



Team: 034

**ELSA MOOT COURT COMPETITION ON WTO LAW
2014-2015**

**Viridium – Measures Affecting the
Agricultural Sector**

Ruberia
(Complainant)

VS

Viridium
(Respondent)

SUBMISSION OF THE RESPONDENT

Table of Contents

List of References	III
List of Abbreviations	VII
Summary of Arguments	1
Statement of Facts	3
Identification of the Measures at Issue	4
Legal Pleadings	4
I. The ARRA does not Violate Article I:1 of GATT 1994 because It does not Confer an Advantage to Products from Countries with Less than 0.15 Hectares of Arable Land Per Capita	4
1. The ARRA Article 2 Exemption does not Modify the Competitive Relationship Between these Countries.....	4
II. The ARRA does not Violate Article III:4 of GATT 1994 because the Products at Issue are not “Like”	5
1. The Products at Issue are not “Like” Products for the Purposes of GATT III:4	5
2. In the Alternative, the ARRA does not Accord Less Favourable Treatment to Ruberia’s Imports vis-à-vis Like Domestic Products.....	6
III. If the ARRA Violates Article I:1 or Article III:4 of GATT 1994, it is Justified under the General Exceptions in Article XX and does not Violate the Article XX Chapeau Requirement	7
1. The ARRA’s Objective to Ensure the Humane Treatment of Animals Falls under the Scope of Measures “Necessary to Protect Public Morals” under Article XX(a).....	7
a. The ARRA is Related to the Objective of Protecting Public Moral Concerns	7
b. The ARRA is Necessary to Fulfill the Objective of Protecting Public Morals	7
2. The ARRA is Necessary to Protect Human and Animal Life or Health for the Purposes of GATT XX(b)	9
a. The ARRA Protects Animal and Human Life or Health	9
b. The ARRA is Necessary to Fulfill the Objective of Protecting Animal and Human Health.....	9
3. The ARRA is Exempt under GATT XX(g) as it Protects Exhaustible Natural Resources	10
a. The ARRA Concerns and Relates to the Conservation of Exhaustible Natural Resources	10
b. The ARRA Even-Handedly Affects Restrictions on Imported and Domestic Products	11
4. The ARRA Satisfies the GATT XX Chapeau Requirement.....	11
a. No Discrimination Occurs between Countries where the Same Conditions Prevail	11

b. Any Discrimination Resulting from the ARRA is not Arbitrary or Unjustifiable..... 12

IV. The ARRA is not a “Technical Regulation” within Annex 1.1 of the TBT Agreement 12

1. The ARRA does not Lay Down Product Characteristics or PPMs related to Product Characteristics..... 13

V. The ARRA does not Violate Article 2.1 of the TBT Agreement because it does not cause Detrimental Impact to Like Ruberian Products..... 13

1. The Products are “Like” Regarding MFN, but not National Treatment..... 14

2. The Treatment Accorded to Imported Products from Ruberia is No Less Favourable 14

a. In the Alternative, Any Detrimental Impact from the ARRA Stems from a Legitimate Regulatory Distinction 14

VI. the ARRA is not Inconsistent with TBT Article 2.4 because the WAWC Guidelines do not Constitute a Relevant International Standard 15

1. The WAWC Guidelines are not a relevant international standard because the WAWC is not an International Standardizing Body 15

The WAWC Guidelines do not Constitute a *Relevant* International Standard..... 16

2. In the Alternative, The ARRA used the WAWC Guidelines as a Basis for Article 2..... 16

3. If the ARRA is not based on the WAWC Guidelines, then those Guidelines are Ineffective and Inappropriate to the ARRA’s Purpose 17

VII. Articles 3 and 4 of the TBT Agreement Do Not Apply to this Case..... 17

1. Viridium’s Largest Association of Food Retailers is Not a Non-Governmental Body 17

2. As the ARRA does not Violate TBT Article 2.4, Viridium does not Violate TBT Articles 3.1 and 3.4..... 18

3. The ARRA does not “Require” or “Encourage” Local Bodies to Violate TBT Article 2.4 18

4. In the Alternative, Viridium does not violate TBT Article 4.1..... 19

Request for Findings..... 20

List of References

Short Form	Full Citation
TREATIES AND AGREEMENTS	
GATT	General Agreement on Tariffs and Trade 1994 (15 April 1994) LT/UR/A-1A/1/GATT/1 < http://docsonline.wto.org >.
TBT	Agreement on Technical Barriers to Trade (15 April 1994) LT/UR/A-1A/10.
VCLT	Vienna Convention on the Law of Treaties (adopted 22 May 1969, entered into force 27 January 1980) 1155 UNTS 331.
WTO Enabling Clause	Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries (28 November 1979) BISD 26S/203.
ELSA DOCUMENTS	
Clarifications	Clarifications, ELSA Moot Court Competition (EMC2) on WTO Law, Case 2014-2015, <i>Viridium – Measures Affecting the Agricultural Sector</i> .
Problem	Problem, ELSA Moot Court Competition (EMC2) on WTO Law, Case 2014-2015, <i>Viridium – Measures Affecting the Agricultural Sector</i> .
WTO APPELLATE BODY REPORTS	
<i>Brazil – Retreaded Tyres</i>	Appellate Body Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> (3 December 2007) WT/DS332/AB/R.
<i>Canada – Autos</i>	Appellate Body Report, <i>Canada – Autos</i> (31 May 2000) WT/DS139/AB/R.
<i>China – Audiovisual</i>	Appellate Body Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> (21 December 2009) WT/DS363/AB/R.
<i>Dominican Republic – Import and Sale of Cigarettes</i>	Appellate Body Report, <i>Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes</i> (25 April 2005) WT/DS302/AB/R.
<i>EC – Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Products Containing Asbestos</i> (12 March 2001) WT/DS135/AB/R.
<i>EC – Bananas III</i>	Appellate Body Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> (25 September 1997) WT/DS27/AB/R.
<i>EC – Hormones</i>	Appellate Body Report, <i>European Communities – Measures Concerning</i>

