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13TH GNLU INTERNATIONAL LAW MOOT COURT COMPETITION 2022

In the WORLD TRADE ORGANIZATION PANEL

VALARIA – MEASURES AFFECTING THE IMPORTATION AND MARKETING OF COSMETIC PRODUCTS WT/DSXXX

DANIZIA

(*COMPLAINANT*)

v.

FEDERAL REPUBLIC OF VALARIA

(*RESPONDENT*)

WRITTEN SUBMISSION *for* RESPONDENT

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LIST OF ABBREVIATIONS

ABBREVIATIONS	EXPANSIONS
Art.	Article
AB/R	Appellate Body / Report
Doc.	Document
DSB/M	Dispute Settlement Body / Mechanism
DSU	Dispute Settlement Understanding
ed.	Edition
et. Al.	And others
Govt.	Government
Id.	*Ibidem*
i.e.	Id Est
No.	Number
PR	Panel Report
p./ pp.	Page/ Pages
s.	Section
v.	Versus
WTO	World Trade Organization
WT/DS	World Trade/ Dispute Settlement

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STATEMENT OF FACTS

The Federal Republic of Valaria **["the RESPONDENT" or "Valaria"]**, is a country known for harboring various endemic species. For the same reason, it is one of the rare countries declared as a 'megadiverse' country. The RESPONDENT is a founding member of World Trade Organization **["WTO"]** and is a proponent the of environment sustainability. Valarian society seeks to build a greener economy, and this trend was a driving factor behind the win of Green Party in 2013 elections.

The Danizia **["the COMPLAINANT" or "Danizia"]**, is a large island nation, that exploits its marine resources for keeping up with scientific advancement of the world. Due to this reason, it is regarded as a hub for animal testing.

DATE	EVENTS
January 1, 2014	The RESPONDENT launched *Sustainable Consumption and Production Initiative* in order to ensure compliance with its commitment towards United Nations Sustainable Development Goals **["UN SDGs"]**.
April, 2014	The RESPONDENT enacted Sustainable Taxation Act, 2014 with the view to reduce 50% of carbon emission by 2024.
2019	The Regulatory Scrutiny Board reviewed Sustainable Tax Act and concluded that narrowing the coverage of the Act in the initial stage would have made its implementation more efficient.
February & March, 2020	The RESPONDENT conducted a nation-wide online survey to gather public opinion on furtherance of *Sustainable Consumption and Production Initiative.* The survey received response from not only the people but other stake holder such as industries and civil society organizations.
May & June, 2020	Following the success of the survey, Valaria conducted a follow-up survey with the goal of aligning govt's action with people's mandate.

July 4, 2020	The survey reflected that govt. needs to prioritize is action toward cubing animal testing, especially in the cosmetics industry. The RESPONDENT further set up a special committee to study environmental impact of animal testing.
September 28, 2020	Special Committee results revealed that animal testing had a devastating impact on animal and human health. It is a major source of air pollution, has led to decline of multiple species and can even lead to a horrific pandemic like the SARS-CoV-2.
April 1, 2021	The RESPONDENT concluded that cosmetics industry disregards concerns related to animal welfare, and in order to keep the same in check, the RESPONDENT introduced Ethical Cosmetics Act, 2021 **["ECA"]** and Sustainable Taxation (Amendment) Act, 2021 **["STA"]**.
April 23, 2021	The RESPONDENT duly notified ECA to Technical Barriers to Trade [**"TBT"**] Committee.
October 17, 2021	The RESPONDENT enacted both the ECA and STA after a gap of more than 5 months from the date of notification to the TBT Committee.
November 10, 2021	The COMPLAINANT initiated consultations with Valaria to resolve their differences.
November 23, 2021	The COMPLAINANT requested to form Panel under DSU Art. 4 & 6.
December 2021	Valaria accredited several certification agencies in countries across the globe with progressive legislations on animal testing.
January 8, 2022	Dispute Settlement Body accepted the request from Danizia and formed a panel chaired by Mr. George Oscar Bluth II.
February 6, 2022	The CLAIMANT supported Isle of Nysa's request to file *amicus curiae* submission.

MEASURES AT ISSUE

I

WHETHER OR NOT THE PANEL SHOULD ACCEPT ISLE OF NYSA'S REQUEST TO FILE AN AMICUS CURIAE BRIEF?

II

WHETHER OR NOT THE LABELLING REQUIREMENT UNDER SECTION 6 OF THE ECA IS IN VIOLATION WITH ART. 2.2 OF THE TECHNICAL BARRIERS TO TRADE AGREEMENT?

III

WHETHER OR NOT THE CERTIFICATION REQUIREMENT UNDER SECTION 8 OF ECA IS IN VIOLATION OF ART. 5.2.6 OF THE TECHNICAL BARRIERS TO TRADE AGREEMENT?

IV

WHETHER OR NOT THE EQUIVALENCY FEE UNDER SECTION 5 OF THE STA IS IN VIOLATION OF ART. III:2 OF THE GENERAL AGREEMENT ON TARIFF AND TRADE?

V

WHETHER OR NOT THE PANEL SHOULD EXERCISE ITS DISCRETION UNDER ART. 19.1 OF THE DISPUTE SETTLEMENT UNDERTAKING WITH RESPECT TO DANIZIA'S REQUEST FOR RECOMMENDATION?

SUMMARY OF PLEADINGS

I. THE PANEL SHOULD NOT ACCEPT ISLE OF NYSA'S *AMICUS CURIAE* BRIEF.

Art. 13 of the DSU states that the panel may use its discretionary power only to seek information from a 'relevant source'. Isle of Nysa holds an unfounded bias against Valaria and has accused Valaria of promoting its own cosmetics industry without having sufficient reasons to believe so. Isle of Nysa's request for submitting an *amicus curiae* brief should not be accepted as: *firstly*, Isle of Nysa failed to avail third party rights available to it under Art. 10 of DSU; *secondly*, Isle of Nysa's brief is biased and irrelevant to the dispute; and *thirdly*, accepting such *amicus curiae* brief undermines the fairness of WTO DSM proceedings.

II. THE LABELLING REQUIREMENT UNDER SECTION 6 OF THE ECA ARE NOT IN VIOLATION OF ART. 2.2 OF THE TBT.

Art. 2.2 of TBT allows members to prepare, adopt or apply technical regulations that pursue a legitimate objective and do not create unnecessary obstacles to international trade. Valaria introduced a labelling requirement on manufacturers of cosmetic products through Section 6 of the ECA. The labelling requirement is created with an objective of promoting animal welfare and facilitating consumer information. The measure is consistent with obligations under Art. 2.2 of TBT as: *firstly*, it is not a technical regulation within the meaning of Annex 1.1 of TBT; *secondly*, it fulfills the legitimate objective of promoting animal welfare and providing information to consumers; *thirdly*, it is not more trade restrictive than necessary to fulfil the legitimate objectives; and *fourthly*, no equivalent alternative measures are reasonably available to Valaria.

III. THE CERTIFICATION REQUIREMENT UNDER SECTION 8 OF THE ECA IS NOT IN VIOLATION OF ART. 5.2.6 OF THE TBT.

Art. 5.2.6 of TBT provides that a member can use siting of facility unless it causes unnecessary inconvenience to the applicants or agents. Valaria introduced a certification of recognition before marketing a product. The long-term effects of non-compliance with ECA are devastating for the Valarian ecology and society. Thus, the measure is necessary for providing adequate confidence to Valaria that the cosmetic products shall conform to the ECA. This certification requirement is consistent with Art. 5.2.6 of TBT as: *firstly*, the conformity assessment procedure does not cause unnecessary inconvenience to applicants of Danizia or their agents; and *secondly*, the conformity assessment procedure is not applied more strictly than necessary to provide adequate confidence of conformity to Valaria.

IV. THE EQUIVALENCY FEE UNDER SECTION 5 OF STA IS NOT IN VIOLATION OF GATT ART. III:2.

GATT Art. III only prohibits a regulation, law, or taxation pattern applied as a protectionist measure. Valaria introduced a tax through Section 5 of STA to be borne by manufacturers for relying on animal test data while assessing the safety of cosmetic products. The taxation measure applies equally to Valarian and Danizian manufacturers and does not violate national treatment obligation of Valaria. The measure designed and is necessary to protect public morals and animal health in Valaria. This measure does not violate the obligation set under GATT as: *firstly*, the taxation measure is in compliance with GATT Art. III:2, *First Sentence*, and *secondly*, the taxation requirement is justified by the substantive provisions of GATT Art. XX.

V. THE PANEL SHOULD NOT MAKE A RECOMMENDATION UNDER ART. 19.1 OF DSU.

Art. 19.1 of the DSU provides that the panel 'may' suggest ways in which an inconsistent measure could be brought into conformity with covered agreements. Danizia is seeking a recommendation from the panel to postpone the certification requirement until sufficient certification agencies are not accredited. The request qualifies as a suggestion as it also includes the manner in which a measure should be implemented. However, Valaria is in the best position to assess the manner in which it should implement its measures. The panel should decline from making a recommendation to Valaria to postpone the CAP measure for a year as: *firstly*, measures invoked by Valaria are consistent with the covered agreements; *secondly*, Danizia is seeking a suggestion rather than a recommendation; and *thirdly*, the suggestions made by the panel are not binding in nature.

