Team Code: 129R

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 RESPONDENT-

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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

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 *Brazil – Measures affecting import of Retreaded Tyres,* WT/DS332/AB/R, adopted on 3 December 2007
2. Appellate Body Report *Chile – Taxes on Alcoholic Beverages*, WT/DS87/AB/R, WT/DS110/AB/R adopted 13 December 1999
3. Appellate Body Report, *Canada — Certain Measures Concerning Periodicals*, WT/DS31/AB/R adopted on 30 June 1997
4. Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audio-visual Entertainment Products*, WT/DS363/AB/R adopted on 21 December 2009
5. Appellate Body Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R adopted 5 April 2001
6. Appellate Body Report, *European Communities–Conditions for the Granting of Tariff Preferences to Developing Countries*, WT/ DS246/AB/R adopted on 7 April 2004
7. Appellate Body Report, *Japan — Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R adopted on 4 October 1996

8. 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
9. Appellate Body Report, *Korea – Taxes on Alcoholic Beverages*, WT/DS75/AB/R, WT/DS84/AB/R adopted 18 January 1999
10. Appellate Body Report, *Russia - Measures Affecting the Importation of Railway Equipment and Parts thereof*, WT/DS499/AB/R, adopted on 4 February 2020
11. Appellate Body Report, *United States – Measures Affecting The Cross-Border Supply of Gambling And Betting Services*, WT/DS285/AB/R adopted on 7 April 2005
12. Appellate Body Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, adopted 24 April 2012
13. Appellate Body Report, *United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R adopted on 16 May 2012
14. Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products Recourse to Article 21.5 of the DSU by Mexico*, WT/DS381/AB/RW adopted on 20 November 2015
15. Appellate Body Report, United States - *Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted on 29 April 1996
16. Appellate Body Report, *United States- Certain Country of Origin Labelling (COOL) Requirements*, WT/DS384/AB/R, WT/DS386/AB/R adopted on 29 June 2012
17. Appellate Body Reports, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R adopted 12 October 1998
18. GATT Panel Report, *Canada/Japan—Tariff on Imports of Spruce, Pine, Fir (SPF) Dimension Lumber*, L/6470 adopted on 19 July 1989
19. GATT Panel Report, *United States - Section 337 Of The Tariff Act Of 1930*, L/6439 - 36S/345 adopted on 7 November 1989
20. Panel Report *Argentina – Measures affecting the export of Bovine Hides and the Import of Finished Leather*, WT/DS155/R adopted on 19 December 2000
21. 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.

22. Panel Report, *India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, WT/DS90/R adopted on 6 April 1999
23. Panel Report, *Japan – Alcoholic Beverages II*, WT/DS8/R, WT/DS10/R, WT/DS11/R adopted on 11 July 1996
24. Panel Report, *Mexico – Taxes on Soft Drinks and other Beverages*, WT/DS308/R adopted 7 October 2005
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 – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/R adopted on 13 June 2012
28. Panel Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/AB/RW adopted 22 October 2001
29. Panel Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R, WT/DS401/R adopted on 25 November 2013

Books & Articles

1. FAOUN and WTO 2017: Food and Agriculture Organization of the United Nations, World Trade Organization, 'Trade and Food Standards' (Geneva 2017)
2. Gabrielle Marceau, *The New TBT Jurisprudence in US - Clove Cigarettes, WTO US - Tuna II, and US – COOL*, 8 ASIAN JOURNAL OF WTO & INTERNATIONAL HEALTH LAW & POLICY 1, 11 (Mar. 2013).
3. Hestermeyer, *Article III GATT 1994, in* 3 WTO – TECHNICAL BARRIERS AND SPS MEASURES 1, 5 (Rudiger Wolfrum et al. eds., 2007).

4. Howse, Robert and Regan, Donald. (2000) 'The Product/Process Distinction: An Illusory Basis for Disciplining 'Unilateralism' in Trade Policy' 11 *European Journal of International Law* 249.
5. Ludivine Tamiotti, *Article 2 TBT: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies in* MAX PLANCK COMMENTARIES ON WORLD TRADE LAW: WTO- TECHNICAL BARRIERS AND SPS MEASURES 219 (2007).
6. Marceau, Gabrielle and Trachtman, Joel P. (2002) 'The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade: A Map of the World Trade Organization Law of Domestic Regulation of Goods'. 36 *Journal of World Trade* 811.
7. Petros C. Mavroidis, *Driftin' Too far from shore-Why the test for compliance with the TBT Agreement developed by the WTO Appellate Body is wrong, and what should the AB have done instead*, 522 World Trade Review (2013).
8. Petros C. Mavroidis, Driftin' Too far from shore-Why the test for compliance with the TBT Agreement developed by the WTO Appellate Body is wrong, and what should the AB have done instead, 522 World Trade Review (2013).
9. The Law and Policy of the World Trade Organization Text, Cases and Materials , pp. 320 - 400DOI: 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
10. Thow et al 2020: Thow A, Jones A, Schneider C, et al, 'Increasing the Public Health Voice in Global Decision-making on Nutrition Labelling' (2020) 16 BMC Public Health
11. Yoshimichi Ishikawa, *Plain Packaging Requirements and Article 2.2 of the TBT Agreement,* 30 CHINESE (TAIWAN) YEARBOOK OF INTERNATIONAL LAW AND AFFAIRS 72, 88 (2012).

Miscellaneous Authorities

1. Appellant Submission of the United States of America, *United States - Certain Country of Origin Labelling (Cool) Requirements*, AB-2012-3 //DS384/386 adopted on 23 March 2012
2. 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
3. Ministry of Economy, Trade and Industry, NATIONAL TREATMENT PRINCIPLE, https://www.meti.go.jp/english/report/downloadfiles/gCT0322e.pdf
4. Animal Derived Ingredients List, PETA.org, available at https://www.peta.org/living/food/animal-ingredients-list/
5. WTO, *Understanding the WTO* (2008). https://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm
6. Sixth Recital, Agreement on Technical Barriers to Trade, Jan. 1, 1995, 1868 U.N.T.S. 120, 18 I.L.M. 1079; Button,

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 AMONST 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 VIOLATIVCE 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 UNECESSARY INCONVIENECE AND VIOLATION OF ARTICLE 5.2.6 OF TBT

SUMMARY OF PLEADINGS

I.

Isle of Nysa, being a WTO Member, had chosen not to exercise its third party right conferred upon it by virtue of Article 10.2 of the DSU. This legal right is provided to WTO Members under the DSU to participate in proceedings by way of retaining their third-party rights.Due process was followed by other WTO Members who notified their interest in participating in the proceedings before the Panel unlike Isle of Nysa and accepting the request put forth by Isle of Nysa would go to undermine the efforts of the other Members.As per Article 13 of the DSU, the right to seek information rests with the Panel and gives the Panel the right to decide whether it needs any more information and also the kind of information it needs in a matter. Valaria submits that the Panel not accept the *amicus curiae* brief that Isle of Nysa has requested to file as it also seeks to provide legal arguments and legal interpretation in the matter which it should have done by means of exercising its third-party right.

II.

