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Engeli – Measures related to
Critical Minerals

Ashta
(Complainant)

VS

Engeli
(Respondent)

SUBMISSION OF THE RESPONDENT

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- Panel Report, *Colombia — Measures Relating to the Importation of Textiles, Apparel and Footwear* (“Colombia – Textiles”) WT/DS461/R

List of Abbreviations

Abbreviation	Description
AB	Appellate Body
Barite products (/imports)	Products containing barium sulphate derived from barite (/imported to Engeli)
CMP	Critical Minerals Partnership
CO ₂	Carbon dioxide
DSU	Dispute Settlement Understanding
EU	European Union
EUDR	European Union Deforestation Regulation
FTA	Free trade area
GATT (1994)	General Agreement on Tariffs and Trade (updated 1994 version)
IFDA	Investment Facilitation for Development Agreement
ILO	International Labour Organization
LDC	Least developed country (as designated by the United Nations)
MFN	Most-Favoured Nation
OECD	Organisation for Economic Co-operation and Development
Raya	Raya Developer
(State-Raya) Contract	Contract No. 05/2024-PWH
WTO	World Trade Organization
(WTO) Member	State member of the World Trade Organization

Statement of Facts

1. Astha, Engela, and Rubina are WTO Members of the Tropics Region.
2. Engeli is a high-income WTO Member pursuing a strategic relocation of its capital to Sunshine City as part of a broader program to improve environmental performance, urban resilience, and administrative efficiency.
3. Presidential Decree 1 of 2023 frames Sunshine City as a “sustainable smart city”, aligns the project with emissions-reduction and green-growth objectives, and instructs ministries to prioritise domestic goods and services in government procurement for the build-out.
4. To implement these priorities in the construction stream, the Ministry of Public Works and Housing issued Directive 2 of 2023, requiring public buildings and utilities to prioritise *“domestic and green construction goods and materials.”*
5. The Ministry then engaged Raya Developer (hereafter Raya) under Contract No. 05/2024-PWH (hereafter Contract) to deliver a significant package of Sunshine City’s core public buildings.
6. Performing this mandate, Raya launched in March 2024 a procurement for interior and exterior paints for government offices and public housing.
7. The published specifications required non-toxic paints compatible with green-building standards. They also provided a 25% price-preference evaluation rule for bids using $\geq 30\%$ domestic materials or domestic manufacturing and set a reference price range of USD 10–15 per gallon, with flexibility for “exceptional innovative or environmental benefits”.
8. Two established paint suppliers, Luminex (Engeli-based) and Parisa (Astha-based), competed.
9. In May 2024, Raya selected Luminex as paint supplier. Aligned with Sunshine City’s green objectives, Luminex offered a “cooling paint” based on barite that lowers CO₂ emissions by cooling down buildings.
10. In July 2022, Engeli and Rubina concluded the Critical Minerals Partnership (CMP) Agreement, which eliminates import duties on all raw and processed critical minerals traded bilaterally, simplifies customs through electronic clearance, and removes restrictive measures for the covered products. It also provides that certain Rubinian critical minerals meeting certain conditions are deemed to originate in Engeli. Executive Order 1 codified the CMP Agreement into domestic law.

11. Of Luminex’ cooling paint, 40% is manufactured in Engeli and 60% produced in Rubina, with 75% of the barium sulphate content sourced from the Engeli–Rubina Joint Facility established under the CMP.

12. Parisa, upset that it was not selected by Raya, took its concerns to Astha’s Ministry of Trade and Industry, which opened discussions with Engeli’s Ministry of Commerce. Engeli confirmed that Raya’s tenders were public procurement, conducted transparently pursuant to Decree 1, Directive 2, and the Contract, in service of Sunshine City’s sustainability objectives.

13. Separately, in September 2024, a university team in Astha backed by Parisa developed a “thinner and lighter” cooling paint targeted to moving vehicles. Around the same time, civil-society concerns arose regarding child labour risks in artisanal barite mining in Saparua (Astha), where local practice involves youth in mining.