LEGAL PLEADINGS

I. THE PANEL SHOULD NOT ACCEPT ISLE OF NYSA'S *AMICUS CURIAE* BRIEF.

[¶ 1] Art. 13 of the Dispute Settlement Understanding ("**DSU**") states that the panel may use its discretionary power only to seek information from a 'relevant source'.[1] The panel has the discretion to reject unsolicited *amicus curiae* submissions.[2] *Amicus curiae* participation is not a legal right of World Trade Organization ("**WTO**") members.[3] The Respondent submits that the Panel should decline to accept Isle of Nysa's *amicus curiae* brief as: Isle of Nysa failed to avail third party rights available to it under Art. 10 of DSU (**A**); Isle of Nysa's brief is biased and irrelevant to the dispute (**B**); and accepting such amicus brief submission undermines the fairness of WTO DSM proceedings (**C**).

A. Isle of Nysa has failed to avail third party rights.

[¶ 2] The issue of accepting unsolicited amicus curiae submissions from a member country was first raised in the case of *EC – Sardines*,[4] where the Appellate Body ("**AB**") discussed its authority to accept such briefs. However, the AB did not consider the submission as it was irrelevant to the dispute.[5] The RESPONDENT contends that Isle of Nysa has failed to avail third party rights and its submission is unacceptable as: DSU only envisages participation as third party for non-disputing members (**1**); and the present matter digresses from AB's findings in *EC-Sardines* (**2**).

1) DSU ONLY ENVISAGES PARTICIPATION AS THIRD PARTY FOR NON-DISPUTING MEMBERS.

[¶ 3] Art. 10.2 of the DSU provides for participation rights in form third party to non-disputing members.[6] DSU provides that members may submit information either when third party rights are reserved,[7] or when the panel solicits relevant information from non-party

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[1] Understanding on Rules and Procedures Governing the Settlement of Disputes art. 13, Apr. 15, 1994, Marrakesh Agreement establishing the World Trade Organization, Annex 2, 1869 U.N.T.S. 401 [hereinafter DSU].
[2] Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, ¶104, WTO Doc. WT/DS58/AB/R, (adopted Nov. 6, 1998) [hereinafter ABR *US – Shrimp*]. Appellate Body Report, *European Communities – Trade Description of Sardines*, ¶302, WTO Doc. WT/DS231/AB/R (adopted Oct. 23, 2002) [hereinafter ABR *EC-Sardines*]; Appellate Body Report, *Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items*, ¶¶¶ 82, 84 & 86, WTO Doc. WT/DS56/AB/R (adopted Mar. 27, 1998).
[3] ABR, *EC – Sardines*, *supra* note 2, ¶166-167.
[4] ABR, *EC – Sardines*, *supra* note 2, ¶166-167.
[5] ABR, *EC – Sardines*, *supra* note 2, ¶169.
[6] DSU, Article 10.2.
[7] ABR *US-Shrimp*, *supra* note 2, ¶101. P. Ala'i, *Judicial Lobbying at the WTO: the Debate over the Use of Amicus Curiae Briefs and the U.S. Experience*, FORDHAM INTERNATIONAL LAW JOURNAL, 62- 94 (Dec. 2000).

WTO members.[8] Further, Art. 10 is silent about the time limit in which third parties must notify their interest in the dispute.[9] The ten-day deadline followed in practice is not strict and the rights of member countries to participate as third party even at a later stage has been recognized by panel in several cases.[10] This implies that third party right is still available to Isle of Nysa.

[¶ 4] Thus, it is evident that the scheme of DSU does not provide for a WTO member to participate in a dispute as *amicus curiae*. Since Isle of Nysa seeks to submit both factual and legal information, it should have availed third-party rights.

2) THE PRESENT MATTER DIGRESSES FROM AB'S FINDINGS IN *EC – SARDINES.*

[¶ 5] It is submitted that the decision of the AB in *EC - Sardines* does not apply to the present dispute. This is because the dispute was at the appellate stage and Morocco no longer had the opportunity to participate as a third-party.[11] This is distinguished from the present dispute wherein Isle of Nysa could still participate as a third-party in the dispute. It is contended that it would not be appropriate for a party to circumvent the DSU and avail a right that is otherwise not available to it.

[¶ 6] Even if the Panel finds otherwise, it is submitted that AB Reports are not binding precedents.[12] WTO's case history is an important indication of the fact that unsolicited submissions are rejected or not considered in dispute settlement proceedings.[13] The AB itself clarified in *EC – Sardines* that accepting Morocco's brief is not a suggestion that a member's *amicus curiae* brief should be considered each time.[14] Thus, the dispute is distinguished from *EC – Sardines* and the Panel should exercise its discretion independent of the AB's findings in that case.

B. *In Arguendo*, Isle of Nysa's brief is biased and irrelevant to the dispute.

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[8] DSU, Article 13.2; Panel Report, *Turkey Restrictions on Imports of textile and Clothing Products*, ¶4.1-4.3, WTO Doc. WT/DS34/R (adopted May 31, 1999).
[9] Panel Report, *European Communities – Export Subsidies on Sugar*, ¶2.2-2.4, WTO Doc. WT/DS265/R (adopted Oct. 15, 2004).
[10] Panel Report, *Turkey – Measures Affecting the Importation of Rice*, ¶6.4-6.9, WTO Doc. WT/DS334/R (adopted Sep. 21, 2007); Panel Report, *European Communities and its Member States – Tariff Treatment of Certain Information Technology Products*, ¶7.75, WTO Doc. WT/DS377/R (adopted Aug. 16, 2010) [hereinafter PR *EC – Tariff*].
[11] ABR, *EC – Sardines*, *supra* note 2, ¶153.
[12] World Trade Organization, *Chapter 7.2 Legal status of adopted/unadopted reports in other disputes*, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c7s2p1_e.htm.
[13] Leah Butler, *Effects and Outcomes of Amicus Curiae Briefs at the WTO: An Assessment of NGO Experiences* 2 (2006).
[14] ABR *EC – Sardines*, *supra* note 2, ¶¶ 166,167.

[¶ 7] Art. 13.2 of the DSU,[15] implies that briefs containing information not relevant to the dispute should not be accepted or considered, as done by the Panel in several cases.[16] It is submitted that Isle of Nysa's brief is not relevant to the present dispute because: Isle of Nysa is biased against the RESPONDENT **(1)**; and factual information it seeks to submit is not relevant **(2)**.

1) ISLE OF NYSA IS BIASED AGAINST THE RESPONDENT.

[¶ 8] It is submitted that *amicus curiae* briefs should be impartial and neutral.[17] Isle of Nysa holds an unfounded bias against the RESPONDENT. The same can be inferred from the fact that it made comments in the TBT Committee accusing Valaria of promoting its own industry without having sufficient reasons to believe so.[18] It would not be 'appropriate' for the Panel to consider such an *amicus curiae* brief as it no form assists the court to arrive at an objective and unbiased decision. Thus, the RESPONDENT has a reason to fear that the opinions of Isle of Nysa will be biased against it, and such biased member cannot act as the 'friend of the court'.

2) FACTUAL INFORMATION IT SEEKS TO SUBMIT IS NOT RELEVANT.

[¶ 9] The burden rests on the complaining party to establish a *prima facie* case of inconsistency with WTO Agreements based on the legal claims asserted by it.[19] This implies that such burden cannot be discharged by a member acting as the 'friend of the court'. Further, Isle of Nysa's brief seeks to submit factual information on ineffectiveness of alternative methods of testing,[20] which is not in question as the present dispute pertains to 'restrictiveness of the measure at issue'. Hence, Isle of Nysa's submission request cannot be accepted as, ***firstly***, the party alleging a violation must bear the burden of establishing its own claims, and ***secondly***, the factual submission of the brief is irrelevant to the dispute.

C. *In Arguendo*, accepting such brief will undermine WTO DSM Proceedings.

[¶ 10] The WTO Dispute Settlement Mechanism ("**DSM**") has been governed by two principles in a consistent manner with respect to *amicus curiae* submissions, ***firstly***, that they

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[15] DSU, Article 13.
[16] ABR, *EC – Sardines*, *supra* note 2, ¶169; Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 1.15, WTO Doc. WT/DS400/AB/R, WT/DS401/AB/R (adopted Jun. 18, 2014) [hereinafter ABR *EC – Seals*].
[17] James Smith, *Inequality in international trade? Developing countries and institutional change in WTO dispute settlement*, REVIEW OF INTERNATIONAL POLITICAL ECONOMY 542-573 (2004).
[18] Moot problem, ¶4.12
[19] World Trade Organization, *Chapter 10.6: Legal issues arising in WTO Dispute Settlement Proceedings*, https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c10s6p1_e.htm.
[20] Moot problem, ¶4.10.

can only be used for factual and not legal analysis; and ***secondly***, that consideration of such briefs must not undermine the fairness of the proceedings.[21]

1) THE PANEL SHOULD NOT CONSIDER LEGAL ANALYSIS FROM *AMICUS CURIAE* BRIEF.

[¶ 11] Isle of Nysa seeks to advance legal arguments along with factual information. Thus, its *amicus curiae* brief is irrelevant for the panel is principally bound to not use the legal arguments while making an analysis.[22] Panels are reluctant to utilize the amicus curiae briefs even if they are accepted.[23] This demonstrates a trend that even though panel has exercised its discretion in favor of the *amicus curiae* submission, it is unable to rely upon it considering the procedural fairness and irrelevance of *amicus curiae* briefs in most disputes. Likewise, in this case, the Panel should not accept Isle of Nysa's brief as it would not be able to rely on it for legal analysis and the factual arguments are irrelevant as established above.

2) CONSIDERATION OF THIS BRIEF WILL UNDERMINE FAIRNESS OF THE DSM PROCEEDINGS.