The Labelling requirements under section 6 of ECA are consistent with Article 2.2 of the TBT Agreement. The requirements are enforced to pursue a "*legitimate objective*" and is not more "*trade restrictive*" than "*necessary*". The measure at hand makes a material contribution towards achieving the objective and it is also not unnecessarily trade restrictive. It is proved beyond reasonable doubt that grave consequences arise from non-fulfillment of the objective. Additionally no less restrictive trade alternatives are "*reasonably*" available. Henceforth, it is proved that the labeling requirements under section 6 of ECA is consistent with Article 2.2 of the TBT agreement.

III.

As stipulated by Article III:2,Valeria does not apply any standards higher than those imposed on domestic products as the domestic and imported products are not 'like', nor is there a a directly competitive or substitutable relationship between the goods. Additionally, Section 5 of the Sustainable Taxation (Amendment) Act 2021 is consistent 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 implements its obligations under Article 5.1.1, Article 5.1.2 and Article 5.2.6 of the TBT.

LEGAL PLEADINGS

1. ISLE OF NYSA'S REQUEST TO FILE AN AMICUS CURIAE BRIEF MAY NOT BE ACCEPTED BY THE PANEL

1. Valaria humbly submits before the Panel that the amicus curiae brief that Isle of Nysa has requested to submit not be accepted by the Panel as the acceptance of the same is not necessary in the current dispute. Isle of Nysa has not exercised its right as a third party in the current dispute and has thus forgone its right to submit evidence before the Panel. Moreover, it is humbly submitted that the fair, prompt, and effective resolution of trade disputes will be interfered with by accepting the said brief.

1.1. Isle of Nysa has not exercised its right as a third party in the current dispute under Article 10.2 and Appendix 3 of the DSU

2. Valaria humbly submits before the Panel that Isle of Nysa, being a WTO Member had the opportunity to exercise its rights as a third party conferred to it under the DSU but chose not to do so. Article 10.2 of the DSU clearly states as follows: *"10.2- Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB.shall have an opportunity to be heard by the panel and to make written submission to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report."*[1]
3. Upon reading and interpreting the wordings under the above article, it can be clearly inferred that any WTO Member who has a "substantial interest in a matter before the panel" must (i) notify its interest to the DSB in order to (ii) have an opportunity to be heard by the panel as well as make written submissions to the panel. The reading of Article 10.2 goes to show that WTO Members possess a legal right under the DSU to participate in Panel proceedings if they retain their third-party rights at the outset of the dispute settlement process and since Members are conferred with this legal right, it imposes a subsequent legal duty on the Panel to ensure that this legal right of the Members are upheld. Valaria submits that other Members such as

[1] Understanding on Rules and Procedures Governing the Settlement of Disputes,Art. 10.2, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU]

Elysia, Hyperborea, Arcadia, Themiscyra and Saturnalia had followed the due process set out under the DSU and notified their interest in participating in the Panel proceedings as third parties.[2] However, Isle of Nysa, despite being a WTO Member and having possession of this legal right as under the DSU had not exercised the same and thus, there exists no legal duty on the Panel to accept the *amicus curiae* brief put forth by the Isle of Nysa.

4. Moreover, Appendix 3 of the DSU lays down the Working Procedures to be followed by the panel in its proceedings. Pursuant to this, it has been laid down that"6. *All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session."*[3]
5. According to this, Valaria submits that only WTO Members who have exercised their third-party right and expressed their interest by way of notifying the DSB of the same shall be allowed to present their written submissions to the Panel. Given this, Valaria further submits that interpreting the DSU in such a manner as to grant a Member who has not exercised their third-party right in a dispute, to be able to file an unsolicited *amicus curiae* brief is unreasonable and goes to undermine the efforts of those Members who have made use of the procedures established under the DSU. Valaria submits that since Isle of Nysa did not notify its interest to the DSB in accordance with these provisions, Isle of Nysa should not be given an opportunity to be heard by the Panel.

1.2. Article 13.1 of the DSU to be interpreted in a literal manner by the Panel as it does not require Panels to consider unsolicited information.

6. Valaria submits to the Panel that Article 13.1 of the DSU should be interpreted in a literal manner. Under this Article, a three step process is seen to have been established in order for Panels to seek information; (a) A decision to seek information and technical advice is to be made by the Panel, (b) a notification is to be sent to a Member that such information or advice is being sought for by the Panel from within its jurisdiction and (c) Members are to respond to the consideration of the requested information or advice. Valaria submits that on interpreting this provision, it is seen that the Panel has a right to decide whether it is in need of any

[2]Para 4.9, ¶ 12, Moot Problem
[3]Appendix 3, DSU.

additional information and if so, what kind of information it should seek. Furthermore, as has been stated by the Appellate Body in *US-Shrimp, "The amplitude of the authority vested in panels to shape the process of fact-finding and legal interpretation makes clear that a panel will not be deluged; as it were, with non-requested material, unless that panel allows itself to be so deluged."*[4] Valaria submits that this statement of the Appellate Body points to the right of the Panel to decide whether it requires any additional information and that the authority of the Panel does not necessarily mean it must be overburdened with non-requested material. It is submitted that accepting any or all unsolicited amicus curiae briefs would without a doubt increase the burden of workload on the Panel as well as the parties to the dispute.

7. The Panel is conferred with the right to "seek" information or advice under Article 13.1 of the DSU. Valaria submits that the use of the word "seek" under this Article has been carried out in order to provide the Panel with the option of requesting for such information or advice.
8. Hence, it is submitted that accepting the request put forth by Isle of Nysa to submit an *amicus curiae* brief would be inconsistent with the provisions of the DSU because the same has not been requested by the Panel and would be depriving the right of the Panel to decide by itself whether it is in need of any additional information or not.
9. Moreover, it is submitted that Isle of Nysa seeks to put forward legal arguments and provide legal interpretation of the issues[5] which does not constitute either *"information or technical advice"* as has been laid down in Article 13.1 of the DSU.
10. Valaria submits that the Panel not accept the *amicus curiae* brief that Isle of Nysa requests to submit as accepting the same will hamper the fair, prompt and effective process of resolution of the trade dispute.

[4] Appellate Body Reports, *United States-Import Prohibition of Certain Shrimp and Shrimp Products*, ¶108, WT/DS58/AB/R (12 October 1998)
[5] Para 4.10, ¶ 12, Moot Problem

2. THROUGH THE LABELLING REQUIREMENT IN SECTION 6 OF THE ETHICAL COSMETICS ACT 2021, VALARIA DOES NOT APPLY 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

11. It is well established that for a measure to be consistent with Art 2.2 of the TBT,[6] it must seek to achieve a legitimate objective **[2.1]** and it should not be more trade restrictive than necessary to fulfill that legitimate objective **[2.2]**.[7] It is submitted that in the present case, the Ethical Cosmetics Act complies with both the conditions.