14. After an NGO campaign that triggered a nation-wide public outcry in Engeli, the Government adopted Directive 3 of 2025, requiring responsible supply-chain certification for products containing barium sulphate derived from barite (hereafter barite products) imported into Engeli. Certification must confirm that no child labour was involved in the supply chain of barite products. It is issued by private entities recognised by the Government. Engelian Customs apply a risk-management system that expedites “low-risk” consignments and refers “high-risk” consignments for inter-ministerial verification.

15. Astha has complained that its “thinner and lighter” vehicle paint shipments are frequently categorised as high risk, causing verification delays and costs, while other importers with unrelated labour-rights records have been treated as low risk.

16. Engeli maintains that its due-diligence certification and risk-management procedures are non-discriminatory, target identified child-labour risks in mineral supply chains, and further legitimate public objectives consistent with international commitments.

17. On 10 July 2025, Astha requested WTO consultations; it sought panel establishment with three sets of claims: (i) procurement measures for Sunshine City under Article III:4 GATT; (ii) the CMP and Executive Order 1 under Article I:1 GATT; and (iii) Directive 3 and Customs risk management under Article XI:1 GATT.

18. Engeli has stated that the paint tenders are government procurement within Article III:8(a); that the CMP Agreement is a permissible Free Trade Agreement under Article XXIV; and that its due-diligence and verification regime is neutral, evidence-based, and aligned with responsible-business and ILO commitments.

Summary of Arguments

I. Decree 1 of 2023, Directive 2 of 2023, and the Raya-State Contract contain local content provisions that are consistent with Article III:4 GATT or are otherwise exempted therefrom under Article III:8(a)

- The measure at issue is a tender-specific award rule: a 25% price preference for bids with $\geq 30\%$ domestic input, set by Raya in its paint procurement and reflected in Luminex's award; Decree 1, Directive 2, and the Contract are mere context and do not mandate this preference. Because Article III:4 covers state measures, and this is a one-off buyer rule with no governmental mandate, leverage, or conditioned advantage, III:4 should not apply.
- In any event, the products are not like in this procurement: the buyer sought cooling/green paint. Luminex offered cooling paint. Parisa did not, and its later vehicle paint is irrelevant.
- All elements of Article III:8(a) are satisfied: rule governing procurement; governmental agency; same products in the tender; governmental purposes; no commercial resale. Hence, Article III:4 obligations do not even start to apply.

II. The CMP is consistent with Article I:1 or is otherwise justified under Article XXIV, and Executive Order 1 falls outside Article I:1

- The CMP Agreement is trade deal promoting deeper economic cooperation in the critical minerals sector, an Free trade area within Article XXIV. It grants Rubinian critical minerals duty-free entry while others face a 5% MFN rate; if Article I:1 is engaged, the analysis shifts to Article XXIV. The CMP qualifies as a WTO-consistent FTA: it eliminates duties and ORRC on all critical-minerals trade ($\approx 80\%$ of bilateral flows), satisfying Article XXIV:8(b) quantitatively and qualitatively. Further, it does not raise external protection (XXIV:5(b)) and facilitates intra-party trade without new barriers (XXIV:4).
- The zero-duty and origin rules were introduced upon and are necessary to the FTA: absent them, the CMP Agreement would devolve into non-preferential cooperation.
- Executive Order 1 applies only to procurement and, due to Article III:8(a), falls outside Article I:1 and should be dismissed for lack of scope.