	<i>Meat and Meat Products (Hormones)</i> (16 January 1998) WT/DS26/AB/R.
<i>EC – Sardines</i>	Appellate Body Report, <i>European Communities – Trade Description of Sardines</i> (26 September 2002) WT/DS231/AB/R.
<i>EC – Seals</i>	Appellate Body Report, <i>EC – Measures Prohibiting the Importation and Marketing of Seal Products</i> (22 May 2014) WT/DS400/AB/R and WT/DS401/AB/R.
<i>Korea – Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> (10 January 2001) WT/DS161/AB/R and WT/DS169/AB/R.
<i>Thailand – Cigarettes (Philippines)</i>	Appellate Body Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines</i> (17 June 2011) WT/DS371/AB/R.
<i>US – Clove Cigarettes</i>	Appellate Body Report, <i>United States – Measures Affecting the Production and Sale of Clove Cigarettes</i> (4 April 2012) WT/DS406/AB/R.
<i>US – COOL</i>	Appellate Body Report, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> (29 June 2012) WT/DS384/AB/R.
<i>US – Gambling</i>	Appellate Body Report, <i>Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> (20 April 2005) WT/DS285/AB/R.
<i>US – Gasoline</i>	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> (20 May 1996) WT/DS2/AB/R.
<i>US – Shrimp</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> (12 October 1998) WT/DS58/AB/R.
<i>US – Shrimp (Article 21.5 – Malaysia)</i>	Appellate Body Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products (Article 21.5)</i> (22 October 2001), WT/DS58/AB/R.
<i>US – Tuna II</i>	Appellate Body Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> (16 May 2012) WT/DS381/AB/R.
WTO PANEL REPORTS	
<i>Brazil – Retreaded Tyres</i>	Panel Report, <i>Brazil – Retreaded Tyres</i> (12 June 2007) WT/DS332/R.
<i>China – Audiovisuals</i>	Panel Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , (12 August 2009) WT/DS363/R.
<i>EC – Bananas III</i>	Panel Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> (22 May 1997) WT/DS27/R.
<i>EC – Seals</i>	Panel Report, <i>European Communities – Measures Prohibiting the Importation and Marketing of Seal Products</i> (25 November 2013)

	WT/DS400/R and WT/DS401/R.
<i>EC – Tariff Preferences</i>	Panel Report, <i>EC – Tariff Preferences</i> (1 December 2003) WT/DS246/R.
<i>Indonesia – Autos</i>	Panel Report, <i>Indonesia – Certain Measures Affecting the Automobile Industry</i> (2 July 1998) WT/DS54/R.
<i>US – COOL</i>	Panel Report, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> (18 November 2011) WT/DS384/R.
<i>US – Gasoline</i>	Panel Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> (29 January 1996) WT/DS2/R.
WTO MATERIALS	
<i>Border Tax Adjustments</i>	Working Party Report, <i>Border Tax Adjustments</i> (2 December 1970) BISD 18S/97.
Jansen and de Faria	Marion Jansen and Andre Lince de Faria, <i>Product Labelling, Quality and International Trade</i> (February 2002) Staff Working Paper DERD-2002-1.
SECONDARY SOURCES	
Arcuri	Alessandra Arcuri, “The TBT Agreement and Private Standards” in Tracey Epps and Michael J. Trebilcock (eds), <i>Research Handbook on the WTO and Technical Barriers to Trade</i> (Edward Elgar Publishing 2013).
Condon & Sinha	Bradly J. Condon and Tapen Sinha, <i>The Role of Climate Change in Global Economic Governance</i> (Oxford University Press 2013).
EPA	Environmental Protection Agency, “How Do CAFOs Impact the Environment?” (EPA) < http://www.epa.gov/region07/water/cafo/cafo_impact_environment.htm > accessed 9 January 2015.
EU Strategy for the Protection and Welfare of Animals	European Commission, “European Union Strategy for the Protection and Welfare of Animals 2012-2015” (Communication) COM (2012) 6 final < http://ec.europa.eu/food/animal/welfare/actionplan/docs/aw_strategy_19012012_en.pdf > accessed 7 January 2015.
FAO, “Animal Production”	Agriculture and Consumer Protection Department, “Animal Production and Health: Mission” (FAO, 25 September 2012) < www.fao.org/ag/againfo/home/en/mission.htm > accessed 7 January 2015.
Giampietro	Mario Giampietro, <i>Multi-Scale Integrated Analysis of Agroecosystems</i> (CRC Press 2004).
Gualtieri	Alix Gualtieri, “Legal Implications of Trade in ‘Real’ and ‘Virtual’ Water Resources” in Philippe Cullet and others (eds), <i>Water Law for the Twenty-First Century</i> (Routledge 2010).

Guzman & Pauwelyn	Andrew T. Guzman and Joost H.B. Pauwelyn, <i>International Trade Law</i> (2nd edn, Wolters Kluwer 2012).
Howse	Robert Howse, “A New Device for Creating International Legal Normativity: The WTO Technical Barriers to Trade Agreement and ‘International Standards’” in Christian Joerges and Ernst-Ulrich Petersmann (eds), <i>Constitutionalism, Multilevel Trade Governance and International Economic Law</i> (Hart Publishing 2011).
Johnson	Robbin Johnson, “Food Security: The Role of Agricultural Trade” (IPC Discussion Paper, International Policy Council 2009) < www.agritrade.org/documents/FoodSecurity.pdf > accessed 10 January 2015.
Marceau & Trachtman	Gabrielle Marceau & Joel P. Trachtman, “A Map of the World Trade Organization Law of Domestic Regulation of Goods: The Technical Barriers to Trade Agreement, the Sanitary and Phytosanitary Measures Agreement, and the General Agreement on Tariffs and Trade” (2014) 48(2) <i>JWT</i> 351.
Oxford English Dictionary	<i>OED Online</i> (Oxford University Press, December 2014) < www.oed.com > accessed 25 November 2014.
Regan	Donald Regan, “The Meaning of ‘Necessary’ in GATT Article XX and GATS Article XIV: The Myth of Cost-Benefit Balancing” in Lorand Bartels and Federico Ortino (eds), <i>The Regulation of Goods</i> (Ashgate 2013).
Ruozzi	Elisa Ruozzi, “The Multilateral Trading System and Non-Trade Issues: How the World Trade Organisation Managed to Integrate Environmental Concerns without Integrating International Environmental Law” in Christoph Herrmann, Markus Krajewski, Jörg Philipp Terhechte (eds) <i>European Yearbook of International Economic Law 2014</i> (New York: Springer, 2013).
Struck	Christian Struck, <i>Product Regulations and Standards in WTO Law</i> (Wolters Kluwer 2014).
Trebilcock	Michael J. Trebilcock, <i>Advanced Introduction to International Trade Law</i> (Edward Elgar Publishing 2015).
Van den Bossche & Zdouc	Peter Van den Bossche and Werner Zdouc, <i>The Law and Policy of the World Trade Organization</i> (3rd edn, Cambridge University Press 2013).
World Bank Arable Land Statistics	World Bank, “Data: Arable land (hectares per person)” (World Bank) < http://data.worldbank.org/indicator/AG.LND.ARBL.HA.PC?order=wbapi_data_value_2012+wbapi_data_value+wbapi_data_value-last&sort=asc > accessed 4 January 2015.

List of Abbreviations

Abbreviation	Description
0.15 Countries	Countries with less than 0.15 hectares of arable land per capita
AB	Appellate Body
AFO	Animal Feeding Operation
ARRA	Agricultural Reconstruction and Reform Act
CAFO	Concentrated Animal Feeding Operation
EC	European Communities
EU	European Union
EPA	Environmental Protection Agency (US)
FAO	Food and Agriculture Organization
GATT	<i>General Agreement on Tariffs and Trade 1994</i>
MFN	Most Favoured Nation
OED	Oxford English Dictionary
PPM	Processes and Production Method
SDT	Special and Differential Treatment
TBT	<i>Agreement on Technical Barriers to Trade 1994</i>
US	United States
VCLT	<i>Vienna Convention on the Law of Treaties</i>
WAWC	World Animal Welfare Council
WTO	World Trade Organization

Summary of Arguments

I. The ARRA does not Violate the Most Favoured Nation Obligation under *GATT 1994* because Products from Countries with Less than 0.15 Hectares of Arable Land Per Capita do not Receive Any Advantage Over Like Products from Ruberia

- Unlike Ruberia and other large developed WTO Members, 0.15 countries are not major exporters of animal products due to their limited resources. Ruberia can comply with ARRA Article 2 unlike these countries.
- Therefore, the competitive relationship between Ruberia and 0.15 countries is unaffected by the ARRA Article 2 exemption, and these countries receive no advantage.