2.1 ECA seeks to achieve a legitimate objective

12. The first step in examining the legitimacy of the objective is the identification of the objective of the measure at issue. The objective of any measure can be determined by considering text of the statute, legislative history, and other evidence regarding the structure and operation of the measure.[8] Moreover, the respondent member's characterization of the objective can be taken into account, although the Panel is not bound by it. A legitimate objective" refers to ―an aim or target that is lawful, justifiable, or proper".[9] Article 2.2 also explicitly provides for protection of, animal or plant life or health, or the environment *inter alia*, as a legitimate

[6] Article 2.2,TBT Agreement.
[7] 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]; Panel Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, ¶¶ 314, 318, WT/DS381/R (June 13, 2012) [hereinafter *US-Tuna* Panel Report]. Appellate Body Report, *United States- Certain Country of Origin Labelling (COOL) Requirements*, ¶ 369,WT/DS384/AB/R, WT/DS386/AB/R (June 29, 2012). Petros C. Mavroidis, *Driftin' Too far from shore-Why the test for compliance with the TBT Agreement developed by the WTO Appellate Body is wrong, and what should the AB have done instead*, 522 World Trade Review (2013).
Agreement on Technical Barriers to Trade, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1968 U.N.T.S 120; Panel Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, ¶87, WT/DS406/R (24 April 2012)[hereinafter Panel Report, *US Clove Cigarettes*].
Appellate Body Report, *United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, ¶313, WT/DS381/AB/R (16 May 2012). [hereinafter Appellate Body Report ,*US Tuna II (Mexico)*]; Appellate Body Report, *United States - Certain Country of Origin Labelling (Cool) Requirements*, ¶370 , WT/DS384/AB/R, WT/DS386/AB/R (29 June 2012). [hereinafter Appellate Body Report, *US- Cool*]. .
[8] Appellate Body Report ,*US-Tuna*, *supra* note 3, ¶ 314.
[9]Appellate Body Report US-COOL, supra note 3, ¶ 370.

objective.[10] The objective need not be completely met[11] nor is there a minimum threshold requirement to be fulfilled for a measure to contribute to an objective.[12] This requirement, of the contribution to the objective is said to be met, as long as there is a contribution to the fulfillment of the stipulated objective to at least some extent.[13]

13. In the present dispute, the labeling requirements under section 6 of ECA were brought into effect by Valaria to minimize animal testing conducted to demonstrate the safety of cosmetic products.[14]Moreover, animal testing and research causes significant rise in air pollution, water contamination and soil contamination in addition to the biologically hazardous waste produced in laboratories. [15] The Animal testing and Research is a compound threat to valerian biodiversity as captive breeding and release of genetically modified animal into the wild only has a devastating effect on the fauna of the country posing a huge threat to its wild species.[16] Additionally, the enactment of ECA was also for the protection of human health as Valaria is home to several indigenous communities who are known to utilize plants and animal populations effectively as resources while managing them sustainably.[17] A threat to the animal species of the country could affect the life and lifestyle of these communities that are depended on these species for their life.
14. Additionally, by making the information set out in the new labels as per section 6 of the ECA to consumers, it will enable them to make informed and determined choices. The Panel in *US-COOL*[18] held that providing information to the consumers by way of labels is also a legitimate objective within the meaning of Art. 2.2. Additionally, Art. VI: 4 of the GATS list out "protection of consumers" as a legitimate objective. Therefore, it is submitted that ECA has been implemented to pursue a legitimate objective.

[10] Article 2.2 , TBT Agreement
[11] Appellate Body Report, *US- Tuna II (Mexico)*, *Supra* Note 67, ¶315; Appellate Body Report, *US- Cool*, *Supra* Note 67, ¶373.
[12] Appellant Submission of the United States of America, *United States - Certain Country of Origin Labelling (Cool) Requirements*, ¶167, AB-2012-3 //DS384/386 (23 March 2012).
[13] Appellate Body Report, *United States – Measures Affecting The Cross-Border Supply of Gambling And Betting Services*, ¶ 301, WT/DS285/AB/R (7 April 2005) [hereinafter Appellate Body Report, *US – Gambling*]
[14] Para 2.13, ¶ 6, Moot Problem
[15] Para 1.12, ¶ 5, Moot Problem
[16] Id
[17] Para 1.3, ¶ 1, Moot Problem
[18] Panel Report *US-COOL, supra 2*

2.2 ECA is not more trade restrictive than necessary to fulfill the legitimate objective

15. The assessment of the necessity of a measure requires „weighing and balancing" factors such as the degree of contribution made by the measure to the legitimate objective **[2.2.1]**, the trade-restrictiveness of the measure **[2.2.2]**, and the nature of the risks at issue and the gravity of the consequences that would arise from non-fulfillment of the objective pursued by the Member through the measure **[2.2.3]**.[19] This test is mainly used for assessment under Art XX. However, the jurisprudence of Art XX of GATT has been held to be applicable to Art 2.2 of TBT Agreement as well.[20] Additionally, a comparative analysis of the measure at issue and the alternatives is also used to establish its necessity **[2.2.4]**.[21]

2.2.1. ECA contributes to the fulfilment of the legitimate objective

16. A measure is said to contribute to the achievement of the legitimate objective when there is "*a genuine relationship of ends and means between the objective pursued and the measure at issue*"[22] The degree of contribution can be determined from the design, structure, and operation of the measure.[23] A measure need not make any minimum degree of contribution to the objective. Even if *some* contribution has been made, this test is said to have been satisfied.[24] Moreover, the sixth recital in the Preamble of the TBT Agreement permits the members to pursue the legitimate objectives ―*at the levels [the Member] considers appropriate*‖.[25] The degree or level of contribution of a technical regulation to its objective is not an abstract

[19] Appellate Body Report ,*Korea-Beef, ,* ¶ 164; *US-Tuna* Appellate Body Report, *supra* note 3, ¶ 321; Gabrielle Marceau, *The New TBT Jurisprudence in US - Clove Cigarettes, WTO US - Tuna II, and US – COOL,* 8 ASIAN JOURNAL OF WTO & INTERNATIONAL HEALTH LAW & POLICY 1, 11 (Mar. 2013).
[20] Panel Report *US-Clove, ,* ¶ 7.368; *US-COOL* Panel Report, *supra* note 47, ¶ 7.667; 3 Ludivine Tamiotti, *Article 2 TBT: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies in* MAX PLANCK COMMENTARIES ON WORLD TRADE LAW: WTO- TECHNICAL BARRIERS AND SPS MEASURES 219 (2007).
[21] Appellate Body Report *US-Tuna, ,* ¶ 320; Yoshimichi Ishikawa, *Plain Packaging Requirements and Article 2.2 of the TBT Agreement,* 30 CHINESE (TAIWAN) YEARBOOK OF INTERNATIONAL LAW AND AFFAIRS 72, 88 (2012).
[22] Appellate Body Report *Brazil – Retreaded Tyres,* Appellate Body Report, *United States – Measures Affecting the Production & Sale of Clove Cigarettes*, ¶ 87, WT/DS406/AB/R (Apr. 24, 2012) [hereinafter *US-Clove* Appellate Body Report]; Appellate Body Report, *United States – Measures Concerning the Importation, Marketing & Sale of Tuna and Tuna Products*, ¶ 202 , WT/DS381/AB/R (May 16, 2012) [hereinafter *US-Tuna* Appellate Body Report]; Appellate Body Report, *United States – Certain Country of Origin Labelling (COOL) Requirements*, ¶ 267, WT/DS384/AB/R, WT/DS386/AB/R (June 29, 2012) [hereinafter *US-COOL* Appellate Body Report].
[23] *Appellate Body Report, United States – Measures Concerning the Importation, Marketing & Sale of Tuna and Tuna Products, ¶ 202 , WT/DS381/AB/R (May 16, 2012) [hereinafter US-Tuna Appellate Body Report];*
[24] Appellate Body Report, *United States – Certain Country of Origin Labelling (COOL) Requirements*, ¶ 267, WT/DS384/AB/R, WT/DS386/AB/R (June 29, 2012) [hereinafter *US-COOL* Appellate Body Report].
[25] Sixth Recital, Agreement on Technical Barriers to Trade, Jan. 1, 1995, 1868 U.N.T.S. 120, 18 I.L.M. 1079; Button,

concept, but rather something, that is revealed through the measure itself.[26] 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.[27] 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.[28]