III. Directive 3 is not a quantitative restriction under Article XI:1, and is otherwise justified under Article XX(a) and XX(d)

- Directive 3 is not a quantitative restriction under Article XI:1: it sets uniform, objective certification conditions, imposes no quotas or caps, does not channel imports, and “high-risk” status only triggers a time-bound verification (up to one month) that affects timing, not volumes; compliant consignments clear automatically.
- Directive 3 is otherwise justified under Article XX(a): it pursues the fundamental moral objective of combating child labour, contributes materially through certification and risk-based checks, is moderately trade-restrictive, and no reasonably available alternative would achieve an equivalent level of protection.
- Directive 3 is also justified under Article XX(d): it is necessary to secure compliance with domestic customs, child-labour, and due-diligence rules reflected in OECD instruments, the IFDA and the ILO Conventions on child labour.
- The chapeau is satisfied: application is origin-neutral, criteria are objective and transparent, reclassification is available, and there is no arbitrary or unjustifiable discrimination. Due diligence certification and additional verification mechanism are applied in a non-discriminatory manner, assist companies in identifying and addressing the risks of child labour in their mineral supply chains, and thereby contribute to the pursuit of Engeli’s legitimate policy objectives.

Measures at Issue & Legal Pleadings

1. DECREE 1, DIRECTIVE 2, AND THE CONTRACT CONTAIN LOCAL CONTENT PROVISIONS THAT ARE CONSISTENT WITH ARTICLE III:4 GATT OR ARE OTHERWISE EXEMPTED THEREFROM UNDER ARTICLE III:8(A)

1.1. Identification of the measure at issue

1. Under Article III:4 of the GATT, WTO Members are prohibited from having less favourable treatment to imported products than to like domestic products through laws, regulations, or requirements affecting their internal sale, offering for sale, purchase, or use. In the context of public procurement, panels assess with particular care whether the challenged measure consists of a governmental rule or requirement governing the conditions of purchase, and whether it operates so as to advantage domestic products over imported ones. Identifying the precise measure at issue therefore requires distinguishing between binding procurement rules applied in a tender and broader policy or enabling instruments that merely provide background authority.

2. The measure challenged by Astha is the domestic-input price preference embedded in the Sunshine City paint procurement procedure. Specifically, the measure consists of the award rule granting a 25% price preference to bids offering paint containing at least 30% domestic input, as set out and applied in Raya's tender. This preference directly affected the evaluation of competing bids by treating qualifying domestic-content bids as if they were priced 25% lower than their actual offer.

3. The measure is concretely expressed in the tender documentation, including the procurement specifications, instructions to bidders, and evaluation methodology. It was implemented by the evaluation committee during the scoring of bids and is reflected in the award decision in favour of Luminex. The measure therefore constitutes a rule governing the procurement of the product purchased, namely paint, within this specific procurement procedure, rather than a merely abstract policy statement.

4. By contrast, Decree 1, Directive 2, and the Contract between the State and Raya function as background instruments. They articulate policy objectives and establish the delegation framework for the Sunshine City project, but they do not themselves impose, mandate, or specify the 25% domestic-content preference or the award formula applied in the tender. They are therefore relied upon only to provide context and to explain the public-procurement mandate under which Raya conducted the tender.

5. Finally, the scope of the challenged measure is limited in both product and time. It applies solely to architectural paint procured for Sunshine City under the tender at issue and does not extend to other products or to other procurement procedures. Institutionally, the measure is confined to Raya, acting for and on behalf of Engeli under the public-works mandate for the Sunshine City project.

1.1. Decree 1, Directive 2, the Contract, and the 25% price preference are measures falling outside the scope of Article III:4 GATT

6. A measure falling under Article III:4 GATT is a “law, regulation or requirement”. Article III:4 thus applies to state measures, not to the choices of a private purchaser in the context of a procurement contract.

7. In the case at hand, the 25% price preference linked to domestic production factors was introduced in the context of a single procurement contract managed by Raya, acting autonomously.

8. Neither Decree 1, nor Directive 2, nor the Contract do impose, mandate, or condition any 25% price preference condition.

9. Decree 1 sets high-level “green” objectives for the Sunshine City program but contains no numerical preference or binding award formula, i.e., it is policy direction rather than a market-facing rule. Soft, non-self-executing guidance is not a “measure” absent coercive features that make private compliance mandatory.¹

10. Directive 2 is likewise non-binding. It identifies goals but provides no sanctions, incentives, monitoring, or licensing leverage whose operation depends on governmental action. In WTO terms, there is no “*administrative guidance*” rising to the level of a governmental measure.