II. The ARRA does not Violate the National Treatment Obligation under *GATT 1994* because the Products at Issue are not “Like”

- Under GATT Article III:4, the products at issue (beef and eggs) from Viridium and Ruberia are not “like” products because they differ in nature and quality, and in consumer preferences.
- In the alternative, products from Ruberia do not receive less favourable treatment than products from Viridium because the ARREA treats the two products.

III. If the ARRA Violates Article I:1 or III:4, it is Justified under Article XX Subparagraphs (a), (b), and (g)

- Under GATT XX(a), the ARRA is necessary to protect public moral concerns given the high importance of animal welfare and sustainable agriculture, and no less restrictive trade alternatives exist to achieve this objective.
- Under GATT XX(b), the ARRA is necessary to protect animal and human life or health because it prohibits unethical and unsustainable industrial farming practices.
- Under GATT XX(g), the ARRA relates to the conservation of exhaustible natural resources, as industrial farming is known to pollute and harm the environment. The exemption for 0.15 countries is also justified under this exemption as it prevents these countries from encroaching on their limited arable land to comply with ARRA Article 2.

IV. The ARRA does not Violate the Article XX Chapeau Requirement as it is not Applied in an Arbitrary or Unjustifiable Manner

- Any discrimination is rationally connected to the ARRA’s legitimate objectives of protecting public moral concerns, animal and human health, and exhaustible natural resources.

- WTO principles of law support exemptions for developing and least-developed countries in trade regulations.

V. The ARRA is not a Technical Regulation under TBT Annex 1.1 because it does not Lay Down Related Processes and Production Methods (PPMs)

- The ARRA is not a technical regulation under TBT Annex 1.1 as it does not lay down any product characteristics or related PPMs. The ARRA regulates the treatment of the animals during production, which does not relate to product characteristics.
- In the alternative, the ARRA does not violate the TBT Agreement.

VI. The ARRA does not cause a Detrimental Impact to Like Imported Products from Ruberia under TBT Article 2.1

- The ARRA does not cause a detrimental impact to like imported products from Ruberia for the reasons listed under the GATT I:1 and III:4 submissions.
- If any detrimental impact is found to occur, it stems from a legitimate regulatory distinction between humanely and non-humanely sourced animal products.

VII. The ARRA is not Inconsistent with TBT Article 2.4 because the WAWC is not an International Standardizing Body

- The WAWC is not a recognized international standardizing body as it is small in size and has only set one standard thus far, the WAWC Guidelines. Consequently, the Guidelines are not an international standard.
- In the alternative, the Guidelines are not a relevant international standard because they are targeted at developing countries, based on the WAWC's mission as an organization.
- Further, as evidenced by the natural disaster's effects, the Guidelines are ineffective and inappropriate to the ARRA's purpose of protecting animal life and health.

VIII. TBT Articles 3 and 4 do not Apply because Viridium's Largest Association of Food Retailers is not a "Non-Governmental Body"

- The association is not a non-governmental body according to the TBT Annex 1.8 definition because it does not have any legal power to enforce a technical regulation.
- Even if the association is considered a non-governmental body, the WAWC is not an international standardizing body, therefore both the ARRA and the association are not violating Articles 3 and 4.

Statement of Facts

1. Viridium, the Respondent, is a small developed country WTO member. A devastating natural disaster recently destroyed a significant part of Viridium's agricultural infrastructure, killing the majority of its farm animals. In the aftermath, the people of Viridium elected the Green Party on a mandate of promoting sustainable agricultural development and breaking from harmful industrial farming practices. The new government passed the Agricultural Reconstruction and Reform Act (ARRA) to fulfill that mandate.
2. The ARRA implements standards that ensure the humane treatment of farm animals. Under the ARRA, developed countries are given one year to comply (including Viridium), while developing countries have three years. Countries with less than 0.15 hectares of arable land per capita are exempt from complying with ARRA Article 2. The ARRA will fundamentally transform Viridium's agricultural sector, since the majority of its pre-disaster production of beef and eggs would not meet the ARRA's requirements.
3. ARRA Article 2 stipulates minimum space allowances for livestock held in Concentrated Animal Feeding Operations (CAFOs). Before the natural disaster, Viridium held cattle in CAFOs that followed the non-binding minimum space allowances set by the World Animal Welfare Council (WAWC). The WAWC is an international organization consisting of thirty-five Member States, including Ruberia and Viridium. A narrow majority of members, including Ruberia and Viridium's previous administration, passed the WAWC Guidelines on minimum space allowances. A sizeable minority of the members did not support the Guidelines for being insufficient to protect farm animals. The natural disaster caused these smaller CAFOs to leak manure and wastewater, threatening surrounding lands and bodies of water with pollution. Consequently, the ARRA imposes higher standards for minimum space allowances than the Guidelines.
4. The association of Viridium's largest food retailers has announced that it will only source animal products that fulfill the requirements of ARRA Articles 2 and 3, irrespective of any exemptions for certain countries.
5. Ruberia, the Complainant, is a large developed country WTO member that supplies a significant amount of all beef and eggs sold in Viridium. Although some of its livestock production already conforms to the ARRA, Ruberia has brought a challenge against Viridium on various grounds concerning the ARRA.

Identification of the Measures at Issue

Measure 1: Viridium’s Agricultural Reconstruction and Reform Act (ARRA), which requires all animal products sold in Viridium to be sourced from humanely treated animals.

Legal Pleadings

I. THE ARRA DOES NOT VIOLATE ARTICLE I:1 OF GATT 1994 BECAUSE IT DOES NOT CONFER AN ADVANTAGE TO PRODUCTS FROM COUNTRIES WITH LESS THAN 0.15 HECTARES OF ARABLE LAND PER CAPITA

1. The ARRA does not violate the MFN obligation under GATT I:1 because the products imported from 0.15 countries do not receive any advantage over like products from Ruberia.

2. An Article I:1 violation occurs when the following requirements are met: 1) The measure in question confers an “advantage” to any product originating in the territory of another country; 2) The products concerned are considered “like” products; and 3) The advantage in question is not granted “immediately and unconditionally” to all like products of other WTO Members.¹ Although the products concerned are “like” products, the ARRA does not confer an “advantage” to like products from countries with less than 0.15 hectares of arable land per capita.