17. The labeling requirement was introduced to achieve the legitimate objectives that are rightly established above. The labeling requirement under section 6 of ECA categorizes products as CRUELTY FREE PRODUCT, NOT TESTED ON ANIMALS AND, HARMFUL, TESTED ON ANIMALS depending upon the animal test data obtained.[29] It is to be highlighted here that in no way are the labeling misleading as the clear purpose of the labeling is to inform consumers whether it's tested on animals or not which is fulfilled. This requirement was brought into action for the protections of the animal species in the country. The animal welfare is very crucial and important for a mega diverse country like Valeria where its citizens are also keen in protecting its bio diversity. Considering that Animal welfare is a cross border issue and there might be divergence in the level of animal welfare action taken by trading partners, it was necessary for Valeria to come up with the labeling requirements under ECA. In addition to providing consumers awareness, the labeling requirements also helps to keep in check and control the level of animal of animal testing happening until an equitable alternative is brought into action. Additionally, it has to be highlighted here that Valeria has always been keen on protecting its bio diversity which is evident from the several acts and measures taken in the past including the BP Act 1984, the MoFWC's Animal Welfare Board, the Sustainable Taxation Act, the SCPI and the various surveys conducted time to time before arriving at crucial decisions.

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[26] Appellate Body Report, *United States- Certain Country of Origin Labelling (COOL) Requirements*, ¶ 373, WT/DS384/AB/R, WT/DS386/AB/R (June 29, 2012); *See also* Appellate Body Report, *United States – Measures Concerning The Important, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, ¶ 316, WT/DS381/AB/R

[27] Appellate Body Report, *United States- Certain Country of Origin Labelling (COOL) Requirements*, ¶ 390, WT/DS384/AB/R, WT/DS386/AB/R

[28] 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 Entertainment Products*, ¶ 252, , WT/DS363/AB/R

[29] Para 2& 3, ¶ 21, Moot Problem

2.2.2. ECA is not more trade restrictive than necessary to fulfill the legitimate objective

18. The term "trade-restrictive" refers to a measure "having a limiting effect on trade‖.[30] Measures that are Trade-restrictive includes those that impose any form of limitation of imports, discriminate against imports or deny competitive opportunities to imports.[31] It is submitted that the Appellate Body, in *US – Tuna II*, found that "some" trade-restrictiveness is allowed. Excessive restrictions than necessary to achieve the required degree of contribution on international trade are, however, prohibited.[32]
19. However, the Panel in the case of considered that "the manner in which an assertion of trade-restrictiveness is substantiated may vary from case to case" and "an assertion that a technical regulation is trade-restrictive might be substantiated on the basis of whether the technical regulation has a limiting effect on competitive opportunities 'in qualitative terms … in the particular circumstances of a given case'." The Panel further noted that, "in certain cases, 'a detrimental modification of competitive opportunities may be self-evident with respect to certain de jure discriminatory measures, whereas supporting evidence and argumentation of actual trade effects might be required to demonstrate the existence and extent of trade-restrictiveness in respect of non-discriminatory internal measures that address a legitimate objective'." Consequently, "while the existence of discrimination may contribute to the establishment of 'trade-restrictiveness' within the meaning of Article 2.2, a determination of 'trade-restrictiveness' is not dependent on the existence of discriminatory treatment of imported products. The existence and extent of trade-restrictiveness is to be demonstrated in respect of technical regulations that are not alleged to be discriminatory will depend on the circumstances of a given case" and "in the absence of any allegation of de jure restriction on the opportunity for imports to compete on the market or of any alleged discrimination in this respect (between imports or between imported and domestic products), a sufficient demonstration will be required to establish the existence and extent of any 'limiting effect' on international trade
20. Additionally, the reference in article 2.2 of the TBT Agreement, to *unnecessary obstacles,* implies that some trade restrictiveness is allowed. Further, that what is actually prohibited are

[30] Panel Report, *India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, ¶ 5.129, WT/DS90/R (Apr. 6, 1999); *US-COOL* Appellate Body Report, *supra* note 3, ¶ 371; *US-Tuna* Appellate Body Report,
[31] Panel Report, *US-Tuna, supra note 25*
[32] Appellate Body Report ,*US-Tuna,*; *US — COOL* Appellate Body Report,

those restriction 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.[33] It is also submitted that, in order to comply with the technical regulations, the exporters may have to incur various kinds of costs/ compliance costs, and an exporter or manufacturer must adjust its production facilities to comply with diverse technical requirements in individual markets, production costs per unit are likely to increase.[34]

21. It is also observed that " a demonstration that the challenged measures may result in some alteration of the overall competitive environment for suppliers on the market would not, in itself, demonstrate their trade-restrictiveness within the meaning of Article 2.2". [35] Accordingly, the existence of some modification "of the conditions under which all manufacturers will compete against each other on the market, would [not], in itself, be sufficient to demonstrate the trade-restrictiveness" of the measures at issue. Rather, what must be established is that the challenged measures have a "limiting effect on international trade".[36] Thus, a complainant needs to show how any modification of the conditions of competition give rise to a limiting effect on international trade.[37]
22. It is submitted that the labeling requirements under section 6 of ECA applies to both domestic and foreign products and thus does not discriminate against imports. Further, it does not seek to impose ‘any limitation on imports’ or ‘deny competitive opportunity to importers’ as the measure does not impose a complete ban on animal testing or animal tested products. Moreover, the result of the survey conducted shows that 51% of the population was willing to pay a premium for a product that was more animal welfare friendly and 42% of the respondents considered that improving animal welfare could have positive effects on production. [38] It is therefore evident that the ECA was enacted by the Valarian government considering the best interest of its importers as well as the domestic producers in a long run. Since both relational

[33] *Appellate Body Report, United States – Measures Concerning The Important, Marketing And Sale Of Tuna And Tuna Products (Mexico),* ¶ 319, WT/DS381/AB/R (Jan 12, 2022).
[34] Technical Barriers To Trade, Technical Information On Technical Barriers To Trade, http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm#agree1 (last visited Jan 7 2022).
[35] Panel Reports, Australia – Tobacco Plain Packaging, para. 7.1166.
[36] Panel Reports, Australia – Tobacco Plain Packaging, para. 7.1166.
[37] Panel Reports, Australia – Tobacco Plain Packaging, para. 7.11667
[38] Para 2.9, ¶ 4, Moot Problem

and comparative analysis proves the necessity of ECA and its labeling requirements, it is not more trade-restrictive than necessary.