[¶ 12] Equitability and mutual acceptability are cardinal principles of WTO DSM.[24] The AB in *EC – Sardines*,[25] has emphasized that accepting an *amicus curiae* brief should not interfere with "fair, prompt and effective resolution of trade disputes". It is submitted that accepting Isle of Nysa's *amicus curiae* brief would undermine the fairness principle of the WTO DSM proceedings as it does not adhere to the established due procedure under the DSU.

[¶ 13] While considering whether to exercise its discretion under Art. 13, the panel should assess if the information or evidence in question is likely to be essential to ensure a proper adjudication of the relevant claims and that due process is followed.[26] In the instance case, accepting Isle of Nysa's brief in itself undermines the due procedure established by DSU as it has requested to file an *amicus curiae* submission instead of availing third party rights. Further, as established above, Isle of Nysa holds an unfounded bias against the RESPONDENT. Thus, accepting their brief will undermine the fairness of the proceedings.

[¶ 14] ***Therefore***, the request for accepting Isle of Nysa's *amicus curiae* submission

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[21] *Supra* note 19.

[22] Theresa Squatrito, *Amicus Curiae Briefs in the WTO DSM: Good or Bad News for Non-State Actor Involvement?*, WORLD TRADE REVIEW 17:1, 65-89 (2018).

[23] *Id*.

[24] World Trade Organization, *Understanding the WTO: Settling Disputes, A Unique Contribution*, https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm.

[25] ABR *EC – Sardines*, *supra* note 2, ¶¶166,167; Appellate Body Report, *United States – Tax Treatment "Foreign Sales Corporations"*, ¶166, WTO Doc. WT/DS108/AB/R (adopted Feb. 24, 2000).

[26] Appellate Body Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complainant)*, ¶1140, WTO Doc. WT/DS353/AB/R (adopted Mar. 12, 2021).

should be rejected as the brief is biased, and irrelevant, and accepting the request undermines the fairness of the WTO DSM.

II. LABELLING REQUIREMENT UNDER SECTION 6 OF THE ECA ARE NOT IN VIOLATION OF ART. 2.2 OF THE TBT AGREEMENT.

[¶ 15] Art. 2.2 of the Technical Barriers to Trade ("**TBT**") Agreement allows members to prepare, adopt or apply technical regulations that pursue a legitimate objective and do not create unnecessary obstacles to international trade.[27] It is submitted that labelling requirements provided under Section 6 of the Ethical Cosmetics Act , 2021 ("**ECA**") are consistent with Art. 2.2 of TBT Agreement. The AB in *US – Tuna II*, [28] laid down a three-tier conjunctive test to determine consistency of a measure with Art. 2.2 of TBT. The test ascertains whether a measure at issue is a technical regulation (**A**); fulfills a 'legitimate objective'(**B**); and whether it is 'not more trade restrictive than necessary' taking into account the risks of non-fulfillment (**C**). Further, it is submitted that no alternative measures make an equivalent contribution to the stated objective (**D**).

A. The measure is not a technical regulation.

[¶ 16] Annex 1.1 of TBT stipulates a three-tier test which must be satisfied for a measure to qualify as a technical regulation.[29] To be a technical regulation a document must: apply to an identifiable product or group of products **(i)**; lay down product characteristics **(ii)**; and be mandatory **(iii)**.[30] The RESPONDENT submits that labelling requirement does not constitute a technical regulation as it is not mandatory

[¶ 17] The AB in *EC-Asbestos* emphasized that while analyzing the above-mentioned criteria, the measure must be examined holistically.[31] Examining the ECA as a whole reveals that it is not a technical regulation. Section 6 of the ECA lays down one label using the word 'may',[32] indicating an option and not an obligation to use such a label.[33] Thus, the labelling requirement does not constitute a technical regulation. Even if the Panel finds otherwise, it is submitted that other criteria are satisfied, and the measure is still consistent with Art. 2.2 of

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[27] Agreement on Technical Barriers to Trade, art. 2.2, Jan. 1, 1995, 1868 U.N.T.S.120, 18 I.L.M. 1079 [hereinafter 'TBT'].
[28] Appellate Body Report, *United States – Measures Concerning the Importation, Marketing & Sale of Tuna and Tuna Products*, ¶ 322, WTO Doc. WT/DS381/AB/R (adopted May 16, 2012) [hereinafter ABR *US-Tuna II*].
[29] TBT, Article 2.2.
[30] ABR, *US – Tuna II*, *supra* note 28, ¶323.
[31] Appellate Body Report, *European Communities — Measures Affecting Asbestos and Products Containing Asbestos*, ¶64, WTO Doc. WT/DS135/AB/R (adopted Apr.5, 2001).
[32] Moot problem, pg. 21, The Ethical Cosmetics Act 2021, Annexure B.
[33] ABR *US-Tuna II*, *supra* note 28, ¶188.

TBT Agreement.

B. The measure fulfills the 'Legitimate Objective' of promoting animal welfare and providing information to consumers.

[¶ 18] Art. 2.2 provides an illustrative list of legitimate objectives including protection of human health or safety, animal life or health, or the environment.[34] The list is not exhaustive,[35] and the objectives stated in the preamble of ECA overlap with the legitimate objectives enlisted in Art. 2.2.[36] The objective of a measure can be determined from its text, structure, and legislative history.[37] It is acceptable for a technical regulation to pursue more than one legitimate objectives.[38] The objectives pursued by labelling requirements, *inter alia*, are promoting animal welfare; and providing consumers with understandable, simple, and accurate information to enable them to make informed and conscious choices.[39]

[¶ 19] Legitimacy of an objective is "assessed in the context of the world in which we live".[40] Further, social norms must be taken into consideration while determining whether a policy measure is legitimate.[41] Objectives like protecting individual animals, or species, whether endangered or not, and prevention of deceptive practices by facilitating consumer information have been recognized as a legitimate objective.[42]

[¶ 20] Valaria is one of the world's few *megadiverse* countries.[43] Animal testing is a resource-intensive activity and contributes heavily to contamination of environmental resources putting public health at risk.[44] Consumers in Valaria lack knowledge about the prevalence of animal testing in the cosmetics industry,[45] and are willing to move to more animal-friendly products.[46] "Cruelty-Free" labels could imply that the ingredients might have

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[34] TBT, Article 2.2.
[35] ABR *US-Tuna II*, *supra* note 28, ¶313.
[36] Moot Problem, pg. 13, The Ethical Cosmetics Act, Preamble.
[37] ABR *US-Tuna II*, *supra* note 28, ¶314.
[38] Panel Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, ¶ 7.342, WTO Doc. WT/DS406/R (adopted Sep. 11, 2011).
[39] Moot Problem, pg. 13, The Ethical Cosmetics Act, Preamble.
[40] Panel Reports, *United States – Certain Country of Origin Labelling (COOL) Requirements*, ¶7.650, WTO Doc. WT/DS384/R / WT/DS386/R (adopted Jul. 23, 2012) [hereinafter PR *US – COOL*]; Appellate Body Report, *European Communities – Measures concerning meat and meat products (Hormones)*, ¶187, WTO Doc. WT/DS48/AB/R (adopted Jan. 16, 1998).
[41] PR *US – COOL*, *supra* note 40, ¶7.650; Panel Report, *European Communities – Trade Description of Sardines*, ¶7.121, WTO Doc. WT/DS231/R (adopted May 29, 2002).
[42] Appellate Body Report, *United States- Certain Country of Origin Labelling (COOL) Requirements*, ¶¶ 445,453, WTO Doc. WT/DS384/AB/R, WT/DS386/AB/R (adopted on Jun. 29, 2012) [hereinafter ABR *US – COOL*].
[43] Moot Problem, ¶1.1.
[44] Moot Problem, ¶2.12.
[45] Moot Problem, ¶2.8.
[46] Moot Problem, ¶2.9.

been tested on animals even if the final product is not.[47] Thus, easy to understand and clearly visible labels are essential to make the information accessible to all consumers. Hence, the objectives pursued by Valaria are legitimate within the meaning of Art. 2.2 of TBT.

C. The measure is not more trade restrictive than necessary.

[¶ 21] The term trade-restrictive refers to a measure having a limiting effect on trade. [48] The burden on proof rests on the Complainant to demonstrate that the challenged measure is more trade restrictive than necessary to achieve the stated objective. [49] It is to be noted that the measure will be treated as WTO-consistent until proven otherwise.[50] To ascertain whether a measure is more trade-restrictive than necessary a relational analysis must be made by considering: the degree of contribution to the objective pursued (**1**); the trade-restrictiveness of the technical regulation (**2**); and the risks that non-fulfilment of the objectives would create (**3**).[51] Considering each of these criteria, it is submitted that labelling requirements are not more trade-restrictive than necessary.

1) LABELLING REQUIREMENT MAKES A MATERIAL CONTRIBUTION TO THE LEGITIMATE OBJECTIVE.