1. The ARRA Article 2 Exemption does not Modify the Competitive Relationship Between these Countries

3. Animal products from 0.15 countries do not receive an advantage over Ruberian products because the exemption from ARRA Article 2 does not modify the competitive relationship between these countries. A measure is inconsistent with GATT I:1 if it “modifies the conditions of competition between like imported products to the detriment of the third-country imported products at issue.”² An “advantage” creates “more favourable import opportunities” or affects the competitive relationship between products of different origins.³

4. 0.15 countries have limited space and resources to raise and feed farm animals, particularly compared to Ruberia, a large and developed nation. These countries are unlikely to export animal products to Viridium given their limited resources. In fact, the remainder of beef and eggs not supplied by Ruberia is primarily met by domestic production, and 0.15 countries do not export any beef and eggs to Viridium.⁴

¹ PR, Indonesia—Autos, [14.138]; ABR, EC – Bananas III, [206]; Van den Bossche & Zdouc (2013), 320-321.

² PR, EC—Seals, [5.93].

³ PR, EC—Bananas III, [7.239] (upheld by the AB).

⁴ Problem, [8]; Clarifications, [158].

5. In addition, 60 percent of the cattle in Ruberia are raised in AFOs that already comply with ARRA Article 2 requirements.⁵ Ruberia can continue to export beef from these cattle to Viridium and suffer no disadvantage vis-à-vis other WTO Members whose territory contains 0.15 hectares of arable land per capita. For these reasons, the competitive relationship between these countries is unaffected and there is no advantage conferred on animal products from these WTO Members.

II. THE ARRA DOES NOT VIOLATE ARTICLE III:4 OF GATT 1994 BECAUSE THE PRODUCTS AT ISSUE ARE NOT “LIKE”

6. The ARRA does not violate the national treatment obligation under GATT III:4 because the products at issue are not “like” products and, in the alternative, there is no less favourable treatment accorded to products from Ruberia. A GATT III:4 violation occurs when three elements are satisfied: 1) The imported and domestic products at issue are “like products”; 2) The measure at issue is a “law, regulation, or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use”; and 3) The imported products are accorded “less favourable” treatment than that accorded to like domestic products.⁶ Although the ARRA is a legal instrument, the products are not “like” and even if they were, imported products are not accorded less favourable treatment.

1. The Products at Issue are not “Like” Products for the Purposes of GATT III:4

7. The products at issue are beef and eggs imported from Ruberia and those produced in Viridium. Ruberia claims that the beef produced from cattle that does not meet the minimum space requirements, and eggs from hens raised in battery cages are disadvantaged. These are compared to the beef and eggs produced in Viridium, which will meet the space allowance requirements for cattle set out in the ARRA, and do not come from hens in battery cages.

8. The assessment for “like” products considers the competitive relationship between products by evaluating: 1) the properties, nature and quality of the products; 2) the end-uses of the products; 3) consumers’ tastes and habits; and 4) tariff classification.⁷ The two groups of products do not satisfy all four criteria. First, the products differ in nature and quality as those from Viridium are sourced from ethically treated animals, while those from Ruberia are not

⁵ Problem, [7].

⁶ ABR, Korea—Beef, [133]; ABR, EC—Seals, [5.99]; ABR, Thailand—Cigarettes (Philippines), [127].

⁷ ABR, EC—Asbestos, [101]; Border Tax Adjustments, [18]; Marceau & Trachtman (2014), 360.

guaranteed to have received the same treatment. Non-economic interests such as health and environmental factors are relevant in determining the nature of the products.⁸ Additionally, the humane treatment of animals leads to overall tastier and better quality animal product.⁹

9. Second, the products differ due to consumers' tastes and habits. Viridian consumers prefer animal products that have been treated humanely, and view products that have not received this treatment as fundamentally different. Viridium's largest association of food retailers is an example of consumer tastes and preferences, as they will sell only animal products that conform to the ARRA, regardless of transition periods or exemptions.¹⁰

2. In the Alternative, the ARRA does not Accord Less Favourable Treatment to Ruberia's Imports vis-à-vis Like Domestic Products

10. Imported products from Ruberia are not accorded "less favourable" treatment than that accorded to like domestic products. The ARRA does not modify the conditions of competition in the relevant market to the detriment of imports.¹¹

11. Animal products from Ruberia are subject to the same treatment as animal products from Viridium. It requires producers of both countries' beef and eggs to comply with new production methods. The fact that Ruberia's beef and eggs had a greater share of the Viridium market before the ARRA was enacted cannot be used as a basis for a finding of less favourable treatment.¹²

12. Furthermore, Ruberia does not suffer a change in conditions of competition resulting from the ARRA. Ruberia does not have to undergo large structural changes to comply with the ARRA's standards. Ruberia already complies with the transportation requirements under ARRA Annex 2, and 60 percent of its cattle are raised in CAFOs that comply with Article 2 minimum space allowances. Additionally, 20 percent of Ruberia's eggs also comply with the ARRA's prohibition on battery cages.¹³ Ruberia could export the animal products that meet the ARRA's standards to Viridium with minimal effect on its own agricultural industry. For these reasons, the ARRA does not impose *de facto* discriminatory treatment resulting in less favourable treatment on Ruberia's imports.

⁸ ABR, EC—Asbestos, [113].

⁹ Problem, [3] (ARRA Preamble).

¹⁰ Problem, [6].

¹¹ ABR, Korea—Beef, [137]; ABR, Thailand—Cigarettes (Philippines), [128].

¹² ABR, DR—Cigarettes, [96].

¹³ Problem, [7].

III. IF THE ARRA VIOLATES ARTICLE I:1 OR ARTICLE III:4 OF GATT 1994, IT IS JUSTIFIED UNDER THE GENERAL EXCEPTIONS IN ARTICLE XX AND DOES NOT VIOLATE THE ARTICLE XX CHAPEAU REQUIREMENT

13. If the Panel still finds that the ARRA violates either GATT I:1 or GATT III:4, the measure is justified under GATT XX subparagraphs (a), (b), and (g).

14. Examining a measure under GATT Article XX is two-tiered. The panel first examines whether a measure falls under an exception listed in Article XX(a)-(j). The panel then determines whether the measure meets the Article XX chapeau requirements.¹⁴ The ARRA is justified under Article XX because it meets the chapeau requirements.

1. The ARRA's Objective to Ensure the Humane Treatment of Animals Falls under the Scope of Measures "Necessary to Protect Public Morals" under Article XX(a)

15. The ARRA is justified under the Article XX(a) exception because the measure is necessary to protect public moral concerns in Viridium. To meet Article XX(a), "A Member... must demonstrate that it has adopted or enforced a measure 'to protect public morals,' and that the measure is 'necessary' to protect such public morals."¹⁵ Members may determine the degree of protection necessary for public moral concerns, and need not identify any risks that would result if the moral concerns were not addressed.¹⁶

a. The ARRA is Related to the Objective of Protecting Public Moral Concerns

16. The ARRA's objective is to protect public moral concerns related to the humane treatment of animals and the importance of a sustainable agricultural sector. Public moral concerns are implied in concerns about the humane treatment of animals.¹⁷ The ARRA establishes its commitment to these principles in its preamble.