11. The State–Raya Contract does not oblige Raya to apply a domestic-content preference or to submit award criteria for binding governmental approval. It does not condition any government-conferred advantage on the use of domestic inputs, the hallmark of a “requirement” for Article III:4 purposes.²

12. What remains is a one-off 25% price preference that appears for the first time in Raya’s tender documents as an internal award rule for that specific purchase. Article III:4 addresses governmental intervention affecting competitive conditions, not autonomous choices of private entrepreneurs; a buyer’s self-set award factor, without state mandate or leverage, falls outside

¹ Japan – Film (Panel), para. 10.45; Japan – Semiconductors (Panel), paras. 113–114, 132.

² Canada – Autos (Panel), para. 10.88.

its purview³. And even if one insisted on characterizing the rule as a law, regulation or requirement, it would still be a rule governing procurement, not market regulation, given it is embedded in the tender process and has the function of organizing the government's own purchase⁴.

13. Because no government act requires suppliers to meet a domestic-content condition to receive a public benefit, there is no "requirement" under Article III:4. WTO panels have treated "*requirements*" to include conditions a firm accepts to obtain a government advantage; where no such advantage is on offer, private criteria do not qualify.⁵ Moreover, the record contains no evidence of government pressure, monitoring, or leverage that would convert soft guidance into a de facto obligation. Non-binding directions count as "requirements" only where there are sufficient incentives/disincentives and the scheme's operation depends on government intervention.⁶

14. The Panel in Japan – Film, likewise, treats "*laws, regulations or requirements*" broadly, but highlights that it covers measures where compliance is necessary to obtain an advantage, underscoring the need for a state-conferred benefit or sanction.⁷

15. Eventually, market-wide regulation and government purchasing are distinct. Article III:8(a) narrows the scope of Article III for procurement and requires an articulated link between any "law, regulation or requirement" and the procurement of the "products purchased".⁸

16. Reading a one-off award rule in a tender as a general market regulation would collapse that line; Article III:4 should not apply at the outset.⁹

1.2. In any event, the paints are not "like products" within Article III:4

17. The two paints are not "*like*" in the procurement context at issue. The purchase was framed by Sunshine City's green/cooling objectives for public buildings, which defines the relevant end-uses and the competitive space.¹⁰ Luminex offered a "*cooling paint*" expressly aligned with that objective. The paint Parisa offered in the tender is not described in the record as cooling paint.

³ Korea – Beef (AB), paras. 1604–1607

⁴ Canada – Renewable Energy / Feed-in Tariff (AB), paras. 5.55–5.58.

⁵ Canada – Autos (Panel), para. 10.104 (citing Canada – FIRA, para. 5.4; EEC – Parts and Components, para. 5.21).

⁶ Japan – Semiconductors (Panel), paras. 108–111.

⁷ Japan – Film (Panel), paras. 10.374–10.376.

⁸ Canada – Renewable Energy / Feed-In Tariff Program (AB), paras. 5.55–5.58.

⁹ Korea – Beef (Panel), para. 635.

¹⁰ EC – Asbestos (AB), para 99 and paras. 101 - 103

18. The later “*thinner & lighter*” paint associated with Parisa is a different product for vehicles developed after the award and cannot retroactively redefine Parisa’s tendered product. Likeness must be assessed case by case on the products and legal provision at issue, not on a subsequent product iteration.¹¹

19. From the perspective of the relevant consumer, the public administration acting through Raya, the two products were not interchangeable for the stated governmental purpose. The award to Luminex despite a higher price indicates that the buyer did not view Parisa’s tendered paint as an equivalent substitute for the required cooling/green function. As presented, the products do not share the same nature and quality for the use that defined the procurement, and they do not compete on equal terms in that functional segment. Likeness under article III:4 turns on the competitive relationship, which is absent here.¹²