2.2.3. Grave Consequences Arise From Non-Fulfillment Of The Objectives

23. The third factor in relational analysis is that of the nature of the risks at issue and the gravity of consequences that would arise from non-fulfillment of the objective(s) pursued by the Member through the measure in question.[39] The term "risk of non-fulfillment", under Article 2.2, requires consideration of the likelihood and the gravity of potential risks.[40]
24. The determination requires taking into account the risks that would result from non-fulfillment of the stated objective. Art. 2.2 of TBT Agreement provide that in assessing the risks, *available scientific and technical information* could be a relevant element of consideration. Valaria is a mega diverse country with majority of its reptiles endemic to the country.[41] Valaria also has a significant proportion of its population belonging to the indigenous communities whose life and livelihood depends on the co-existence with the flora and fauna.[42] Additionally as part of the survey conducted for SCPI, 77% of the respondents considered preservation of wildlife to be an important goal. Hence it is clear that, protection of animal and wild species is extremely important for the ecological balance of environment as well as significant National Requirement of its citizens.
25. Laboratory conditions in animal research facilities are known to lead to zoonotic disease transmissions, with severity ranging from mild symptoms to death. In light of Valaria's recent experiences with SARS-CoV-2 and its potentially zoonotic origins, this is a cause for grave concern. Animal research and testing compound threats to Valarian biodiversity, as evinced by the rapid decline of long-tailed and rhesus macaques in Valaria in addition to threat posed by the genetically modified species interbreeding with other wild species.[43] Therefore it is evident that a check has to be made with the animal testing researching that is happening in and out of the country and hence the ECA is extremely necessary to be adopted and adhered to. The term

[39] Appellate Body Report,*US-Tuna*, ¶ 320; *US-COOL*,, ¶ 377.
[40] Appellate Body Report *US-Tuna*,¶¶ 7.466–7.467. 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).
[41] Para 1.1, ¶ 1, Moot Problem
[42] Para 1.3, ¶ 1, Moot Problem
[43] ¶ 5, Moot Problem

necessary here means making a contribution to[44], and the labeling requirements under ECA make a notable contribution towards the achievement of the legitimate objective.

2.2.4. There are no reasonably available alternatives

26. A measure is not considered necessary if there are reasonably available and less trade-restrictive alternatives. [45] The alternatives should be capable of making an equivalent contribution to the objective.[46] 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.[47] An alternative measure, however, has to be less trade restrictive than the challenged measure, makes an equivalent contribution to the relevant objective and is reasonably available. Members are expected to consider reasonably available alternatives in pursuing legitimate objectives.[48]
27. Given the urgency of the situation, Valaria submits that any other action would have imposed an undue burden on the state. Further, on account of being a developing country, Valaria is considerably constrained in its capacities at the moment. However, the SCPI Collective Action Fund under which grants would be awarded "to encourage cutting-edge research into alternatives to animal testing" will be provided and grant applications would be accepted as soon as the Ethical Cosmetics Act 2021 came into force.[49]Additionally, the nature of the risk is such that absent an immediate response, grave consequences would have ensued.
28. In the present case, instead of banning the products that used animal testing altogether, the government chose the less-restrictive way by adopting the labeling requirements under ECA. It has given an opportunity to the producers to come clean and regulate the animal testing and research by declaring the animal test data of their products. Therefore, it is submitted that the

[44] Appellate Body Report, *United States – Measures Concerning The Important, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, ¶ 318, WT/DS381/AB/R (May 16, 2012); *See also* Appellate Body Report, *Korea – Measures Affecting Imports Of Fresh, Chilled And Frozen Beef Korean beef*, ¶ 161, WT/DS161/AB/R, WT/DS169/AB/R (December 11, 2000).
[45] Appellate Body Report , *US-Tuna*, ¶ 304.
[46]Appellate Body Report *US — Tuna II (Mexico)*, ¶ 322.
[47] Appellate Body Report, *United States – Measures Concerning The Important, Marketing And Sale Of Tuna And Tuna Products (Mexico)*, ¶ 321, WT/DS381/AB/R (May 16, 2012).P 322
[48] Appellate Body Report, *US -Tuna II (Mexico), Supra* Note 67, ¶322; Appellate Body Report, *US- Cool*, ¶471.
[49]Para 2.16, ¶ 7, Moot Problem

labeling requirements is the least trade-restrictive way and no other reasonably available alternative will be able to achieve the objective at the same level at the moment.

3. THROUGH THE EQUIVALENCY FEE IN SECTION 5 OF THE SUSTAINABLE TAXATION (AMENDMENT) ACT 2021, VALARIA DOES NOT SUBJECT 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

29. Non-discrimination is a key concept in WTO law and policy.[50] WTO Agreements have distinguished between two components of this principle: Most Favoured Nation Principle and National Treatment Obligation.[51]The National Treatment Obligations requires that Members' goods should not be treated inferior to domestic goods. [52] This principle is incorporated in Art. III of the GATT.[53]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.[54]
30. The broad and fundamental purpose of Article III is to avoid protectionism in the application of regulatory measures. [55]The Appellate Body in *Canada — Periodicals,*[56]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 relationship[57].Regulatory measures

[50] The Law and Policy of the World Trade Organization Text, Cases and Materials , pp. 320 - 400 DOI: 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
[51] Hestermeyer, *Article III GATT 1994, in* 3 WTO – TECHNICAL BARRIERS AND SPS MEASURES 1, 5 (Rudiger Wolfrum et al. eds., 2007).
[52] Id at ¶ 6.
[53] 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].
[54] Id
[55] GATT Panel Report, *United States - Section 337 Of The Tariff Act Of 1930*, ¶ 5.10, L/6439 - 36S/345 (Nov. 7 1989).
[56] Appellate Body Report, *Canada — Certain Measures Concerning Periodicals*, pp. 18, WT/DS31/AB/R (Jun. 30, 1997).
[57] Appellate Body Report, *Japan — Taxes on Alcoholic Beverages*, pp. 16, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R (Oct. 4, 1996).

according an advantage to domestic products over imported products are therefore, inconsistent with the principle of equality of competition enshrined in Art. III.