17. The ARRA relates to this objective by prohibiting animal products derived from cows kept in cramped enclosures and hens kept in battery ages. The ARRA also mandates a return to sustainable agriculture by prohibiting harmful and unsustainable industrial farming practices.

b. The ARRA is Necessary to Fulfill the Objective of Protecting Public Morals

18. The necessity test under GATT XX(a) involves a process of "weighing and balancing" a series of factors, including the importance of the objective pursued, the contribution made to the

¹⁴ ABR, Brazil—Retreaded Tyres, [139]; Guzman & Pauwelyn (2012), 358.

¹⁵ ABR, EC—Seals, [5.169]

¹⁶ Ibid, [5.198-5.199].

¹⁷ Ibid, [5.203].

realization of the objective, and the measure's trade-restrictiveness.¹⁸ Following this analysis, a panel compares the measure with possible alternatives.¹⁹

19. The values supported by the ARRA (namely, sustainable development and the humane treatment of animals) are significantly important to Viridium and the world. For example, the FAO advocates the importance of addressing animal health to ensure a sustainable agricultural sector.²⁰ The EU also developed a "Strategy for the Protection and Welfare of Animals 2012-2015" aimed at assisting farmers in implementing ethical standards to better protect animals.²¹

20. The ARRA contributes to the realization of the objective of addressing public morals as it assures the public that the majority of the animal products they consume come from animals that have not suffered inhumane treatment. A decrease in demand, and hence a contraction of the market for inhumanely treated animal products, will reduce the number of animals treated inhumanely.²² The ARRA also addresses public moral concerns about sustainable agriculture by assuring the public that their animal products are being produced sustainably.

21. The ARRA has a minimal impact on imports and exports and is therefore not very trade-restrictive. As mentioned, 60 percent of Ruberia's beef and 20 percent of Ruberia's eggs can still be imported in Viridium under the ARRA. The ARRA also provides for transition periods for countries to adapt to the new standards, and also permits exemptions for certain countries that would be unable to meet the ARRA's requirements. In sum, the ARRA's contribution to the objective combined with the importance of the objective outweighs any minimal trade-restrictiveness. Weighing and balancing these factors shows that the ARRA is necessary for the purposes of GATT XX(a).

22. As will be demonstrated below regarding TBT Article 2.4 and international standards, possible alternatives such as lowering the standards set by the ARRA or implementing labeling requirements "would involve a continuation of the very risk that [the ARRA] seeks to halt."²³ Furthermore, Viridium cannot be expected to employ an alternative measure if that measure falls

¹⁸ Ibid; ABR, Korea—Beef, [164]; ABR, US—Gambling, [306]; Guzman & Pauwelyn (2012), 367.

¹⁹ ABR, US—Gambling, [307]; ABR, Korea—Beef [166].

²⁰ FAO, "Animal Production."

²¹ EU Strategy for the Protection and Welfare of Animals.

²² ABR, EC—Seals, [7.637]

²³ ABR, EC—Asbestos, [174].

below the desired level of protection regarding the objective pursued.²⁴ Any violation of the GATT by the ARRA is consequently justified under XX(a).

2. The ARRA is Necessary to Protect Human and Animal Life or Health for the Purposes of GATT XX(b)

23. In addition to being necessary to protect public morals, the ARRA is also necessary to protect animal and human health. The ARRA ensures the humane and ethical treatment of farm animals in the agricultural industry through sustainable farming practices. Two elements must exist for a measure to be justified under GATT XX(b): 1) the policy in respect of the measures for which the provision was invoked must fall within the range of policies designed to protect human, animal or plant life or health; and 2) the inconsistent measures for which the exception is being invoked must be necessary to fulfill the policy objective.²⁵

a. The ARRA Protects Animal and Human Life or Health

24. By ensuring the humane treatment of farm animals and promoting sustainable farming practices, the ARRA protects both animal and human health. Following the natural disaster, the land, rivers and lakes surrounding the crowded CAFOs were threatened by pollution.²⁶ This natural disaster provides actual evidence of the risks that are posed to animal and human life and health through the use of industrial farming practices. Even without a natural disaster, CAFOs and other industrial farming practices regulated by the ARRA produce negative environmental effects that affect animal and human health, such as infectious diseases.²⁷

25. The ARRA reduces such health risks to both farm animals and humans living near farms by requiring cattle to be raised in larger and less concentrated spaces. These larger spaces minimize pollution of surrounding lands and water bodies with animal waste.²⁸

26. The ARRA further relates to protecting animal health by requiring all meat processing plants to have non-slip flooring, and prohibiting electric prod usage except in exceptional cases, in addition to several other provisions aimed at improving farm animals' welfare.

b. The ARRA is Necessary to Fulfill the Objective of Protecting Animal and Human Health

27. As in GATT XX(a), the necessity analysis under GATT XX(b) involves weighing and balancing the objective's importance, the measure's contribution to the fulfilment of the

²⁴ ABR, Korea—Beef, [176]; Regan (2012), 236-237; Van den Bossche & Zdouc (2013), 558.

²⁵ PR, US—Gasoline, [6.20] (upheld by the AB); PR, Brazil—Retreaded Tyres, [7.40-7.41].

²⁶ Problem, [1].

²⁷ Hribar (2010), 2; Jansen and de Faria (2002), 2-3.

²⁸ EPA.

objective, and the measure's trade restrictiveness, followed by considering possible alternative measures.²⁹ The ARRA's policy objective is to promote treating animals humanely and ethically, which affects the health and life of animals. The devastating effects of pollution from industrial farming on both animal and human health reinforce the objective's importance.

28. The objective is fulfilled by the ARRA that prohibits unethical and unsustainable farming practices. These measures contribute to protecting both animal and human health by regulating matters that directly relate to their wellbeing.

29. The measure is not overly trade restrictive for the same reasons enumerated in the XX(a) submission. Weighing and balancing these factors demonstrates that the measure is necessary to protect animal and human life or health.

30. As determined under XX(a), no less-restrictive trade alternatives exist to accomplish this objective.

3. The ARRA is Exempt under GATT XX(g) as it Protects Exhaustible Natural Resources

31. To receive an exemption under GATT XX(g), the measure in question must 1) concern the "conservation of exhaustible natural resources"; 2) relate to the conservation of exhaustible natural resources and 3) be "made effective in conjunction with" restrictions on domestic production or consumption.³⁰

a. The ARRA Concerns and Relates to the Conservation of Exhaustible Natural Resources

32. The ARRA's objective to promote sustainable agriculture through ethical farming practices protects an exhaustible natural resource. The industrial farming that Viridium previously practiced significantly exacerbated the natural disaster's effects by causing spills of manure and wastewater, threatening Viridium's rivers and lakes with pollution. By treating animals humanely with sustainable farming practices, the ARRA relates to the conservation of exhaustible natural resources such as land and bodies of water. Water sources can be made non-renewable through human action, as is the case here.³¹ Thus, preserving clean water is analogous to preserving clean air in *US – Gasoline*.³²

33. If the exemption from ARRA Article 2 for 0.15 countries is found to be discriminatory, this exemption is also allowed under GATT XX(g). Countries with very little arable land tend to

²⁹ ABR, Brazil—Tyres, [182]; ABR, US—Gambling, [307]; Van den Bossche & Zdouc (2013), 556.