[¶ 22] The degree of achievement of a particular objective may be determined from the 'design, structure, and operation' of the technical regulation. [52] The measure is structured, designed, and applied in a manner apt to make a material contribution to the objective of curbing animal testing. This is achieved by, ***firstly***, facilitating consumer awareness about the method of testing relied upon to assess the safety of the product,[53] and ***secondly***, by discouraging deceptive practices by placing the label on the principle display panel.[54]

[¶ 23] Surveys conducted by Valarian government revealed that a large number of the its

[47] *Cruelty-Free Labelling*, Massachusetts Society for the Prevention of Cruelty to Animals-Angell Animal Medical Center, https://www.mspca.org/animal_protection/cruelty-free-labeling/ (accessed Mar. 14, 2022).
[48] Panel Report, *India - Quantitative Restrictions on Imports of Agricultural, Textile and Industrial Products*, ¶5.129, WTO Doc. WT/DS90/R (Apr. 6, 1999); ABR *US – COOL*, *supra* note at ¶371; ABR *US-Tuna - II*, *supra* note 28, ¶319.
[49] ABR *US – COOL*, *supra* note 42, ¶379.
[50] Appellate Body Report, *Canada – Measures Affecting the Importation of Milk and Exportation of Dairy Products – Second Recourse to Article 21.5 of the DSU by New Zealand and the United States,* ¶66, WTO Doc. WT/DS103/AB/RW2, WT/DS113/AB/RW2 (adopted Dec. 20, 2002).
[51] ABR *US-Tuna - II*, *supra* note 28,¶322; Appellate Body Report, *Australia – Certain Measures Concerning Trademarks, Geographical Indications ad Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*, ¶ 6.517, WTO Doc. WT/DS435/AB/R WT/DS441/AB/R (adopted Jun. 9, 2020) [hereinafter ABR *Australia – Plain Packaging*].
[52] ABR *US – Tuna II*, *supra* note 28, ¶317; ABR *US – COOL*, *supra* note 42, ¶461.
[53] Moot Problem, pg. 21, The Ethical Cosmetic Act 2021, Annexure B.
[54] *Id.*

citizens are not aware about the cosmetics product being tested animals.[55] Front-of-pack labelling has been successful in improving consumer selection.[56] Further, interpretive labelling has been useful and easy to use for consumers across multiple demographics.[57] Moreover, Valarian citizens are interested in sustainable use of animal resources.[58] Hence, the front-of-pack label proposed by Valaria is required to effectively communicate the testing process applied for a product.

2) GRAVE CONSEQUENCES WOULD ARISE FROM NON-FULFILLMENT OF THE LEGITIMATE OBJECTIVE.

[¶ 24] Determining the risks that non-fulfilment 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.[59] Grave consequences arise from non-fulfilment of the objective as a large number of Valarians do not know that the products they use are tested on animals.[60] If an intervention is not made, animals will continue to get harmed in cosmetic testing processes. Further, the use of genetically modified animals and mis-happenings in Valarian labs and hazardous waste produced would lead to spread of deadly diseases amongst citizens of Valaria.[61]

3) THE TRADE RESTRICTIVENESS OF THE MEASURE IS MINIMAL IN COMPARISON TO ITS COMPARISON WITH THE LEGITIMATE OBJECTIVE.

[¶ 25] Art. 2.2 refers to "unnecessary obstacles" to *international* trade, and this implies that "some" trade-restrictiveness is allowed.[62] Measures that are trade-restrictive include those that impose any form of "limitation of imports, discriminate against imports or deny competitive opportunities to imports".[63] In the present case, the measure at issue simply creates a labelling requirement that does not limit or discriminate against imports, thereby not limiting the trade in any manner. Thus, the measure does not create 'unnecessary' obstacles to international trade.

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[55] Moot Problem, ¶2.8.

[56] Cecchini M and Warin L, *Impact of Food Labelling Systems on Food Choices and Eating Behaviours: A Systematic Review and Meta-Analysis of Randomized Studies*, 17 OBESITY REVIEW 3, 201 (2016).

[57] Instituto Nacional de Salud Publica de Mexico, *Review of Current Labelling Regulations and Practices for Food and Beverage Targeting Children and Adolescents in Latin American Countries (Mexico, Chile, Costa Rica and Argentina) and Recommendations for Facilitating Consumer Information* 9 (UNICEF, 2016)

[58] Moot Problem, ¶2.8.

[59] TBT, Article 2.2.

[60] Moot Problem, ¶2.8.

[61] Moot Problem, ¶ 2.12.

[62] ABR *US – Tuna II*, *supra* note 28, ¶319; ABR *US – COOL*, *supra* note 42, ¶375.

[63] ABR *US – Tuna II*, *supra* note 28, ¶222.

4) NO EQUIVALENT ALTERNATIVE MEASURES ARE REASONABLY AVAILABLE

[¶ 26] Whether a measure is suitable for a country is determined by several factors such as preferences and behavior of the people, environmental and economic variables and structures.[64]A comparative analysis between the suggested alternative and measure at issue must reveal that,[65] the suggested alternative must be less trade-restrictive, make an equivalent contribution to the legitimate objective, and be reasonably available.[66] The complainant is required to demonstrate *prima facie* that such alternative measures exist.[67]

[¶ 27] Facilitating consumer awareness through mass campaigns and promotion of alternative measures to testing were considered and implemented by Valaria. However, there is no evidence as to their effectiveness. Labelling measures have proven to be successful in Saturnalia,[68] and Valaria is adopting best international practices to achieve its legitimate objectives.

[¶ 28] The Complainant may propose several alternative measures *inter alia* replacing the labels with texts and shifting the label to the back side of the package. It is pertinent to note that cosmetics not tested on animals already exist in Valarian markets,[69] it is the lack of consumer awareness that has prevented them from opting for such cosmetics.[70] Hence, it is essential to place labels on the principal display panel to facilitate informed consumer choices and to increase consumer awareness. This is especially important considering the will of Valarian consumers to influence animal welfare with their purchasing power.[71] Thus, there exists no alternative measures that would make equivalent contribution to the legitimate objectives.

[¶ 29] ***Therefore***, the measure at it issue as a whole is consistent with Art. 2.2 of TBT as it does not constitute a technical regulation, pursues a legitimate objective, and is not more trade restrictive than necessary to achieve the legitimate objective taking into account the risks that non-fulfilment would create.

III. CERTIFICATION REQUIREMENT UNDER SECTION 8 OF THE ECA IS NOT IN VIOLATION OF ART. 5.2.6 OF THE TBT AGREEMENT.

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[64] Cracolici, M.F., Cuffaro, M. & Nijkamp, P., *The Measurement of Economic, Social and Environmental Performance of Countries: A Novel Approach*., SOC INDIC RES 339 (2010).
[65] ABR *US – Tuna II*, *supra* note 28, ¶320.
[66] ABR *Australia – Plain Packaging*, *supra* note 51, ¶6.461.
[67] ABR *US – Tuna II*, *supra* note 28, ¶323.
[68] Moot Problem, Clarifications, Additional Information, ¶2.
[69] Moot Problem, ¶2.15.
[70] Moot Problem, ¶2.8.
[71] Moot Problem, ¶2.9.

[¶ 30] Art. 5.2.6 of TBT provides that the member can use siting of facility unless it causes unnecessary inconvenience to the applicants or agents.[72] The chapeau of Art. 5.2 defines the relationship between 5.1.2 and 5.2,[73] stating that the obligations set under the former must be in check while implementing the latter.[74] However, the obligation under Art. 5.2 is restricted to the implementation of the Conformity Assessment Procedure ("**CAP"**).[75] Hence, the requirements under Art. 5.2.6 are distinct and not contiguous to the obligations of 5.1.2 .

[¶ 31] It is submitted that Valaria has not violated its obligations under Art. 5.2.6 of the TBT as the CAP does not cause unnecessary inconvenience to applicants or agents (**A**), and it is not applied more strictly than is necessary to give Valaria adequate confidence (**B**).[76]

A. The CAP DOES NOT CAUSE UNNECESSARY INCONVENIENCE TO APPLICANTS OR AGENTS.

[¶ 32] Art. Art. 5.2.6 puts emphasis on the term "unnecessary" inconvenience.[77] Panel in *EC seals*, [78] stated that the relational analysis shall be drawn with Art. 2.2 for the purpose of necessity test under. Thus, borrowing the jurisprudence, it is observed that the term "unnecessary inconvenience" under Art. 5.2.6 allows siting of facilities causing inconvenience that is necessary. The RESPONDENT submits that the CAP under Section 8 of the ECA are not inconsistent with Art. 5.2.6 of the TBT as: Valaria has provided sufficient certification bodies for the conformity (**1**); and the centralized system is necessary to achieve the legitimate objective (**2**).

1) VALARIA HAS ACCREDITED SUFFICIENT CERTIFICATION BODIES.

[¶ 33] The text of Art. 5.2.6 or Art. 5.1.2 does not make any precise indication of permitted or prohibited types of CAPs,[79] nor it does indicate any certain number of certification bodies to be accredited.[80] Thus, it can be inferred from above that there is no indication in TBT for a minimum or maximum accreditation of certification bodies by a

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[72] TBT, Article 5.2.6.
[73] TBT, Article 5.2.
[74] Panel Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, ¶7.556, WTO Doc. WT/DS400/R WT/DS401/R (adopted Nov. 25, 2013) [hereinafter PR *EC – Seals*].
[75] PR *EC – Seals*, *supra* note 74, ¶7.559.
[76] PR *EC – Seals*, *supra* note 74, ¶7.513; Panel Report, *Russia – Measures affecting the importation of Railway Equipment and Parts thereof*, ¶¶ 7.402 & 7.413, WTO Doc. WT/DS499/R (adopted Jul. 30, 2018) [hereinafter PR *Russia – Railway Equipment*].
[77] TBT, Article 5.2.6.
[78] PR *EC – Seals*, *supra* note 74, ¶7.539; PR - *Russia Railway Equipment*, *supra* note 76, ¶¶ 7.418 & 7.419.
[79] PR *EC – Seals*, *supra* note 74, ¶7.522; PR - *Russia Railway Equipment*, *supra* note 76, ¶¶ 7.418 & 7.419.
[80] TBT, Article 5.2.6; TBT, Article 5.1.2.

member. The only requirement is that it shall satisfy is the assurance of conformity with the technical regulation.[81]

[¶ 34] In the present case, Valaria published a list of certification bodies while notifying the ECA.[82] Further, Valaria accredited multiple certification agencies in other countries and seven renowned regional agencies covering world's all geographical regions.[83] Further, Valaria is presently reviewing Danizian CosLab Agency's application for accreditation.[84] Thus, Valaria has accredited sufficient certification bodies for complying with CAP and the siting facility does not cause "unnecessary" inconvenience.