31. 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."[58]
32. 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."[59] The second sentence examines whether (i) products are directly competitive or substitutable; (ii) not similarly taxed, and (iii) the dissimilar taxation is applied so as to afford protection to domestic production.[60]
33. In light of the above, the following arguments are advanced to prove that Section 5 of the Sustainable Taxation (Amendment) Act 2021 is consistent 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 consistent with GATT Art III:2, first sentence

34. The STA, 2021 does not violate Art. III:2, first sentence, since 1) Danizia's cosmetic products and Valeria's Cosmetic products are not like products and 2) the imported product, namely Danizian cosmetic products, are not 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 not 'like products'

[58] Ministry of Economy, Trade and Industry, NATIONAL TREATMENT PRINCIPLE, https://www.meti.go.jp/english/report/downloadfiles/gCT0322e.pdf
[59] Appellate Body Report, *Canada – Periodicals*, ¶. 22-23.
[60] Appellate Body Report, *Japan-Alcoholic Beverages*, ¶ 24

35. 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.[61] Valeria submits that its cosmetic products (hereinafter referred as "domestic products")" and Danizia's cosmetic products(hereinafter referred as "imported product") are not like products as they are categorically different, based on the criteria above mentioned. It is pertinent to note that as per Section 2(g) of the Ethical Cosmetics Act, "the assessment of whether a product is a cosmetic product has to be made on the basis of a case-by-case assessment, taking into account prescribed use, intended use, and tariff classification among other factors."[62] This provision by itself is indicative of the fact that due to the differing nature of factors such as prescribed use, intended use, tariff classification etc, a strict test is applied to even classify differing products available in the market under the head of cosmetic products.
36. Valeria submits that its domestic products and the imported products are different in terms of *physical characteristics and their nature and quality.* The Appellate Body in *Korea – Alcoholic Beverages*, supported the Panel's emphasis on the "quality" or "nature" rather than the "quantitative overlap of competition"[63]
37. The properties, nature and quality of the domestic and imported products are not like. The cosmetic industry in Valeria predominantly produces cosmetic products that are vegan and cruelty free.[64] A product that is vegan does not contain any animal ingredients or animal-derived ingredients. Commonly used ingredients in non-vegan cosmetics are honey, beeswax, lanolin, collagen, albumen, carmine, cholesterol, gelatin, etc. [65]These major ingredients are refrained from use in vegan products, hence substantially differentiating the composition of the domestic products from the imported products.
38. Since the products are ethically sourced, their production method also differs vastly from imported products available in the market. It is submitted that since Valarian cosmetic products are vegan and cruelty free, their composition, properties and physical characteristics are entirely different from that of Danizian imports which are cheaper since they do not use vegan

[61]Appellate Body Report, *Japan—Alcoholic Beverages II*, ¶ 20–1.
[62] Section 2(g) Ethical Cosmetics Act, Footnote 1, ¶ 14, Moot Problem
[63]Appellate Body Report, *Korea – Alcoholic Beverages*, para. 134.
[64] Para 2.15, ¶ 6, Moot Problem.
[65] Animal Derived Ingredients List, PETA.org, available at https://www.peta.org/living/food/animal-ingredients-list/

ingredients. Both the cosmetic products would be made of different raw materials which does not match the criteria set down for "like products" having similar raw materials by the Panel in *Japan-Alcoholic Beverages II*[66].

39. It is also pertinent to note that the general nature and quality of vegan products differ vastly from non-vegan products. Due to the ingredients used and sustainable sourcing, these products have a higher quality than non-vegan products.
40. The *consumer taste and preferences* blatantly point towards a distinction between the products in dispute. The citizens of Valaria are extremely conscious of the sustainability, animal welfare and protection of its bio-diversity.[67]The people's choices indicate that they have a strong preference for the consumption and production of goods and services that have minimal impact on the environment. The majority of the population were also even willing to pay a higher premium for a product that was more animal welfare friendly.[68] This is indicative of the fact that the purchasing decision of the citizens of Valaria is vastly distinctive of the local and imported products.
41. Furthermore, the *end uses* of the imported and domestic product cannot be considered 'like' since the domestic product is organically used in comparison to the imported product.
42. It is submitted that the imported and domestic products have different *Tariff classification* under the Tariff Schedule of Valeria. This is indicated by the assessment to be done with tariff classification as one of the criterions, for a product to be classified as "cosmetic product" under the Ethical Cosmetics Act.[69] Valeria's tariff classification is more appropriate to determine 'likeness'; this expansion beyond the Harmonized System is acceptable, as it accords to objective criteria, and is for a legitimate purpose.[70] Valeria is 'free to use [its] own definitions according to [its] individual requirements'[71], which it facilitates through Section 2(g) of the Ethical Cosmetics Act.

[66] Panel Report, *Japan – Alcoholic Beverages II*, para. 6.23.
[67] Para 2.6,2.7,2.8,2.9 ¶ 3-4,Moot Problem
[68] Para 2.9, ¶ 4, Moot Problem
[69] Section 2(g) Ethical Cosmetics Act, Footnote 1, ¶ 14 of Moot Problem
[70] GATT Panel Report, *Japan—SPF Lumber*, [5.13]; ABR, *EC–Tariff Preferences*, [183]; Mavroidis (2007), 128.
[71] WTO, *Understanding the WTO* (2008).

43. Moreover, it is submitted that the need to accommodate goals of environmental protection and sustainable development in the multilateral trading system, is recognised in WTO jurisprudence [72] and hence the Panel is requested to interpret likeness in light of these concerns.

3.1.2. Danizia's cosmetic products are not charged in excess of Valeria's cosmetic products

44. Valeria submits that Danizian Cosmetic Products are in no way charged excess of Valeria's cosmetic products. It was stated by the AB in *Argentina – Hides and Leather* that " what must be compared are the tax burdens imposed on the taxed products."[73]In this case, the tax's burden is the same since the tax rates are equal for domestic and imported products. According to Section 4 of the STA, the amount of tax levied is uniform and is applicable to both the imported and domestic products. If the animal test data is more than 15% of its constituents, the tax burden is imposed similarly for both Valeria and Danizia's cosmetic products. The domestic cosmetic products are taxed as per this criterion and hence there is no excess burden.
45. Moreover, as per Section 5.1 of the STA, only Valerian exports qualify for the "equivalency refund". The provision for equivalency refund of domestic products are subject to the conditions of Section 4. Since domestic products contain negligible constituents of animal test data, their nominal taxing rates will be below 15% and hence, no additional tax is imposed. This criterion applies to imported products as well. Moreover, the proviso of Section 5.1 also states that any foreign costs of animal testing which are to be paid upon their importation shall be deducted from this refund. This ensures that the refund is subject to deduction of extra foreign costs based on animal testing data.
46. Moreover, it is submitted that Section 5.2 of STA applies an equivalency fee only if a product imported into Valaria would have had an increased cost imposed by Section 4 had that product been produced in Valaria. This provision is indicative of the fact that the legislation only intends for uniform application of the law to both domestic and imported products with equal costs and their tax burden.
47. The evaluation of whether a tax is 'in excess' has to take into account all relevant factors, including the economic impact on competitive opportunities for evaluation, since the purpose of Art. III:2 first sentence is to ensure equality of competitive conditions. [74] Furthermore,

[72] Appellate Body Report, *US—Gasoline*, 29-30; ABR, *US–Shrimp*, [129], [131], [185]; PR, *US—Shrimp (21.5)*,[7.2].
[73] Panel Report, *Argentina – Hides and Leather*, paras. 11.182-11.184.
[74] Panel Report *Argentina-Hides and Leather*, para. 11.18; ABR *Canada-Periodicals*, ¶ 18.

domestic products produced in an environmentally unfriendly manner will also be subject to the STA.