³⁰ ABR, US—Shrimp, [126]; Van den Bossche & Zdouc (2013), 565.

³¹ Gualtieri (2010), 69.

³² Condon and Sinha (2013), 72.

be small countries and/or have high population density (for example, Singapore and Bangladesh).³³ Countries with limited land will not be able to conform to ARRA Article 2 requirements without significantly depleting their own natural resources. By increasing the minimum space allowances, 0.15 countries would likely infringe on this exhaustible resource to meet this requirement.³⁴ By exempting these nations from adhering to this standard, the ARRA prevents this outcome.

b. The ARRA Even-Handedly Affects Restrictions on Imported and Domestic Products

34. This element of the XX(g) test requires that imported and domestic products are treated in an even-handed manner; they do not need to be treated identically.³⁵ Domestic and imported products in Viridium must both comply with the ARRA. Importing countries with less than 0.15 hectares of arable land are legitimately exempted from Article 2 for the reasons enumerated above. As a result, the ARRA satisfies this stage of the test.

4. The ARRA Satisfies the GATT XX Chapeau Requirement

35. The ARRA is not applied in a manner that would constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail. A Chapeau violation occurs when three elements are satisfied: 1) The application of the measure results in discrimination; 2) the discrimination occurs between countries where the same conditions prevail; and 3) the discrimination is arbitrary or unjustifiable in character.³⁶

a. No Discrimination Occurs between Countries where the Same Conditions Prevail

36. The conditions prevailing in Ruberia are not the same as those prevailing in 0.15 countries or in developing or least developed countries. With regard to 0.15 countries, these countries do not have the capacity to engage in large-scale agricultural production as Ruberia does, and therefore the same conditions do not prevail. Regarding developing and least-developed countries, these countries have fewer resources to transition, or to transition as quickly to the production methods required by the ARRA. Viridium is subject to the same restrictions as Ruberia, as are all other developed countries. Unlike the contested measure in *US – Shrimp*, the ARRA takes “into consideration different conditions which may occur in the territories of” other

³³ World Bank Arable Land Statistics.

³⁴ Giampietro (2004), 336.

³⁵ ABR, US—Shrimp, [145]; Van den Bossche & Zdouc (2013), 567.

³⁶ ABR, EC—Seals, [5.317]; ABR, US—Shrimp, [50]; PR, EC—Tariff Preferences, [7.225-7.235]; PR, Brazil—Retreaded Tyres, [7.226-7.251].

WTO Members.³⁷ As a result of this “sufficient flexibility”³⁸ in application, the ARRA does not constitute “arbitrary discrimination” and satisfies the Chapeau requirement.³⁹

b. Any Discrimination Resulting from the ARRA is not Arbitrary or Unjustifiable

37. The different regulatory treatment that the measure accords to exempt products as compared to non-exempt “like” products does not constitute “arbitrary or unjustifiable discrimination” because any discrimination is rationally connected to the ARRA’s objective.⁴⁰

38. As stated above, the exemption for 0.15 countries is rationally connected to the ARRA’s objective of promoting sustainable agriculture. If imports from these countries were required to comply with the ARRA’s stricter standards, this would directly contradict the ARRA’s objective. Even if these countries abided by the requirements by reducing animal production rather than increasing CAFO spaces, this would have an unreasonable impact on their agricultural industry.

39. The ARRA’s exemption for least developed countries from ARRA Article 2 and ARRA’s longer transition periods for developing countries are not arbitrary or unjustifiable. These exemptions conform to principles of WTO law. For example, Article XXXVII of GATT 1994 provides that developed parties must prioritize reducing and eliminating trade barriers for less-developed parties.⁴¹ This principle is also reiterated in the “Differential and more favourable treatment reciprocity and fuller participation of developing countries” GATT decision (“The Enabling Clause”). This decision provides that “contracting parties may accord differential and more favourable treatment to developing countries.”⁴² Therefore, Viridium is justified in providing more favourable treatment to these countries to ensure that its trade practices conform to principles of SDT under the Enabling Clause and in WTO law.⁴³

IV. THE ARRA IS NOT A “TECHNICAL REGULATION” WITHIN ANNEX 1.1 OF THE TBT AGREEMENT

40. The ARRA is not a “technical regulation” because it does not lay down any product characteristics or related PPMs. As a result, the TBT Agreement does not apply.

³⁷ ABR, US—Shrimp, [164, 177].

³⁸ ABR, US—Shrimp (Article 21.5 – Malaysia), [145].

³⁹ Van den Bossche & Zdouc (2013), 575.

⁴⁰ ABR, EC—Seals, [5.318]; ABR, Brazil—Retreaded Tyres, [227].

⁴¹ GATT, Article XXXVII.

⁴² WTO Enabling Clause.

⁴³ Trebilcock (2015), 187-189.

41. The three-tier test for determining whether a measure is a technical regulation is: 1) whether the document applies to an identifiable product or group of products; 2) whether the document lays down one or more characteristics of the product or processes and production methods (PPMs) that are related to product characteristics; 3) whether compliance with the product characteristics are mandatory.⁴⁴ The ARRA does not meet the second tier of the test.

1. The ARRA does not Lay Down Product Characteristics or PPMs related to Product Characteristics

42. The ARRA lays down PPMs, as the measure regulates the production of livestock products. However, a related PPM must “have a sufficient nexus to the characteristics of a product in order to be considered related to product characteristics.”⁴⁵ The PPMs laid down in the ARRA fail this test, as they are not sufficiently related to any characteristics of the product. Product characteristics include “any objectively definable ‘features’, ‘qualities’, ‘attributes’, or other ‘distinguishing mark’ of a product. Such ‘characteristics’ might relate, inter alia, to a product's composition, size, shape, colour, texture, hardness, tensile strength, flammability, conductivity, density, or viscosity.”⁴⁶ The treatment of livestock regulated by the PPMs has no effect on the characteristics of the livestock products.

43. While Ruberia might argue that “tastier and of better quality” in the ARRA preamble refers to a product characteristic, these attributes are too vague and subjective to constitute related product characteristics. Furthermore, the overall objective of the PPMs enacted by the ARRA is sustainable and ethical agricultural practices, not that the meat be tastier and of better quality. Even if those two qualities could be seen as product characteristics, the PPMs themselves are not related to them, and subsequently fail the “sufficient nexus” requirement.

44. In the alternative that the ARRA is a technical regulation, it does not violate the TBT Agreement.

V. THE ARRA DOES NOT VIOLATE ARTICLE 2.1 OF THE TBT AGREEMENT BECAUSE IT DOES NOT CAUSE DETRIMENTAL IMPACT TO LIKE RUBERIAN PRODUCTS

45. The ARRA does not violate TBT 2.1 because the treatment accorded to like imported products from Ruberia is no less favourable. Even if any detrimental impact occurs, it is because

⁴⁴ ABR, EC—Seals, [5.10]; ABR, EC—Asbestos, [66-70]; ABR, EC—Sardines, [176].