2) THE CENTRALIZED SYSTEM IS NECESSARY TO ACHIEVE THE OBJECTIVE OF CAP.

[¶ 35] The principal objective of a CAP is to reassure government officials that items placed on the market meet the regulation's requirements, notably in terms of consumer health and safety.[85] It is submitted that a centralized system serves to guarantee the compliance with the technical regulation. In the present case, Valaria has already accredited certification bodies in countries with a similar legislation.[86] It is contended that the countries without a similar legislation are not capable of meeting the requirements for an animal safe CAP. Thus, it is not necessary to site facility in a country that does not possess a similar legislation on animal testing.

B. CAP is not applied more strictly than necessary to provide adequate confidence.

[¶ 36] The assessment of the strictness of a measure requires 'weighing and balancing' factors such as the providing the importing member adequate confidence (**1**), the trade-restrictiveness of the application of the measure (**2**), and the gravity of consequences that would arise from non-fulfilment of the underlying technical regulation (**3**).[87] Additionally, comparative study of alternatives and the measure at issue is also used to prove its necessity (**4**).[88] It is submitted that since both relational and comparitive analysis prove the necessity of the certification requirement, it is not applied more strictly than necessary.

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[81] ABR *EC – Seals*, *supra* note 16, ¶6.1.
[82] Moot problem, ¶4.3.
[83] *Id*
[84] *Id*
[85] World Trade Organization, *Technical Information on Technical barriers to trade*, https://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm (accessed Mar. 14, 2022).
[86] Moot problem, ¶4.3.
[87] Appellate Body Report, *Russia – Measures Affecting the Importation of Railway Equipment and Parts thereof*, ¶5.185, WTO Doc. WT/DS499/AB/R (adopted Feb. 2020) [hereinafter ABR *Russia – Railway Equipment*].
[88] ABR *Russia- Railway Equipment*, *supra* note 87, ¶5.186; Appellate Body Report, *United States – Certain Country Origin Labelling Requirements*, ¶5.211 WTO Doc. WT/DS386/AB/RW (adopted May. 18, 2015).

1) THE CERTIFICATION REQUIREMENT PROVIDES ADEQUATE CONFIDENCE TO VALARIA.

[¶ 37] The relevant goal for an assessment under Art. 5.1.2, second sentence, is to provide the importing Member with adequate confidence in conformity with the technical regulation.[89] The term 'adequate confidence' is directly related to the term 'objective' pursued under Art. 2.2.[90] It sets a limit on the type or amount of confidence that an importing Member can acquire through its CAP. Thus, in circumstances where the risks concerned are associated with highly significant legitimate objectives, more confidence may be necessary.[91] As established above, the 'objective' sought is to curb animal testing in the cosmetic industry,[92] protecting the environment, and life and health of humans and animals.[93] Rules in the CAP seek level of protection that is required to protect its citizens and animals.

[¶ 38] It is pertinent to note that the CAP covers both the domestic as well as producers outside of Valaria. The accreditation and recognition of the certification body is done by the Cosmetic Accreditation Authority ("**CAA**") that has the credibility and is the best suitable to comply with the CAP.[94] Appointment of the certification body in country with similarly progressive animal testing justifies the abovementioned statement.[95] The certificate of recognition is an important tool used by Valaria to obtain adequate confidence regarding compliance with the underlying technical regulation. Thus, the accreditation of certification by Valarian authorities is necessary.

2) THE CAP IS NOT MORE TRADE-RESTRICTIVE THAN NECESSARY.

[¶ 39] The CAP should not be strict or be applied more strictly than necessary.[96] The RESPONDENT submits that the requirement to attain a certification of recognition under ECA is just enough trade restrictive as necessary to provide adequate confidence.[97] As reflected in the preamble of the ECA,[98] it serves the purpose of curbing animal testing and facilitating informed choices by Valarian consumers.[99] Moreover, environmental concerns assume an

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89 PR - *Russia Railway Equipment*, *supra* note 76, ¶7.420.
90 PR - *Russia Railway Equipment*, *supra* note 76, ¶¶ 7.418 & 7.419.
91 PR - *Russia Railway Equipment*, *supra* note 76, ¶7.421.
92 Moot problem, pg. 13, The Ethical Cosmetics Act 2021, Preamble.
93 Moot problem, ¶2.12.
94 Moot problem, pg. 13, The Ethical Cosmetics Act 2021, §8.
95 Moot problem, ¶4.3.
96 *Id.*
97 *Conformity assessment – Fundamentals of product certification*, ISO/IEC: 67:2004(E), pt. 4.3.6, (Geneva 2004).
98 Moot problem, pg. 13, The Ethical Cosmetics Act 2021, Preamble.
99 *Id*

important place in Valarian citizenry's value system.[100] Thus, it is submitted by RESPONDENT that the procurement of certificate of recognition is not stricter than necessary under Art. 5.1.2. as it provides adequate confidence to Valaria that the underlying technical regulation is conformed.

[¶ 40] Additionally, the accreditation of certification body by only central government authorities[101] provides validation to the adequate confidence that is needed by Valaria. In the absence, of any central government body validating the accreditation, it would be improbable to verify the capability and credibility of the certifying body to meet the standard of Valaria. Hence, the requirement that only accreditation to be done by the central government body is therefore 'necessary' to give Valaria adequate confidence that cosmetic products satisfy the relevant technical regulation.

3) GRAVE CONSEQUENCES WOULD ARISE FROM NON-CONFORMITY OF THE TECHNICAL REGULATION.

[¶ 41] The third aspect of relational analysis is nature of the risks at hand, and the gravity of the consequences that would result from a lack of positive assurance of conformity.[102] Available scientific and technological information, the intended end use of the product and the available production technology are important aspects of consideration in assessing risks.[103] Applying the same principle by the relational analysis,[104] it will be pertinent to observe the available scientific data with the end use of the cosmetic product.

[¶ 42] In the instant case, the Animal Welfare Board of Valaria released a report on the impacts of animal research and testing.[105] It indicated that several risks are associated with animal testing and research. For instance, it is a significant source of air pollution, and leads to production of biological hazardous substance.[106] Moreover, escaped genetically modified animal can threaten the existence of Valarian biodiversity.[107] Hence, if the products from Danizia and Valaria are not in conformation with the technical regulation, then in the long term it can adversely affect the animal and human health in Valaria. Thus, the measure is

[100] Moot problem, ¶¶ 2.6, 2.9.
[101] Moot problem, pg. 13, The Ethical Cosmetics Act 2021, §8.
[102] PR - *Russia Railway Equipment*, *supra* note 76, ¶7.423.
[103] 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 220 (2007).
[104] ABR, *Russia – Railway Equipment*, *supra* note 87, ¶5.185.
[105] Moot problem, ¶2.11.
[106] Moot problem, ¶2.12.
[107] Moot problem, ¶1.3.

necessary for providing adequate confidence to Valaria that the cosmetic products shall conform to the underlying technical regulation.

4) NO EQUIVALENT MEASURES ARE REASONABLY AVAILABLE.

[¶ 43] The burden of proof is on the Complainant to prove that the alternative measures are available to Valaria.[108]. Under Art. 5.1.2,[109] the comparison should look at whether the alternative CAP is less trade restrictive than the current CAP and provides a similar level of conformity assurance.[110] Further, an alternative that is proposed should be less strict, provide an equivalent contribution to giving Valaria adequate confidence of conformity, and are reasonably available to Valaria.[111]

[¶ 44] In the present case, THE COMPLAINANTS may propose equivalent arrangements as an alternative. Such arrangements allow agencies in other countries to certify products. It is submitted that the proposed alternative does not qualify the test as it fails to provide equivalent contribution to the adequate confidence of Valaria and *in arguendo,* it is not reasonably available to Valaria.

[¶ 45] In the present case, technical regulation is adopted for the purpose of fulfilling legitimate objectives. Possible alternatives like mutual recognition and equivalency arrangements empowers the other members to certify the cosmetic products. However, it fails to make a material contribution to providing adequate confidence. This is because the proposed alternative shall not ensure transparency as to competency, infrastructure, and control on the assessment of the cosmetic products by such certification bodies.

[¶ 46] Further, equivalency certificate will let countries circumvent established animal safety measures as they will not undergo the scrutiny of meticulous Valarian standards and processes. Hence, equivalency arrangements shall not provide equivalent contribution to the adequate confidence of conformity to Valaria. Moreover, the proposed alternatives are not reasonably available to Valaria. The proposed alternative becomes reasonably unavailable if a high cost or technical difficulties are associated with its implementation.[112] Further, the proposed alternative must not be merely theoretical in nature.[113]

[¶ 47] In the present case, pursuing equivalency arrangements with other countries will impose a huge administrative cost and technical difficulty for Valaria would be required to

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[108] ABR, *Russia – Railway Equipment*, *supra* note 87, ¶5.197.
[109] TBT, Article 5.1.2.
[110] ABR *US – Tuna – II*, *supra* note 28, ¶304.
[111] ABR, *Russia – Railway Equipment*, *supra* note 87,¶5.188.
[112] ABR, *Russia – Railway Equipment*, *supra* note 87, ¶5.197.
[113] *Id.*

assess *inter alia*, regulations, accreditation criteria, standards, and certification criteria of the other country. Thus, the proposed alternative shall not provide equivalent contribution to adequate confidence and is not reasonably available to Valaria.