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

48. It is submitted that Section 5 of the Sustainable Taxation (Amendment) Act 2021 is consistent with GATT Art III:2, second sentence. In *Japan – Alcoholic Beverages II*[75], 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 (i) directly competitive or substitutable products (ii) not similarly taxed (iii) applied so as to afford protection to domestic production.[76]

3.2.1. Valeria's cosmetic products and Danizia's cosmetic products are not directly competitive and substitutable.

49. Section 5 of STA complies with the second sentence of Art. III:2, as Valeria's cosmetic products and Danizia's cosmetic products are not directly competitive and substitutable. It is 'appropriate' to consider the competitive conditions in the relevant market, as manifested in the cross-price elasticity.[77] Studies of cross-price elasticity are an established means of examining a market.[78] The domestic and imported products are not directly competitive as an increase in the price of one would not *directly* increase demand for the other.
50. It is submitted that the imported and domestic products are not substitutable products. It is conclusive that as per prevailing market conditions, the demand for products are based on other factors such as sustainability and animal welfare, rather than the price. The environmentally conscious citizens of Valeria clearly differentiate between the products and do not use them interchangeably.

3.2.2. Valeria's cosmetic products and Danizia's cosmetic products are similarly taxed.

51. As per arguments advanced in 2.1.2, Valeria's cosmetic products and Danizia's cosmetic products are similarly taxed. Products are similarly taxed if a tax differential falls below a *de*

[75]Appellate Body Report *Japan – Alcoholic Beverages II*, ¶ 16
[76]Appellate Body Report *Japan – Alcoholic Beverages II*, ¶ 24;ABR *Canada – Periodicals* ¶ 24-25, and ABR *Chile – Alcoholic Beverages*, para. 47,PR, *Mexico – Taxes on Soft Drinks*, para. 8.66.
[77] Appellate Body Report *Japan - Alcohol*, ¶. 25; Appellate Body Report *Korea-Alcohol* para. 134.
[78] Appellate Body Report *Japan – Alcohol* ¶ 25; Appellate Body Report *Korea-Alcohol* para. 121.

minimis threshold, which must be determined on a case-by-case basis[79].Moreover, the burden on imported products must be greater than *de minimis* in any given case.[80] The imported cosmetic products and domestic cosmetic product are both subject to the same normative amount of tax. Thus, the burden on the imported product is not more than *de minimis.*

3.2.3. Section 5 of the Sustainable Taxation (Amendment) Act 2021 is not applied so as to afford protection to domestic production.

52. It is submitted that while the Sustainable Taxation Act was enacted to restrict the use of animal test data, in pursuance of Valeria's objectives of animal welfare and sustainable development. The enactment of STA was as per the will of the people of Valeria which places sustainable development and animal welfare on a higher pedestal. Moreover, Valeria is a Nation that regularly advocates for initiatives that reconcile environmental sustainability, economic prosperity, and resilience at the WTO.[81]The STA manifests Valeria's good faith[82],and also objectively confirms its stated purpose[83], which is intensely pertinent to the determination that it is not applied so as to afford protection.[84]
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 neither the design, architecture, or revealing structure of the STA conclusively establishes that it is applied so as to afford protection to domestic production.
54. Valeria submits that as per the above-mentioned arguments, Section 5 of the Sustainable Taxation (Amendment) Act 2021 is consistent with Valeria's obligations under Article III:2 of the GATT.

[79] Appellate Body Report, *Japan—Alcoholic Beverages II*, 27.
[80] Appellate Body Report *Korea – Alcohol*, para. 118; Appellate Body Report *Japan –Alcohol* ¶. 27.
[81] Para 1.4, ¶ 2, Factual Matrix
[82] VCLT, Art 26; Marceau (2001), 1098.
[83] ¶ 23, Moot Problem
[84] Appellate Body Report, *Chile—Alcoholic Beverages*, para [71]; ABR *Canada—Periodicals*, para 30, 32; Regan (2002), 476.
[85] Appellate Body Report, *Japan—Alcoholic Beverages II*, para 27, 29.

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.[86]Annex 1.3 to the TBT Agreement defines "conformity assessment procedures" as "any procedure used, directly or indirectly, to determine that relevant requirement in 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".[87] 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. Valeria 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 implements its obligations under **[4.1]** Article 5.1.1, **[4.2]** Article 5.1.2 and **[4.3]** Article 5.2.6 of the TBT in the following manner:

4.1. Valeria implements the obligations set out in Article 5.1.1 and 5.1.2 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

[86] Appellate Body Report, *Russia - Measures Affecting the Importation of Railway Equipment and Parts thereof,* WTO Doc. WT/DS499/AB/R, (4 Feb. 2020)
[87] Appellate Body Report, *Russia – Railway Equipmen*t, ¶ 71 , para. 5.210.

situation where a positive assurance of conformity with technical regulations or standards is required (i.e., a mandatory conformity assessment procedure).[88]

58. Valeria concedes 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. However, it is submitted that the obligations set out under Article 5.1 of the TBT is duly complied with by the Respondent. The arguments in light of the same are advanced as follows:

59. An importing Member would act inconsistently with the non-discrimination obligations in Article 5.1.1 in respect of a covered conformity assessment 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 favourabl*e 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*.[89]

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.[90] Valeria submits that 'nature and extent of the competitive relationship' [91] between the Valerian suppliers of cosmetic products and Danizian suppliers of cosmetic products do not 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*

[88] Panel Report, *Russia – Railway Equipment*, para. 7.249
[89] Panel Report, *Russia – Railway Equipment*, para. 7.251.
[90] Panel Report, *Russia – Railway Equipment*, para. 7.254.
[91] ABR, *US – Clove Cigarettes*, para 120.

characteristics, their *end-uses*, *consumer preferences*, and the *products' international tariff classification*.[92]

61. Valeria submits that it has advanced arguments in support of its above-mentioned contention in Para 35-42.

[4.1.2] Valeria grants access and under conditions no less favourable

62. Valeria submits that Danizian suppliers have been given the possibility to have the conformity of their products assessed under the rules of the relevant conformity assessment procedures, and are able to exercise that right [93] as per Section 8 of the Ethical Cosmetics Act and are thereby "granted access" within the meaning of Article 5.1.1, TBT. If the 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.[94] There is no difference in access in this regard as the accreditation of certifications is still underway in many Nations, including Danizia. Since there is no cause of action, this argument does not stand valid. 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.[95] Valeria submits that since the products are not like products, this provision does not apply and moreover, there is no "detriment" caused to the complaining member as a result of the provision.