1.3. Article III:8(a) exempts the application of Article III:4

1.3.1. There is an articulated connection between the 25% price preference and the government procurement

20. Even if the 25% preference were attributable to the State, it sits inside the tender as an award rule that decides which paint the government buys for the Sunshine City works. It is written in the tender documents, applied by the evaluation committee to the competing bids, and directly determines the winning supplier and product. That tight, functional link between the rule and the act of purchasing is what the case law calls an “articulated connection”: it organizes the State’s own acquisition rather than regulating the market at large, and thus fits the notion of a law, regulation or requirement governing procurement of the product purchased (paint), not a norm that sets market-wide conditions.¹³

21. In this light, what matters evidentially is:

- i. the precise clauses in the specifications/instructions where the preference is set out;
- ii. the evaluation sheets and award report showing how the 25% factor was used to score or adjust bids; and
- iii. proof that the preference is not applied beyond this tender (e.g., absence from other procurements or general instruments), reinforcing that it is a one-off purchasing rule embedded in this procedure.

¹¹ Japan – Alcoholic Beverages II (AB), para. 114

¹² EC – Asbestos (AB), para 99 and paras. 101 - 103

¹³ Canada – Renewable Energy / Feed-in Tariff Program (AB), paras. 5.55–5.58.

22. Where a condition shapes only a buyer's own purchase and is not imposed as a market rule, Article III's scrutiny does not apply; it is a procurement rule, not a market regulation.¹⁴

1.3.2. There is a procurement by a governmental agency

23. The paint is procured for a public project under governmental mandate. Raya runs the tender for and on behalf of Engeli under a public-works arrangement that delegates procurement functions for Sunshine City. The funding is public, the assets to be painted are public buildings, and the Ministry retains oversight and audit powers typical of delegated public procurement. In substance and in law, Raya qualifies as a "governmental agency" within Article III:8(a). Indeed, it is an entity acting for or on behalf of government in the public realm within competences conferred to discharge governmental functions, rather than a commercial operator buying for itself.¹⁵ This characterization is reinforced by the procurement set-up itself: under Article III:8(a), "procurement" describes the governmental process of obtaining products, distinct from mere private purchases, and focuses on the conduct of the agency carrying out that public acquisition.¹⁶

24. Relevant evidence includes:

- i. the contract clauses that spell out Raya's mandate, powers, and duties to procure for Sunshine City;
- ii. the public financing of the purchase and the public ownership of the facilities to be painted; and
- iii. the Ministry's supervision/audit rights that anchor Raya's role in the public sphere.

25. Taken together, these show Raya is exercising conferred public competences to acquire paint for a governmental project, satisfying the "procurement by governmental agencies" limb of Article III:8(a).

1.3.3. Luminex cooling paints is in a competitive relationship with Parisa's paint

26. Article III:8(a) further requires that product purchased' must be in a *competitive relationship* with the products of foreign origin that are being discriminated against.¹⁷

27. In our case, the product purchased is paint for the Sunshine City works, and the foreign-made items claiming less favourable treatment are likewise paints submitted in the same tender.

¹⁴ Korea – Beef (AB), paras. 133, 137.

¹⁵ Canada – Renewable Energy / Feed-in Tariff Program (AB), paras. 5.60–5.61

¹⁶ Canada – Renewable Energy / Feed-in Tariff Program (AB), paras. 5.59–5.60

¹⁷ India – Solar Cells (AB), para. 5.21.

The bids met head-to-head for the same contract in the same supply segment, so the competitive interaction is direct and immediate.

28. Although, as explained above, the products are not like under Article III:4, they still fall under the broader “competitive relationship” requirement.¹⁸ Indeed, Article III:8(a) foreign products can both be “like”, “directly competitive” with, or “substitutable” for the product being procured.¹⁹

29. The point of comparison is therefore not upstream inputs or different goods (e.g., pigments, machinery) but the very product the government is buying. Treating the dispute at that level aligns exactly with how Article III:8(a) has been read: the derogation tracks the scope of Article III’s product coverage and applies where the discrimination alleged concerns products that are in a competitive relationship with the product purchased.²⁰

1.3.4. The paint is for governmental purposes

30. The paint is procured to be applied to public buildings and infrastructure under the Sunshine City project, which also advances environmental objectives. It is an input consumed in carrying out public work/service (construction and maintenance of public assets), not a good acquired for any entrepreneurial or commercial activity of the State. In WTO terms, this fits purchases “for governmental purposes”: products consumed by government or provided by government to recipients in the discharge of public functions, with a rational link between the product and the governmental function performed.²¹ The purpose here is governmental in the strict sense – execution of a public project, pursuit of environmental and urban-quality policies, and use on public property – rather than any commercial resale or onward commercialisation.²² This is confirmed by the State–Raya Contract (mandate and oversight clauses).

