Russia – Railway Equipment*, para. 7.257; Appellate Body Report, *Russia – Railway Equipment*, para. 5.123

comparison of the “conditions of access” granted to suppliers of products from the complaining Member and suppliers of like domestic products reveals a difference in the access conditions granted to the suppliers of the complaining Member, that difference amounts to granting access under "less favourable" conditions.⁹⁵

63. It is submitted that the certification bodies that have been accredited are majorly situated in Valaria, with 11 certification bodies located in the Respondent Nation itself,⁹⁶ which limits the accessibility of the same. Less favourable conditions would exist where the importing Member denies or limits the right or possibility of a supplier of another Member to have conformity assessment activities undertaken under the rules of the applicable conformity assessment procedure, either in respect of the entire conformity assessment procedure or any of its relevant parts, but does not deny or limit the right or possibility of access of another supplier of a like product from the importing Member or any other country.⁹⁷
64. Valeria has only accredited multiple certification agencies in countries with “similarly progressive animal testing legislations.”⁹⁸ This clearly indicates that less favourable conditions have been imposed on Valeria’ whose accredited certification body is still under review, despite a request having been put forth towards the same immediately after notification of the Ethical Cosmetics Act. Differential access conditions are relevant under Article 5.1.1 if they modify the conditions of competition, or competitive opportunities, among relevant suppliers of like products to the detriment of suppliers of the complaining Member.⁹⁹ Due to the modified conditions imposed on relevant suppliers of cosmetic products by Valeria, depending on the “progressiveness” of animal testing laws, it is submitted that there is “detriment” caused to the Danizia as a result of the provision.

4.1.3. The situation is comparable

65. The assessment of whether access is granted under conditions no less favourable "in a comparable situation" within the meaning of Article 5.1.1 should focus on factors with a bearing on the conditions for granting access to conformity assessment in that specific case

⁹⁵ Panel Report, *Russia – Railway Equipment*, para. 7.258.

⁹⁶ Para 4.3, ¶ 10, Moot Problem

⁹⁷ Appellate Body Report, *US – Tuna II (Mexico)*, para. 7.281

⁹⁸ Para 4.3, ¶ 10, Moot Problem

⁹⁹ Appellate Body Report, *Russia – Railway Equipment*, para. 5.123.

and the ability of the regulating Member to ensure compliance with the requirements in the underlying technical regulation or standard.¹⁰⁰ This analysis has to be made on a case-by-case basis in light of the measure at issue and the particular circumstances of the case.¹⁰¹

66. Taken together, these factors favour the finding that the imported and domestic products are less favourable "in a comparable situation" within the meaning of Article 5.1.1

4.2. Valeria's acts are inconsistent with Article 5.1.2 of TBT

67. Should the Panel find that the Certification requirements seeks to address environment protection (quod non) or that the consumer information objective is legitimate (quod non), Danizia submits that the certification requirements are more restrictive than necessary thereby causing hindrance to International Trade.

68. To address this, the panel must make an analysis of three elements¹⁰²: [4.2.1] the trade restrictiveness of the measure, [4.2.2] the degree of contribution to the objective pursued and [4.2.3] the risks that non-fulfillment would create. A measure's consistency with TBT Art. 2.2 may be determined on the basis of this analysis alone, without proceeding to a comparative analysis.¹⁰³ The Appellate Body in *Russia – Railway Equipment*¹⁰⁴ noted that the first sentences of Articles 2.2 and 5.1.2 contain an obligation for WTO Members not to "prepare, adopt or apply" technical regulations or conformity assessment procedures respectively "with a view to or with the effect of creating unnecessary obstacles to international trade". "Given the similarities in its text and structure to the second sentence of Article 2.2 of the TBT Agreement, the Panel considers, and the parties do not dispute, that the requirement under the second sentence of Article 5.1.2 calls for a relational analysis similar to that applied in Article 2.2, namely a weighing and balancing of a measure's trade-restrictiveness, degree of its contribution to an objective, and possible less trade restrictive alternative measures. In the context of a claim under Article 5.1.2, however, the analysis relates to the fulfilment of only one objective: giving positive assurance that the relevant requirements of the technical regulation are fulfilled."¹⁰⁵ Regarding the similarities between the two articles, the Panel noted

¹⁰⁰. Appellate Body Report, *Russia – Railway Equipment*, para. 5.1285.124-5.127

¹⁰¹ Appellate Body Report, *Russia – Railway Equipment*, para. 5.128

¹⁰² Appellate Body Report, *US – Tuna II (Mexico)*, para [320].