4.1.3. The situation is comparable

63. 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 and the ability of the regulating Member to ensure compliance with the requirements in the

[92] ABR, *EC – Asbestos*, para 101.
[93] Panel Report, *Russia – Railway Equipment*, para. 7.257; Appellate Body Report, *Russia – Railway Equipment*, para. 5.123
[94] Panel Report, *Russia – Railway Equipment*, para. 7.258.
[95] Panel Report, *Russia – Railway Equipment*, para. 7.260; Appellate Body Report, *Russia – Railway Equipment*, para. 5.123.

underlying technical regulation or standard. [96] 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.[97]

64. Taken together, these factors favor the finding that the imported and domestic products are no less favourable "in a comparable situation" within the meaning of Article 5.1.1

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

65. Ascertaining whether a measure is more trade-restrictive than necessary requires a relational analysis of the measure on its own, considering: **[4.2.1]** the degree of contribution to the objective pursued; **[4.2.2]** the trade-restrictiveness of the technical regulation; and **[4.2.3]** the risks that non-fulfillment would create.[98] When considering all three criteria, the Certification requirement is not more trade-restrictive than necessary. The Appellate Body in Russia – Railway Equipment[99] 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 traderestrictive 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."[100] Regarding the similarities between the two articles, the Panel noted 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.[101]

[96]. Appellate Body Report, *Russia – Railway Equipment*, para. 5.1285. ¶ 124-5.127
[97] Appellate Body Report, *Russia – Railway Equipment*, para. 5.128
[98]Appellate Body Report, *US – Tuna II (Mexico)*, para 322; ABR, *Australia – Plain Packaging*, para 6.517.
[99] Appellate Body Report, *Russia – Railway Equipment*, para. 5.185.
[100] Panel Reports, *EC – Seal Products*, para. 7.539.
[101] Panel Report, *Russia – Railway Equipment*, paras. 7.418-7.419.

4.2.1. The risks of non-fulfilment of the legitimate objectives are high

66. Determining the risks that non-fulfillment of the objective would create requires analysis of the nature of the risks and the gravity of the consequences that would arise, taking into account available scientific and technical information.[102] The simple and basic reason for imposing the certification requirements is for the reassurance of the Valerian government that the labelling requirements are fulfilled. This is because protection of wild species and reducing animal testing is an important goal of the government as well as its citizens. Hence it is the duty of a responsible government to uphold its citizen's welfare and interest.
67. The re certification requirements are important and unavoidable as there may be chances of fraud and non-complying to the labelling requirements and it is the governments duty that its citizens are presented with the truth and the best of their choices. Thus, the risks of non-fulfillment of the certification requirements are high.

4.2.2. The certification requirement makes a material contribution to the objectives

68. The degree of contribution can be discerned from the design, structure, and operation of the technical regulation, as well as from evidence relating to the application of the measure.[103] The Certification requirements is designed, structured, and applied in a manner apt to make a material contribution to the objectives by assuring that the labelling requirements are fulfilled by the countries before placing their products Valarian Market. The certification required under subsection (2) of Section 8 of ECA must be obtained either from a certification body whose accreditation has been issued or recognized by the Cosmetic Accreditation Authority (CAA) or from one which has been appointed by the Ministry of Industry and Chemicals.[104] This measure is made compulsory to make sure that the labelling requirements introduced through section 6 for achieving the legitimate objectives of Consumer Awareness and Protection of animal species are achieved fully and efficiently.
69. Therefore, it is clear that the Certification requirement is introduced for achieving the Legitimate objectives stated above.

[102] TBT, Art 2.2; ABR, *US – COOL* (Article 21.5 – Canada and Mexico), para 5.217.
[103] Appellate Body Report, *US – Tuna II (Mexico)*, para 317; ABR, *US – COOL*,461.
[104] ¶ 17, Moot Problem

4.2.3. The trade-restrictiveness of the certification requirement is minimal compared to its material contribution and the risks of non-fulfilment

70. A measure that has a limiting effect on trade,[105] and a detrimental impact on the competitive opportunities available to imported products, is trade restrictive.[106] TBT Article 2.2 does not prohibit measures that have any trade-restrictive effect, but only those that exceed what is necessary to achieve the degree of contribution towards the legitimate objective.[107] However, Members can take measures necessary to pursue legitimate objectives to the level they consider appropriate[108]. Further, these standards are voluntary and are not intended to create a universal standard,[109] ensuring policy space for national governments.[110]

71. In the present dispute the trade restrictive issues raised by other countries include setting up equivalent certification agencies in their countries and also extending the deadline period. With regards to the first issue Valaria published a list of certification bodies accredited under Section 8(2) of the Ethical Cosmetics Act 2021. The list contained the names of 11 Valarian entities. By December 2021, Valaria had accredited multiple certification agencies in countries with similarly progressive animal testing legislations. Additionally, it has also accredited seven renowned regional agencies specialized in cosmetics research, with a view to encompass all of the world's geographical regions. Valaria is currently reviewing the application for accreditation filed by Danizia's CosLab Agency, a Danizian accredited certification body.[111] A responsible government like the Valarian government cannot be accreditation to a certifying lab without proper consideration of its effectiveness and credibility. Pursuant to the second issue, postponing the requirement of certification of recognition to one year can only worsen the situation and can pose great threat to the animal species of the country. The Valarian government is not in a position at to put its environmental obligations people's interest at risk any cost.

[105]Appellate Body Report , *US – Tuna II (Mexico*), para 319
[106] Appellate Body Report, *Australia – Plain Packaging*, para 6.385.
[107] Appellate Body Report, *US – Tuna II (Mexico)*, para 319.
[108] Appellate Body Report, *US – Tuna II (Mexico)*, para 316.
[109] FAOUN and WTO 2017, 5.
[110] Thow et al 2020, 4.
[111]Para 4.3, ¶ 10 4.3, Moot Problem.

72. Therefore, it is concluded that the certification requirements under section 8 is not more trade restrictive than necessary for fulfilling the legitimate objectives.

4.3. Valeria implements the obligation set out in Article 5.2.6 of TBT

73. It is submitted that Valeria implements obligations set out in Article 5.2.6 of TBT. The siting of facilities used in conformity assessment procedures do not cause "unnecessary inconvenience" to Danizia or other importing countries.
74. Valeria submits that it is in pursuance to its legitimate policies that Valaria has designated certification facilities, which is still underway. It is pertinent to note that within two months of the notification of the Ethical Cosmetics Act, Valaria had already accredited several certification agencies in different countries. [112] Moreover, it has also accredited seven renowned regional agencies specialised in cosmetics research, with a view to encompass all of the world's geographical regions.[113]
75. It is submitted that Danizia has no "cause of action" to state that an unnecessary inconvenience has been caused to them as a result of the siting of facilities as no measures has yet been taken by Valeria to deny accreditation to Danizia's comestic agencies. It is submitted that Valaria is currently reviewing the application for accreditation filed by Danizia's CosLab Agency, a Danizian accredited certification body. [114]
76. In the light of these arguments, it is emphasized that Valeria implements its obligations as set out in Article 5.2.6 of TBT.

[112] Para 4.3, ¶ 10, Moot Problem
[113] Id
[114] Para 4.4, ¶ 10, Moot Problem

REQUEST FOR FINDINGS

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

I. Find that Isle of Nysa's request to file Amicus Curiae brief be not accepted by this Panel.
II. Find that the Labelling requirements under section 6 of Ethical Cosmetics Act 2021 is not in violation of Article 2.2 of TBT.
III. Find that certification requirement under Section 8 of the Ethical Cosmetics Act 2021, is in not 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 not in violation of Article III:2 of the GATT 1994.

Respectfully Submitted

Valaria

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Agent(s) on behalf of the Respondent