1.3.5. The paint is not “with a view to commercial resale” nor “with a view to use in the production of goods for commercial resale”

31. The administration does not buy the paint to resell it as paint, nor to use it to produce goods that will be sold. The paint is applied on site to public buildings and is consumed in performing a public works/service function. There is no downstream transaction in which the same product

¹⁸ India – Solar Cells (AB), para. 5.22.

¹⁹ Canada – Renewable Energy / Canada – Feed-in Tariff Program (AB), para. 5.63.

²⁰ India – Solar Cells (AB), para. 6.2.

²¹ Canada – Renewable Energy / Canada – Feed-in Tariff Program (AB), para. 5.68.

²² Canada – Renewable Energy / Canada – Feed-in Tariff Program (AB), para. 5.69.

re-enters commerce, and no production chain turning the paint into goods for sale. In WTO terms, this meets the final cumulative element of Article III:8(a): the purchase is not “*with a view to commercial resale*” (i.e., onward sale of the *same* product in commercial channels) and not “*with a view to use in the production of goods for commercial resale*”.²³ Occasional, incidental disposal of surplus stock would not alter this conclusion; what matters is the purpose at the time of purchase, which here is governmental consumption in public works, not resale.

32. A payment to a contractor for painting services do not change this characterization. Indeed, the contractor’s service fee is not a resale of the paint itself, and the paint itself never returns to the market as a (part of a) good.

33. The record reflects this use pattern: the bill of quantities and site application clauses show incorporation of the paint into public assets, with no provision for onward sale or for producing market goods. The purchase therefore satisfies the final cumulative element of Article III:8(a) as the paint is procured for governmental consumption in public works, not for commercial resale or for use in producing goods for resale. As a result, the procurement falls within Article III:8(a)’s carve-out and lies outside Article III:4’s national-treatment discipline.

2. THE CMP IS CONSISTENT WITH ARTICLE I:1 OR IS OTHERWISE JUSTIFIED UNDER ARTICLE XXIV, AND EXECUTIVE ORDER 1 FALLS OUTSIDE ARTICLE I:1

2.1. Identification of the measures at issue

34. Article I:1 of the GATT 1994 requires WTO Members to agree immediately and unconditionally to like products originating in or destined for all other Members any advantage, favour, privilege, or immunity granted to the products of any country. In identifying a measure challenged under Article I:1, panels focus on whether a governmental act confers a trade advantage linked to origin and whether that advantage is extended on an MFN basis. Where several legal instruments operate together, it is necessary to distinguish the substantive measure conferring the advantage from background or enabling acts and to clarify the precise product, institutional, and temporal scope of each measure.

35. Two distinct Engelien measures are challenged under Article I:1 GATT:

²³ Canada – Renewable Energy / Canada – Feed-in Tariff Program (AB), paras. 5.69–5.71.

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- (i) the Critical Minerals Partnership (CMP) Agreement tariff preference for goods of Rubinian origin; and
 - (ii) Executive Order 1 of 2022, which grants procurement-only “domestic” status to certain Rubinian critical minerals.

36. First, under the CMP Agreement, critical minerals originating in Rubina enter Engeli duty-free, while like products originating in other WTO Members, including Astha, remain subject to Engeli’s applied 5% ad valorem MFN tariff. This measure operates at the border through Engeli’s tariff schedule and customs administration. It confers a tariff advantage by setting the applicable duty on qualifying Rubinian-origin goods at 0%, while maintaining the 5% rate for non-parties to the CMP. Any CMP-related facilitation measures, such as electronic customs clearance or administrative streamlining, form part of this same customs preference and serve to implement the tariff advantage for the covered category of “critical minerals,” rather than constituting separate measures.