¹⁰³ Appellate Body Report, *US – Tuna II (Mexico)*, para [647].

¹⁰⁴ Appellate Body Report, *Russia – Railway Equipment*, para. 5.185.

¹⁰⁵ Panel Reports, *EC – Seal Products*, para. 7.539.

that both provisions concern the notion of "necessity". To that extent, the Panel considered useful, when interpreting the second sentence of Article 5.1.2, to refer to the holistic weighing and balancing of certain factors set out by the Appellate Body in respect of Article 2.2.¹⁰⁶.

4.2.1. The certification requirement is highly trade restrictive.

69. A measure is trade restrictive if it has a limiting effect on international trade¹⁰⁷. International trade is limited when imports of products are reduced¹⁰⁸ or when conditions of competition are modified¹⁰⁹. In the present dispute, the conditions of completion were modified drastically. The question of whether Valaria has considered equivalency arrangements with other Members with the view to increase the pool of certification bodies empowered under Section 8 of the Ethical Cosmetics Act 2021 has not been addressed properly by the government. The fact that Valaria has introduced more certification bodies in their country is not the relief that the foreign nations are seeking. If the Valarian government introduce certification bodies in these countries which actively engage in trade with Valaria, such equivalency arrangements could potentially alleviate burdens on the foreign products and allow the foreign country certified products to be labelled as "cruelty-free" in Valaria without having to undergo recertification by Valarian authorities. Additionally, this would also relieve the burden on Valarian authorities and prevent unnecessary disruptions in trade.
70. Additionally, the procurement of the certificate causes significant delays and unnecessary costs in placing a product on the Valarian market. Many foreign producers would be disincentivised to seek product re-certification under the Ethical Cosmetics Act 2021 due to prohibitive costs and technical difficulties related to product certifications and availability of certifiers. Cosmetics are fast-moving goods that depend largely on seasonal sales and fashion trends. As a result, the ability to place them immediately on the market is crucial.
71. Moreover the inconsiderate and unreasonable nature of Valarian government can be seen when no response has been given to the recommendation that the implementation of the requirement

¹⁰⁶ Panel Report, *Russia – Railway Equipment*, paras. 7.418-7.419.

¹⁰⁷ Appellate Body Report, *US – Tuna II (Mexico)*, para 319

¹⁰⁸ Panel Report, *Australia – TPP*, para 7.1208.

¹⁰⁹ Appellate Body Report, *Australia - TPP*, para 6.385.

to furnish a “certificate of recognition” be postponed by at least one year to allow supply chains to adjust.

72. Therefore, it is evident that the certification requirement is prima facie causing unnecessary trade restrictions and is a severe hindrance to free flow of International trade.

4.2.2 The degree of contribution made by the certification requirement to address its objective is not substantial

73. The degree of contribution of a measure can be analyzed in quantitative or qualitative terms¹¹⁰. Panels have examined it by analyzing the measure’s design, structure and operation¹¹¹. Scientific evidence also plays a significant role in this assessment, particularly when there is not enough data related to the application of the measure¹¹². The former is a consequence of the required balance between the regulating nature of technical regulations and international trade¹¹³.

74. Firstly, the relation between imposing a trade restrictive measure like re certification and achievement of environmental protection objective is unexplained and vague. Additionally, it has to be noted here that the cosmetics product are certified in their home countries and the Valerian government is imposing a re-certification from their agencies which highly unreasonable and cost consuming. At a stage where no alternative to animal testing s invented and countries struggling to keep with the fast moving pace of a cosmetics market, introducing such unreasonable trade restrictive measures does not help in consumer awareness or protection of wild species but rather causes unnecessary hindrances to trade putting the foreign nations at a great disadvantage as the domestic country does not have to bear this additional cost of re certification.

75. Hence the contention that the measure helps in achieving the legitimate objective does not stand ground.

¹¹⁰ Panel Report, *Australia - TPP*, para 5.211

¹¹¹ Panel Reprt, *Australia – TPP*, para 7.488

¹¹²Panel Report, *Australia - TPP* ,para 7.499

¹¹³Appellate Body Report,, *US - Clove Cigarettes*, para 109.