[¶ 48] ***Therefore***, certification requirement under Section 8 of ECA are not in violation of 5.2.6 of TBT as it does not cause unnecessary inconvenience to the Complainant's applicants or agents, nor is it applied more strictly than necessary to give adequate confidence to Valaria.

IV. THE EQUIVALENCY FEE UNDER SECTION 5 OF STA IS NOT IN VIOLATION OF GATT ART. III:2.

[¶ 49] Section 5 of the Sustainable Taxation Act, 2021 (hereinafter "**STA**") imposes a tax liability on any manufacturer relying on animal test data for assessing safety of a cosmetic product.[114] The RESPONDENT submits that Section 5 of STA does not violate the obligations under General Agreement on Tariff and Trade ("**GATT**") as, ***firstly***, the taxation measure is in compliance with GATT Art. III:2, *First Sentence* **(A)**, and ***secondly*****,** the taxation requirement is justified by the substantive provisions of GATT Art. XX **(B).**

A. Taxation measures is in compliances with GATT Art. III:2, *First Sentence.*

[¶ 50] GATT Art. III only prohibits a regulation, law, or taxation pattern applied as a protectionist measure.[115] Art. III:2 provides that the taxation measure enforced should be non-discriminatory.[116] This implies that a protectionist measure hampers the competition of like imported pro5ducts in the domestic market.[117] Valaria's taxation measure is not discriminatory and applies equally to domestic and imported cosmetic products.[118]

[¶ 51] The AB in *Japan – Alcoholic Beverages II*,[119] distinguished between GATT Art. III:2, *First Sentence* and *Second Sentence*. GATT Art. III:2, *First Sentence* mandates that no domestic product should be taxed in excess of the like imported product.[120] The *First Sentence* lays down the two-steps test that: products at issue should be like, and imported

[114] Moot problem, pg. 24, The Sustainable Taxation Amendment Act, §5.
[115] General Agreement on Trade and Tariffs, Art. III, Apr. 15, 1994, 1867 U.N.T.S. 187, 33 I.L.M. 1153 [hereinafter 'GATT'].
[116] Report of the Panel, *United States – Section 337 of the Tariff Act of 1930 and Amendments thereto*, ¶5.11 L/6439 - 36S/345 (Nov. 7, 1989).
[117] Panel Report, *Indonesia – Certain Measures Affecting the Automobile Industry*, ¶¶ 14.121, 14.122, WTO Doc. WT/DS64/R (adopted Jul. 2, 1998) [hereinafter PR *Indonesia – Autos*].
[118] Moot problem, pg. 24, The Sustainable Taxation Amendment Act, §5.
[119] Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, pg. 19, WTO Doc. WT/DS11/AB/R (adopted Oct. 4, 1996) [hereinafter ABR *Japan – Alcoholic Beverages II*).
[120] GATT, Article III:2.

products should not be taxed *in excess* of its domestic counterpart.[121] The RESPONDENT submits Section 5 of STA has not violated GATT Art. III:2, *First Sentence* as neither the Animal-tested cosmetic imported and domestic non-tested are Like nor are the imported products a taxed in excess of the like domestic products.

[¶ 52] Determination of likeness of product employs a four-factorial test and elaborated in the Border Tax Adjustment Report.[122] The test encompasses criteria such as products' physical properties, consumer tastes and habits, end uses, and tariff classifications.[123] The concept of likeness is subjective and thus, the same product may be like in a certain market but the same shall not stand true while comparing the other market.[124]

[¶ 53] While ascertaining likeness, both factors and facts surrounding the products at issue should be considered, and a case-by-case basis approach should be followed.[125] The RESPONDENT submits that the difference in production process, and consumer behavior regarding Animal Tested ("**AT"**) imported and Non-Animal Tested ("**NAT"**) domestic product suggests that they are not alike.

[¶ 54] ***Firstly,*** Valaria is a country that has always advocated for a sustainable economy.[126] Moreover, recent trends and surveys demonstrate that Valarian citizens are willing to buy animal-friendly products, particularly cosmetics.[127] It is pertinent to note that the measure at issue was enacted and drafted after taking into consideration the country's ethos and citizens' mandate.[128] The products at issue are not like as Valarian consumers' habits and taste indicate that they prefer animal – friendly products when compared to NAT Products.

[¶ 55] ***Secondly,*** product's properties and nature specify its likeness. However, even a little change in Production Process Method (**PPM**) can change likeness of the product in a given market.[129] For instance, *halal* and *kosher* meat have the same physical properties, even

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[121] Appellate Body Report, *Canada – Certain Measures Concerning Periodicals*, pp. 22-23, WTO Doc. WT/DS31/AB/R (adopted Jun. 30, 1997).
[122] Panel Report, *Japan – Taxes on Alcoholic Beverages*, ¶43-45, WTO Doc. WT/DS11/R (adopted Jul. 11, 1996).
[123] Working Party Report, Border Tax Adjustments, ¶18, GATT Doc. L/3464, BISD 18S/97 (adopted Dec. 2, 1970) [hereinafter Working Party Report, Border Tax Adjustments].
[124] Appellate Body Report, *Philippines – Taxes on Distilled Spirits*, ¶168, WTO Doc. WT/DS396/AB/R, WT/DS403/AB/R (adopted Dec. 21, 2011).
[125] ABR *Japan – Alcoholic Beverages II*, *supra* note 119, 20; PR *Indonesia – Autos*, *supra* note 117, ¶14.109.
[126] Moot problem, ¶ 1.4
[127] Moot problem, ¶ 2.9
[128] Moot problem, ¶ 2.13
[129] Steve Charnovitz, *Green Roots, Bad Pruning: GATT Rules and their Application to Environmental Trade Measures*, 7 TULANE ENVTL L J 299, 311-23 (1994).

so, they differ based on associated social connotations.[130] Further, The AB in *EC-Asbestos*,[131] stated that a country can differentiate between products on the basis of product related PPMs and they aren't evidently visible, yet they do form a characteristic of the product.[132]

[¶ 56] Art. 11 of the DSU imposes a duty on the panel to assess the facts presented in an objective manner.[133] In the given case, despite having similar properties both AT imported and NAT domestic products differ. This is due to the fact that one incorporates animal test data, whereas the other does not. Thus, the products at issue aren't like as consumer choices and product properties signify the differences between them.

[¶ 57] WTO jurisprudence provides that once the products at issue are proven to be not alike, the further parameters of GATT Art. III:2, *First Sentence* do not follow and there exists no incongruity with the requisites.[134] Even if the panel holds that the products at issue are alike, it needs to analyze all the data such as competitive relation and economic impact of the measure, as the purpose of the Art. III:2 is to ensure competition between products.[135] Further the AT domestic product would be taxed at the same rate as AT imported product. Conclusively, it is humbly submitted that the products at issue are consistent with GATT Art. III:2, *First Sentence* as the products aren't like nor are they taxed in excess.

B. The measure is justified under the substantive provisions of GATT Art. XX.

[¶ 58] GATT Art. XX provides for general exceptions,[136] wherein a measure imposing country can justify a measure that is inconsistent with core GATT obligation.[137] The AB in *Brazil – Retreaded Tyres*,[138] stated that for a measure to qualify as an exception it must pass the two-tiered test that it qualifies as an exception under GATT Art. XX, and it should not violate the chapeau. The RESPONDENT submits that the taxation measure justified under GATT Art. XX as it is substantiated as an exception under GATT Art. XX **(1);** and it does

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[130] MITSUO MATSUSHITA ET. AL., THE WORLD TRADE ORGANIZATION: LAW, PRACTICE AND POLICY 191 (3rd edn., Oxford University Press 2015).
[131] ABR *EC – Asbestos*, *supra* note 31, ¶117.
[132] Steve Charnovitz, *The Law of Environmental "PPMs" in the WTO: Debunking the Myth of Illegality*, 27 YALE JOURNAL OF INTERNATIONAL LAW 64 (2002).
[133] DSU, Article 11.
[134] ABR *Japan – Alcoholic Beverages II*, *supra* note 119.
[135] Panel Report, *Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather*, ¶11.182, WTO Doc. WT/DS155/R (adopted Dec. 19, 2000).
[136] GATT, Art. XX.
[137] Panel Report, *Brazil – Certain Measures Concerning Taxation and* Charges, ¶7.153, WTO Doc. WT/DS472/R, WT/DS497/R (adopted Aug. 30, 2017) [hereinafter PR *Brazil – Taxation*].
[138] Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, ¶ 139, WTO Doc. WT/DS332/AB/R (adopted Dec. 3, 2007) [hereinafter ABR *Brazil – Retreaded Tyres*].

not violate the chapeau (**2**).

1) THE TAXATION MEASURE IS SUBSTANTIATED AS AN EXCEPTION UNDER GATT ART. XX.

[¶ 59] The inquiry under Art. XX is primarily focused on the justification of incongruent measure.[139] Such inquiry is focused on the justification of measure and not its inconsistency.[140] The RESPONDENT submits that the measure at issue falls within the jurisdictional ambit of Art. XX as the taxation measure can be justified as exception under GATT Art. XX (a) (**a**); and the taxation measure can be justified as exception under GATT Art. XX (b) (**b**).

a. The taxation measure can be justified as an exception under GATT Art. XX(a).