⁴⁵ ABR, EC—Seals, [5.12].

⁴⁶ ABR, EC—Asbestos, [67].

of a legitimate regulatory distinction. To find that there has been a violation of Article 2.1, 1) the measure at issue must be a technical regulation; 2) the imported and domestic products at issue must be like products; and 3) the treatment accorded to imported products must be less favourable than that accorded to like domestic products or like products from other WTO members.⁴⁷

1. The Products are “Like” Regarding MFN, but not National Treatment

46. Regarding national treatment, the imported and domestic animal products at issue are not “like.” The “like” analysis under TBT 2.1 follows the same structure as the analysis under GATT III:4.⁴⁸ As determined in the GATT III:4 submission, the imported animal products from Ruberia and domestic animal products are not “like.”

47. With regard to the MFN obligation in TBT 2.1, the animal products imported from Ruberia and animal products imported from 0.15 countries are “like.”

2. The Treatment Accorded to Imported Products from Ruberia is No Less Favourable

48. As explained in the GATT I:1 and III:4 submissions, the ARRA does not cause a detrimental impact to like products from Ruberia. The two elements are needed to establish less favourable treatment: 1) the measure causes a detrimental impact on competitive opportunities for the group of products imported from the complainant vis-à-vis the group of like domestic products or products imported from other WTO Members; and 2) the detrimental impact on the complainant’s imports, if found to exist, does not stem exclusively from a legitimate regulatory distinction.⁴⁹ Even if detrimental impact is found to exist, it stems from a legitimate regulatory distinction.

a. In the Alternative, Any Detrimental Impact from the ARRA Stems from a Legitimate Regulatory Distinction

49. If a detrimental impact is found, this stems from a legitimate regulatory distinction. “[W]here the technical regulation at issue does not *de jure* discriminate against imports... a panel must further analyze whether the detrimental impact... stems exclusively from a legitimate regulatory distinction rather than reflecting discrimination against the group of imported products.”⁵⁰ Factors to consider in this assessment include “the design, architecture, revealing

⁴⁷ ABR, US—Clove Cigarettes, [87]; ABR, US—Tuna II [202]; Guzman & Pauwelyn (2012), 576.

⁴⁸ ABR, US—Tuna II, [7.223-7.225]; Van den Bossche & Zdouc (2013), 866.

⁴⁹ ABR, US—Clove Cigarettes, [180-182]; ABR, US—Tuna II, [202].

⁵⁰ ABR, US—Clove Cigarettes, [182].

structure, operation, and application of the technical regulation at issue, and, in particular, whether that technical regulation is even-handed.”⁵¹

50. The regulatory distinctions between ethically and non-ethically sourced animal products are legitimate because they are rationally connected to the ARRA’s objectives, which are to protect public moral concerns regarding the treatment of animals, and to promote sustainable agriculture. The ARRA’s objectives are clear in the legislation and reflect a policy standard, which is not deemed inconsistent with WTO practice.⁵² The measure is even-handed as it applies to both domestic and imported products, with exemptions for certain countries that would be unable to meet the requirements. In *US – Clove Cigarettes* and *US – Tuna II*, the AB found the measures not to be even-handed as they disproportionately favoured US products when applied in practice.⁵³ Conversely, the ARRA does not have such an effect. In fact, the consequences for Viridium production are significant in that Viridium will have to completely restructure its agricultural industry to conform to the new standards. Therefore, the ARRA is not administered in an arbitrary or unjustifiable manner. In summary, the ARRA is even-handed in application, and any detrimental impact stems from a legitimate regulatory distinction.

VI. THE ARRA IS NOT INCONSISTENT WITH TBT ARTICLE 2.4 BECAUSE THE WAWC GUIDELINES DO NOT CONSTITUTE A RELEVANT INTERNATIONAL STANDARD

51. The ARRA does not violate TBT 2.4 as the WAWC Guidelines are not a relevant international standard. For a measure to violate TBT 2.4, the international standard at issue must 1) be a relevant international standard; 2) have been used as a basis for the measure in question; and 3) not be ineffective or inappropriate to the measure’s purpose.⁵⁴

1. The WAWC Guidelines are not a relevant international standard because the WAWC is not an International Standardizing Body

52. Under TBT 2.4, an international standardizing body must approve an international standard. The WAWC is not a recognized standardizing body, so the WAWC Guidelines cannot be a relevant international standard according to TBT 2.4. To qualify as an international standardizing body: a) the body must be active in standardization; b) the standardization activities must be recognized, but need not be the body’s principal function; c) the body must be

⁵¹ Ibid; Marceau & Trachtman (2014), 366.

⁵² Ruozzi (2013), 167-168.

⁵³ ABR, US—Clove Cigarettes, [225-226]; ABR, US—Tuna II, [297].

⁵⁴ ABR, EC—Sardines, [217-290].

open to the relevant bodies of at least all WTO members, and open on a non-discriminatory basis.⁵⁵

53. At a minimum, WTO Members must be aware, or have reason to expect, that the international body is engaged in standardizing activities.⁵⁶ Given the WAWC's small size (only 35 state members)⁵⁷, and the fact that it has developed only one standard,⁵⁸ it is unlikely that all WTO Members are aware of the WAWC's standardizing functions. Under this requirement, the WAWC does not qualify as an international standardizing body.

The WAWC Guidelines do not Constitute a Relevant International Standard

54. If the WAWC is a recognized standardizing body, the Guidelines are still not a relevant international standard. The WAWC's mission is to provide technical assistance to developing countries to improve animal welfare in their farming sectors.⁵⁹ Its Guidelines, therefore, represent a compromise between animal welfare concerns and economic efficiency.⁶⁰ These Guidelines are not relevant for developed countries, such as Viridium, that have the resources to implement stricter and more effective standards. Therefore, the WAWC Guidelines do not constitute a relevant international standard under TBT 2.4.

2. In the Alternative, The ARRA used the WAWC Guidelines as a Basis for Article 2

55. In the alternative that the WAWC Guidelines are a relevant international standard, the ARRA is based on the Guidelines. An international standard is "used as a basis" when the measure is founded on, built on, or supported by the standard.⁶¹ In addition, "based on" is not equivalent to "conformed to,"⁶² meaning that the ARRA can differ from the Guidelines.

56. A technical regulation cannot contradict the international standard it is based on.⁶³ However, that Article 2 is stricter than the Guidelines does not mean that the ARRA contradicts the WAWC. Rather, the ARRA builds upon the WAWC standard. According to TBT Annex 1.2, an international standard does not require mandatory compliance. Therefore, Viridium is not bound to impose the exact same standard as outlined in the WAWC Guidelines.

⁵⁵ ABR, US—Tuna II, [360-365].

⁵⁶ Ibid, [362]; Van den Bossche & Zdouc (2013), 880.

⁵⁷ Problem, [9].

⁵⁸ Ibid, [10].