4.2.3. The nature of the risks and the gravity of consequences that would arise from non-fulfilment are, at best, uncertain

76. The burden of proof for this step rests on the respondent¹¹⁴. At this stage a Panel must assess the likelihood and the gravity of potential risks -and any associated adverse consequences- that might arise in the event that the legitimate objective being pursued would not be fulfilled¹¹⁵. These adverse consequences must be seen in light of the alternative measures available to Valeria which have a similar degree of contribution¹¹⁶.
77. The objectives are stated by the government of are Consumer Awareness and Protection of Environment. However, the relation between imposing re- certification requirement that too only by Valarian agencies and protection of the legitimate objectives is in ambiguity. A responsible and welfare government is always welcomed to take measures that protect the interest of the people. However, A measure that addresses these objectives must have a balance between the pursuance of said objective and the restriction of trade¹¹⁷. As was stated before, the contribution of the measure to address these legitimate objectives is uncertain and insufficient. Then, the non-fulfillment of the measure would, at best, have an uncertain impact on Environment protection and consumer misinformation.

4.3. Valeria does not implement the obligations set out in article 5.2.6 of TBT

78. Danizia submits that Valeria does not implement obligations set out in Article 5.2.6 of TBT. The siting of facilities used in conformity assessment procedures cause “unnecessary inconvenience” to Danizia. It is submitted that there is “inconvenience” caused to Danizia as a result of Valeria’s siting of facilities. This measure is burdensome to Danizian exporters of cosmetic products¹¹⁸ as they have to resort to certification bodies located in other parts of the world for accreditation and this effectuates as cumbersome, more expensive and time-consuming. Moreover, for fast moving goods such as cosmetic products, factors such as shelf-life must be taken into account and the certification process must be as expeditious as possible. The siting of facilities are at locations inconvenient to Danizia.

¹¹⁴ Panel Report, *US - Clove Cigarettes*, para 7.424; PR, Australia - TPP, para 7.1321.

¹¹⁵Id

¹¹⁶ Appellate Body Report, *US - Tuna II (Mexico)*, [321].

¹¹⁷ Appellate Body Report, *US – Clove Cigarettes*, [109].

¹¹⁸ Para 4.2, ¶ 10, Moot Problem

79. It is submitted that the inconvenience caused to Danizia is “unnecessary” as the provision of law can be equally efficiently implemented with the siting of facilities within Danizia. Moreover, it would even result in a faster, more expeditious and cost-effective compliance of the provisions of the Ethical Cosmetics Act, as required by Valeria.
80. It is further submitted that the same effect of the application of Section 8 can be implemented through an equivalency arrangement of Valaria with Danizia to increase the pool of certification bodies empowered under Section 8 of the Ethical Cosmetics Act 2021 could potentially alleviate burdens on Danizian products and allow Danizian certified products to be labelled as “cruelty-free” in Valaria without having to undergo re-certification by Valarian authorities. Additionally, this would also relieve the burden on Valarian authorities and prevent unnecessary disruptions in trade. Since there is a reasonably available and less trade restrictive alternative measure that would make an equivalent contribution to the relevant “legitimate” objective¹¹⁹, it is submitted that the inconvenience caused to Danizia is unnecessary.
81. In the light of these arguments, it is emphasized that Valeria does not implement its obligations as set out in Article 5.2.6 of TBT.

¹¹⁹ Panel Report, *US – COOL*, para. 7.650.

REQUEST FOR FINDINGS

Wherefore in light of the measures at issue, legal pleadings, reasons given and authorities cited, Danizia, the Claimant, respectfully requests the Panel to:

- I. Find that Isle of Nysa's request to file Amicus Curiae brief be accepted by this Panel.
- II. Find that the Labelling requirements under section 6 of Ethical Cosmetics Act 2021 is in violation of Article 2.2 of TBT.
- III. Find that certification requirement under Section 8 of the Ethical Cosmetics Act 2021, is in violation of Article 5.2.6 of the TBT Agreement
- IV. Find that equivalency fee in Section 5 of the Sustainable Taxation (Amendment) Act 2021, is in violation of Article III:2 of the GATT 1994.

Respectfully Submitted

Danizia

Agent(s) on behalf of the Complainant