[¶ 60] The GATT Art. XX (a) provides that a measure is justifiable if it is designed to protect public morals and is necessary for the same.[141] The RESPONDENT submits that the measure is justified under the two elements of GATT Art. XX (a): ***firstly*,** measure should be designed in a way to protect public morals (**i**); and ***secondly***, measure should be necessary to protect public morals (**ii**).

i. The measure is designed to protect public morals.

[¶ 61] Public morals are subjective in nature as they are contingent upon several factors such as prevalent ethical, religious, cultural and social factors of the country imposing such measure.[142] Moreover, each member country has a free hand while defining and applying public morals within their jurisdiction.[143] To assess the design of the policy, a panel can consider the evidence that are relevant to 'necessity test' of the measure.[144]

[¶ 62] The Panel in *Brazil – Taxation*,[145] stated that the threshold for determining the design of the policy is that the policy in question should not be incapable of contributing to the objective. In the present case, public morals at stake are associated with animal welfare.[146] The STA imposes a tax liability in the form of 'sin tax' on usage of animal testing

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[139] Appellate Body Report, *United States — Standards for Reformulated and Conventional Gasoline*, pg. 24, WTO Doc., WT/DS2/AB/R, (adopted May 20, 1996) [hereinafter ABR *US – Gasoline*].
[140] ABR *EC – Seals*, *supra* note 16, at ¶5.185.
[141] GATT, Art. XX(a).
[142] ABR *EC – Seals*, *supra* note 16, at ¶5.199.
[143] PR *Brazil – Taxation*, *supra* note, ¶7.558; Panel Report, *United States – Tariff Measures on Certain Goods from China*, ¶7.131, WTO Doc. WT/DS543/R (adopted Sep. 15, 2020) [hereinafter PR *US – Tariff Measures*].
[144] Appellate Body Reports, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*, ¶5.76, WTO Doc. WT/DS461/AB/R (adopted Jun. 7, 2016) [hereinafter ABR *Colombia – Textiles*].
[145] PR *Brazil – Taxation*, *supra* note 137, ¶7.570.
[146] Moot problem, ¶ 2.13.

data.[147] Thus, it is submitted that the measure is designed to protect public morals as it is not incapable of contributing to the objective.

ii. It is necessary to uphold public morals.

[¶ 63] The analysis of the measure being *necessary* has to be holistic in nature.[148] The AB in *China – Publications and Audiovisual Products*,[149] considered a series of factors to undertake the 'weighing and balancing' exercise such as: importance of value at stake (***firstly***); contribution of the measure (***secondly***); trade restrictiveness (***thirdly***). The weighing and balancing process needs to be carried out in a sequential manner.[150]

[¶ 64] ***Firstly***, the degree of importance of the measure at hand cannot be assessed in isolation, facts pertaining to country's social and cultural values as well its innate problem needs to be taken into consideration.[151] Additionally, public policy honouring international commitments has societal interest of high value, particularly, the United Nation (**UN**) development goals.[152] Animal welfare forms part of UN Sustainable Development Goals (**SDG**).[153] Taxation measure aims to discourage reliance on animal test data in the cosmetics industry thereby promoting animal welfare. Thus, the policy at hand does hold high value as it encompasses an important societal interest.

[¶ 65] ***Secondly***, a measure does not become obsolete merely because the contribution made by it cannot be reflected on immediate basis.[154] Qualitative reasoning and quantitative projections must be taken into consideration while analysing a measure that is part of a comprehensive policy.[155] In the present case, the objective sought is to uphold the mandate of Valarian citizens pertaining animal welfare as reflected in the survey.[156] The taxation measure imposes an internal tax on usage of animal test data.[157] Imposing a tax burden will discourage the use of animal test data which in turn leads to animal welfare, thus, upholding the public morals highlighted in the survey.

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[147] Moot Problem, pg. 24, The Ethical Cosmetic Act, Annexure B.
[148] ABR *Colombia – Textiles*, *supra* note 144,¶5.67 – 5.70.
[149] Appellate Body Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audio-Visual Entertainment Products*, ¶240, WTO Doc. WT/DS363/AB/R (adopted Dec. 21, 2009) [hereinafter ABR *China – Audio-visual*].
[150] *Id.*
[151] PR *Brazil – Taxation*, *supra* note 137,¶7.591.
[152] PR *Brazil – Taxation*, *supra* note 137, ¶7.592.
[153] UN General Assembly, *Transforming our world: The 2030 Agenda for Sustainable Development* A/RES/70/1 (Oct. 21, 2015).
[154] ABR *China – Audio-visual*, *supra* note 149, ¶253. PR *US – Tariff Measures*, *supra* note 143, ¶7.178.
[155] ABR *China – Audio-visual*, *supra* note 149, ¶254.
[156] Moot problem, ¶2.9.
[157] Moot problem, pg. 24, The Sustainable Taxation (Amendment) Act, Preamble.

[¶ 66] ***Thirdly*,** while analyzing trade restrictiveness of a measure, the panel must consider the degree of restrictiveness and not merely arrive at a conclusion.[158] In the case at hand, Valaria has not imposed a flat tax rather, it chose the method of progressive taxation. The total tax amount is calculated and levied on the basis of the percentage of animal test data that is relied upon.[159] Additionally, no tax is imposed on a product which has relied on less than 15% of animal test data. Thus, the measure is not highly trade restrictive as the progressive taxation allows for necessary testing and if in any case it passes such bracket the tax will be increased gradually.

b. The taxation measure can be justified as exception under GATT Art. XX(b).

[¶ 67] GATT Art. XX (b) provides that a measure necessary to protect of animal health or life can be justified as an exception.[160] In order to prove that the measure falls within the ambit of GATT Art. XX (b), one needs to prove that the measure is designed to protect animals and is necessary to achieve such goals.[161] The RESPONDENT submits that the measure at issue is an exception under GATT Art. XX (b) as: it designed to protect animal welfare **(i);** and it passes the necessity test **(ii).**

i. It is designed to protect animal health.

[¶ 68] While examining design of the measure, the panel should not interpret the word "to protect" in a way that the requires assessing a threat against the sect being protected, that is, animal life.[162] Further, the examination undertaken must be done from bird eye's view i.e. factors such as content, operation along with the structure of policy needs to be considered. In the present case, the policy has been made with the objective of curb animal testing,[163] and the same is reflected from structure of policy as well as the special committee's report.[164] Thus, the policy of the design does encompass the goal to protect animal health.

ii. It is necessary to protect animal health.

[¶ 69] Any measure at issue must undergo the test of necessity in order to be justified as

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[158] ABR *Colombia – Textiles*, *supra* note 144, ¶5.95.
[159] Moot problem, pg. 24, The Sustainable Taxation (Amendment) Act, Preamble.
[160] GATT, Art. XX (a).
[161] Appellate Body Report, *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, pg. 23, WTO Doc. WT/DS285/AB/R (adopted Apr. 20, 2005) [hereinafter, ABR *US – Gambling*].
[162] ABR *EC – Seals*, *supra* note 16, ¶5.198.
[163] Moot problem, pg. 23, The Sustainable Taxation (Amendment) Act, Preamble.
[164] Moot problem, ¶ 2.12

exception under Art. XX (b).[165] The AB in *Brazil - Retreaded Tyres*,[166] used a three – factorial test to determine the necessity of the measure at issue under Art. XX (b), in which factors such as measures; contribution, trade restrictiveness, and available alternatives were taken into consideration.[167]

[¶ 70] ***Firstly,*** the AB in *China – Publications and Audiovisual Products,*[168] noted that a measure that is part of a comprehensive strategy cannot be examined in isolation as the contribution made by it might not be visible in a short span of time. In the instant case, STA was enacted along with ECA and together they form an over-arching policy to curb animal cruelty and safeguard health of animals. Taxes imposed on animal tested products will nudge the manufacturers to shift to alternative methods of testing.[169]

[¶ 71] ***Secondly***, as established above, the measure at issue is not trade-restrictive. Thus, it is submitted that the measure at hand is not trade restrictive.

[¶ 72] ***Thirdly,*** it is the duty of the complainant to prove that there exists a reasonable alternative.[170] In the present case, the Complainant may propose alternatives pertaining to differentiating between humane and inhumane testing. However, such proposal is based on bogus premises as researchers have discovered that cephalopods have sensitivity to pain.[171] It is pertinent to note that alternative testing methods such as *in vitro* testing provides for better results compared to conventional testing.[172] Such an alternative would be reasonably available, nonetheless, lenient application of the measure would zero down its long-term contribution to the objective of promoting animal welfare.

2) THE MEASURE IS CONSISTENT WITH THE CHAPEAU OF GATT ART. XX.

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[165] PR *EC – Tariff*, *supra* note 10, ¶7.199.

[166] ABR *Brazil – Reatreaded Tyres*, *supra* note 138, ¶182.

[167] Appellate Body Report, *Korea — Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, ¶133, WTO Doc. WT/DS161/AB/R, WT/DS169/AB/R (adopted Dec. 11, 2000) [hereinafter ABR *Korea — Beef*].

[168] ABR *China – Audio-visual*, *supra* note 149, ¶253.

[169] Aurelio Miracolo et. Al., *Sin taxes and their effect on consumption, revenue generation and health improvement: a systematic literature review in Latin America*, 36(5) HEALTH POLICY AND PLANNING 790–810 (June 2021); ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, (Hartford, 1811).

[170] ABR *China – Audio-visual*, *supra* note 149. ¶326.