⁵⁹ Ibid.

⁶⁰ Clarifications, [15].

⁶¹ ABR, EC—Sardines, [242]; Struck (2014), 317.

⁶² ABR, EC—Hormones, [166]; Struck (2014), 318.

⁶³ ABR, EC—Sardines, [248].

3. If the ARRA is not based on the WAWC Guidelines, then those Guidelines are Ineffective and Inappropriate to the ARRA's Purpose

57. If the WAWC Guidelines are a relevant international standard but the ARRA does not use it as a basis, the Guidelines are inappropriate or ineffective to achieve the legitimate objectives pursued by the ARRA. Animal health and sustainable agriculture are legitimate objectives. TBT 2.2 specifically refers to protecting human and animal health and protecting the environment as legitimate objectives under the Agreement.⁶⁴ This definition also applies to the TBT 2.4 analysis.⁶⁵

58. The Guidelines are ineffective to the ARRA's purpose because they are unable to meet these legitimate objectives, and they are inappropriate because they are unsuitable to the achievement of the objective.⁶⁶ First, the Guidelines are aimed at developing countries, in keeping with the WAWC's mission to promote animal welfare in these nations. They are not suitable for developed countries, such as Viridium, that have the resources to implement stricter and more effective standards. Second, the natural disaster's effect on the CAFOs that abided by the Guidelines proves that these standards cannot achieve the legitimate objective.

59. Third, WAWC members and outside advisors argued that the WAWC Guidelines were ineffective to ensure the humane treatment of animals, and only a narrow majority agreed to the Guidelines. Although standards need not be approved by consensus to become the relevant legal standard,⁶⁷ this division indicates that the standards were not effective for all nations. The previous government in Viridium voted in favour of the Guidelines, but Viridians would never have supported weaker guidelines considering their experiences from the natural disaster. For these reasons, the Guidelines are ineffective and inappropriate to achieve the ARRA's legitimate objective.

VII. ARTICLES 3 AND 4 OF THE TBT AGREEMENT DO NOT APPLY TO THIS CASE

1. Viridium's Largest Association of Food Retailers is Not a Non-Governmental Body

60. TBT Articles 3 and 4 do not apply to this case because the private entity in question is not a non-governmental body within the definition of TBT Annex 1.8. TBT Articles 3 and 4 provide that Members should ensure that technical regulations and standards set by private entities,

⁶⁴ TBT, Article 2.2; ABR, US—Tuna II, [311].

⁶⁵ Van den Bossche & Zdouc (2013), 882.

⁶⁶ ABR, EC—Sardines, [288].

⁶⁷ Howse (2011), 289; ABR, EC—Sardines, [223, 227].

including non-governmental bodies, do not contradict relevant international standards. TBT Annex 1.8 defines a non-governmental body as a “[b]ody other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.”⁶⁸ For a private body to become a non-governmental body, there must have been some act by public powers delegating the power to create technical regulations to the private body.⁶⁹

61. By this definition, the association of food retailers is not a non-governmental body because it does not have any legal power to enforce technical regulations. The association does not enforce the law; it is simply the association’s choice to refuse products that do not adhere to their standards within the ARRA’s specifications. Furthermore, the association of Viridium’s largest retailers is a group of distinct entities with aligned but distinct interests rather than a single unit, and this association controls only 80 percent of Viridium’s market.⁷⁰ This association is not a non-governmental body under the TBT because their market share means they cannot enforce laws throughout Viridium.

2. As the ARRA does not Violate TBT Article 2.4, Viridium does not Violate TBT Articles 3.1 and 3.4

62. Even if the association is considered a non-governmental body, Viridium is not required to prevent it from acting inconsistently with the WAWC Guidelines since they do not constitute a relevant international standard. As demonstrated in the TBT 2.4 submission, the ARRA does not violate TBT 2.4 because the WAWC is not an international standardizing body. Therefore, Viridium need not ensure that the association and other private entities base its standards on the Guidelines.

3. The ARRA does not “Require” or “Encourage” Local Bodies to Violate TBT Article 2.4

63. TBT 3.4 states: “Members shall not take measures which require or encourage local government bodies or non-governmental bodies within their territories to act in a manner inconsistent with the provisions of Article 2.”⁷¹

64. An interpretation of Article 3.4, in accordance with customary international law rules of interpretation codified in the VCLT, confirms that the ARRA does not violate this provision.

⁶⁸ TBT, Annex 1.8.

⁶⁹ Arcuri (2013), 498-499.

⁷⁰ Problem, [6].

⁷¹ TBT, Article 3.4.

Under those rules, the “ordinary meaning” of the provision’s terms must be assessed.⁷² The key terms in TBT 3.4 are “require” and “encourage.” The Oxford English Dictionary defines “require” as “to make a request or demand of a person.”⁷³ “Encourage” is “to incite, induce, instigate; in a weaker sense, to recommend, advise.”⁷⁴

65. ARRA Article 5 only provides that local bodies *may* impose stricter standards. Rather than requiring (i.e. demanding) or encouraging (i.e. inciting) them to do so, the ARRA only provides local bodies the option to apply stricter standards.

4. In the Alternative, Viridium does not violate TBT Article 4.1

66. TBT 4.1 pertains to standards, and applies in the alternative if the ARRA is found not to be a technical regulation. TBT 4.1 provides that members must take reasonable measures to ensure that local standardizing bodies comply with the Code of Good Practice outlined in Annex 3. Annex 3F provides that local standardizing bodies shall use international standards as a basis for their standards, except where these international standards would be ineffective or inappropriate to the objective of the local standards.⁷⁵

67. As outlined in the TBT 3.1 and 3.4 submissions, the WAWC Guidelines do not constitute a relevant international standard in this case. In the alternative, they are inappropriate and ineffective to the legitimate objective of the ARRA measure, and the standards developed by local non-governmental bodies. Consequently, Viridium is not required by Article 4.1 and Annex 3F to ensure private entities base its standards on the Guidelines.

⁷² VCLT, Section 3.

⁷³ Oxford English Dictionary (2014).

⁷⁴ Ibid.

⁷⁵ TBT, Annex 3F.

Request for Findings

For the above stated reasons, Viridium requests the panel to:

- (i) Find that the ARRA is consistent with the MFN obligation under GATT Article I:1 and the national treatment obligation under GATT Article III:4.
- (ii) In the alternative, find that the ARRA is justified under GATT Article XX subparagraphs (a), (b), and/or (g), and is consistent with the Article XX Chapeau requirement.
- (iii) Find that the ARRA is not a technical regulation within the TBT Annex 1.1 definition.
- (iv) In the alternative, find that the ARRA is consistent with TBT Article 2.1 by not causing detrimental impact to imported animal products from Ruberia.
- (v) In the alternative, find that the WAWC is not an international standardizing body under TBT 2.4, and that the WAWC Guidelines are consequently not an international standard.
- (vi) In the alternative, find that TBT Articles 3 and 4 do not apply to this case because Viridium's largest association of food retailers is not a non-governmental body within the TBT Annex 1.8 definition.