[171] JONATHAN BIRCH, ET. AL., REVIEW OF THE EVIDENCE OF SENTIENCE IN CEPHALOPOD MOLLUSCS AND DECAPOD CRUSTACEANS (London School of Economics, 2021); Robyn J. Crook, *Behavioral and neurophysiological evidence suggests affective pain experience in octopus*, 24(3) ISCIENCE (2021); Dr Steve Cooke, *Response to Call for evidence: Animal Welfare (Sentience) Bill* (Mar. 15, 2022) https://committees.parliament.uk/writtenevidence/37583/pdf/.

[172] TAYLOR, K, CHAPTER 24 RECENT DEVELOPMENTS IN ALTERNATIVES TO ANIMAL TESTING: IN ANIMAL EXPERIMENTATION: WORKING TOWARDS A PARADIGM CHANGE (The Netherlands: Brill, 2019); Chris Magee, *In vitro: the remarkable rise of animal alternatives* (2015) https://www.understandinganimalresearch.org.uk/news/staff-blog/in-vitro-the-remarkable-rise-of-animal-alternatives/.

[¶ 73] The RESPONDENT submits that the imposed taxation measure safeguards animal life and is consistent with the chapeau of GATT Art. XX as: it does not constitute arbitrary or unjustifiable discrimination **(a)**; and it does not act as disguised restriction on international trade **(b)**.

a. The measure is not an arbitrary or unjustifiable discrimination.

[¶ 74] The chapeau doesn't act as a deterrent to measures that are discriminatory in nature,[173] rather, it prevents a member from imposing a measure that is arbitrary and/or unjustifiable in nature.[174] A discriminatory measure can be assessed as justifiable or non-arbitrary if the rationale behind the measure is provided.[175] In the instant case, Valaria has imposed a progressive taxation measure on cosmetic products calculated in accordance with the amount of animal test data used.[176] The measure at issue is undertaken with the view of safeguarding animal health and as established earlier, such tax burden does discourage use of animal testing, which in turn reduces cruelty on animals. Thus, the taxation measure does not constitute arbitrary and unjustifiable discrimination as it is well reasoned and ultimately fulfils the goal it sought to achieve.

b. The measure does not act as "*disguised restriction*" *on international trade.*

[¶ 75] The Panel in *U.S. – Tuna from Canada*,177 stated that a measure cannot be adjudicated as a disguised restriction if such measure has been made available to public knowledge. In the instant case, Valaria published the taxation measure along with the ECA,[178] thus, the measure is not a disguised restriction. Even if the panel determines that publication is not the sole factor for assessing whether a measure is a disguised restriction on international trade, it is pertinent to note that the measure has not been adopted with the objective of protecting the local industry.

[¶ 76] The measure has been implemented with the aim of protecting animal life and health. Moreover, it is possible that levying the tax, the imported products may still be less priced than their domestic counterparts for they are already substantially less priced.[179] Thus,

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[173] ABR *US – Gasoline*, *supra* note 139 at 23.
[174] ABR *Brazil – Reatreaded Tyres*, *supra* note 138, ¶230.
[175] ABR *US – Tuna II (recourse to Article 21.5)*, *supra* note at ¶7.316.
[176] Moot problem, pg. 24, The Sustainable Taxation (Amendment) Act, §4.
[177] Panel Report, *United States - Prohibition of Imports of Tuna and Tuna Products from Canada*, ¶4.8, WTO Doc. L/5198 - 29S/91 (adopted Feb. 22, 1982).
[178] Moot problem, ¶2.14.
[179] Moot problem, ¶4.12.

no adverse effect is created on the market of imported cosmetic products, and in any benefit accrued to the domestic market will be incidental, short term, and a mere side effect of the legitimate goal pursued by Valaria. Hence, the taxation measure does not violate chapeau as it neither discriminatory nor act as disguised restriction.

[¶ 77] ***Therefore***, the taxation requirement under Section 5 of the STA is in compliance with GATT Art. III:2, *First Sentence*, and is further justified by the substantive provisions of GATT Art. XX.

V. THE PANEL SHOULD NOT MAKE A RECOMMENDATION UNDER ART. 19.1 OF DSU.

[¶ 78] Art. 19.1 of the DSU provides that the panel 'may' suggest ways in which the recommendations could be implemented.[180] The RESPONDENT submits that the panel should decline from making recommendations under Art. 19.1 as: there is no inconsistency under the covered agreements (**A**); The Complainant is seeking a suggestion rather than a recommendation (**B**); and the suggestions made by the panel are not binding in nature (**C**).

A. Measures invoked are consistent with the covered agreements.

[¶ 79] The RESPONDENT submits that there is no violation of Art. 2.2 of TBT, Art. 5.2.6 of TBT, and GATT Art. III:2 and thus, it does not nullify or impair benefits accrued to the Claimant under GATT Art. XXIII: 1(a).[181] A panel may make a recommendation under Art. 19.1 only when there is any inconsistency of the measure at issue with a covered agreement.[182] Thus, a recommendation under Art. 19.1 should not be made

B. *In Arguendo*, The COMPLAINANT is seeking a 'suggestion' rather than a 'recommendation'.

[¶ 80] Art. 19.1 of DSU provides that the panel should 'recommend' the members to bring the measure in to conformity with the relevant agreement. However, the *Second Sentence* of Art. 19.1 further puts a discretionary right on panel to 'suggest' a manner of the implementation of the recommendation.[183] It implies that there is a difference between 'recommendation' and 'suggestion'.[184] Further, recommendation is only limited to bringing the measure into conformity, however, suggestion encompasses the manner it should be

[180] DSU, Article 19.1.
[181] GATT, Article XXIII: 1(a).
[182] Appellate Body Report, *European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia*, ¶ 5.198-5.200 WTO Doc. WT/DS442/AB/R (adopted Sep. 5, 2017).
[183] DSU, Article 19.1.
[184] Appellate Body Report, *US – Anti Dumping Measures on Oil Country Tubular Goods,* ¶184 WTO Doc. WT/DS282/AB/R (adopted Nov. 2, 2005) [hereinafter ABR *US – Tubular*].

implemented.[185]

[¶ 81] In the instant case, that the Complainant is seeking a recommendation from the panel to postpone the certification requirement until sufficient certification agencies are not accredited.[186] However, such requests form a part of suggestion as it is seeking the delay of implementation of measure. Thus, the complainant have mistaken a suggestion for recommendation.

C. *In Arguendo*, the 'suggestions' made by panel are not binding in nature.

[¶ 82] A relationship should exist between panel's determination that "a measure is inconsistent with a covered agreement" and the subsequent request to "bring the measure into conformity by the respondents".[187] Further, Art. 19.1, *Second Sentence* provides that the panel may suggest ways in which the member should implement the measure. The term "may" in Art. 19.1, *Second Sentence* suggests means of implementation, thereby giving the panel an option to exercise its discretion.[188] Hence, the members possess the discretion to determine the manner of implementation the recommendation of the Dispute settlement Body (**"DSB"**).[189]

[¶ 83] WTO confers its members a right to determine the way they implement panel's recommendations and the ruling,[190] doing otherwise shall impair rights of the member. Similarly, it is argued that Valaria is in the best position to assess the manner in which it should comply with the panel's recommendations.[191] Thus, there is no substantive reason to exercise panel's discretion to make a suggestion as it is not "vital" or "necessary" to resolve a dispute.[192]

[¶ 84] ***Therefore***, there is no inconsistency with the covered agreements and there is no violation of rights accrued to the Complainant under Art. XXIII :1(a), hence, a recommendation under Art. 19.1 is not necessary.

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[185] Henrik Horn & Petros C. Mavroidis, *Remedies in the WTO Dispute Settlement System and Developing Country Interests* (April 11, 1999) https://www.iatp.org/sites/default/files/Remedies_in_the_WTO_Dispute_Settlement_System_.htm.
[186] Moot problem, ¶4.6.
[187] Appellate Body Report, *China – Measures Related to the Exploration of Various Raw Materials*, ¶251, WTO Doc. WT/DS394/AB/R, WT/DS395/AB/R, WT/DS398/AB/R (adopted Jan. 30, 2012).
[188] ABR *US – Tubular*, *supra* note 184, ¶184.
[189] Panel Report, *India – Patent Protection for Pharmaceutical and Agriculture Chemical Products*, ¶7.65, WTO Doc. WT/DS50/R (Sep. 5, 1997).
[190] ABR *US – Tubular*, *supra* note at 184, ¶177.
[191] DSU, Article 4.7; Panel Report, *Guatemala-Anti-Dumping Investigation Regarding Portland Cement from Mexico*, ¶8.3, WTO Doc. WT/DS60/R (adopted Jun. 19, 1998).
[192] ABR *US – Tubular*, *supra* note 184 at ¶68.

REQUEST FOR FINDINGS

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

I. Find that Isle of Nysa's *amicus curiae* brief is biased and unacceptable in the present dispute.

II. Find that Valaria's cosmetic labelling requirement in section 6 of the Ethical Cosmetics Act 2021, does not create unnecessary obstacle to international trade and complies with the obligations under Art. 2.2 of the TBT agreement.

III. Find that Valaria's certification requirement in section 8 of the Ethical Cosmetics Act 2021, does not cause unnecessary inconvenience to applicants or their agents and does not violate the obligations under Art. 5.2.6 of the TBT agreement.

IV. Find that Valaria's equivalency fee in Section 5 of the Sustainable Taxation (Amendment) Act 2021, is not in excess of those applied to like domestic products and does not violate the national treatment obligation under GATT Art. III:2.

V. Find that The panel should not exercise its discretion under DSU Art. 19.1 with respect to the Complainant's request for a recommendation.

All of which is respectfully affirmed and submitted

Agents of the Government of Valaria

(RESPONDENT)