37. Second, Executive Order 1 of 2022 classifies certain Rubinian critical minerals as “domestic” solely for the purposes of government procurement conducted by Engelian authorities. This measure does not modify customs duties, internal taxes, or regulatory conditions applicable to private commercial sales. Its effects are confined to public purchasing decisions, including eligibility and status in tender evaluations, where products deemed “domestic” may receive preferential treatment. Executive Order 1 therefore operates in a different regulatory sphere from the CMP tariff preference, despite applying to the same category of products.

38. For each measure, specific implementing acts form part of the same challenged measure rather than constituting independent measures. In the case of the CMP, tariff-line amendments, customs notices, and implementing circulars giving effect to the 0% duty rate are implementing acts of the customs preference. In the case of Executive Order 1, procurement instructions, tender documentation, and award records reflecting the treatment of Rubinian minerals as “domestic” are implementing acts of the procurement classification. These materials evidence how each measure operates in practice.

39. The product scope of both measures is confined to “critical minerals” as defined in the CMP and its implementing instruments. The institutional scope differs: the CMP tariff preference is implemented by customs authorities at the border, while Executive Order 1 is applied by procuring entities within public procurement procedures. The temporal scope is limited to the period following the entry into force of the CMP and the adoption of Executive

Order 1. Broader policy statements or delegation frameworks are cited only as contextual background and do not themselves impose either the 0% tariff or the procurement-only “domestic” classification.

2.2. The CMP tariff preference is consistent with Article I:1 of the GATT

40. Article I:1 GATT requires that any “*advantage, favour, privilege or immunity*” granted to products of one Member be accorded immediately and unconditionally to like products of all other Members; the essence of the MFN obligation is that like products are treated equally irrespective of origin, and this obligation expressly applies to customs duties on importation.²⁴

41. Under the CMP, critical minerals originating in Rubina enter Engeli duty-free (zero customs duty), while like imports from others, including Astha, remain subject to a 5% MFN tariff.

42. Should the Panel find that Article I:1 applies, the analysis shifts to Article XXIV. The CMP forms part of a compliant free-trade area and is justified on that basis: it satisfies Article XXIV:8(b) and 5(b), and the contested preferences were introduced upon and are necessary to the formation of a Free Trade Area (FTA).²⁵ In WTO jurisprudence, import duty exemptions have been found not to be accorded “immediately and unconditionally” where they are available only to some Members’ products, thereby breaching Article I:1.²⁶

43. This threshold framing does not resolve the final legality of the CMP.

44. Article I:1 is not absolute: the GATT contemplates permitted departures from MFN for properly constituted regional integration, and the Appellate Body has confirmed that Article XXIV may, under certain conditions, be invoked as a defence to an inconsistency with other GATT provisions. In particular, the defence applies only where the measure was introduced upon the formation of the FTA/CU and to the extent that formation would be prevented absent the measure.²⁷

2.3. The CMP is a WTO-consistent Free Trade Area under Article XXIV

45. The CMP eliminates customs duties and other restrictive regulations of commerce (ORRC) on all trade in critical minerals between Engeli and Rubina. In practice, this means zero tariffs

²⁴ EC – Bananas III (AB), para. 190.

²⁵ Canada – Autos (AB), para. 77.

²⁶ Canada – Autos (AB), paras. 84–86.

²⁷ Turkey – Textiles (AB), paras. 45–46, 52.

across the covered product scope, removal of restrictive measures within that scope, and streamlined border administration (including electronic clearance and simplified formalities).

46. This liberalization targets the parties' principal bilateral trade flow: critical minerals account for roughly 80% of Engeli-Rubina trade. By design, therefore, the CMP fully liberalizes the sector that constitutes the backbone of the relationship.

47. Article XXIV:8(b) defines a free-trade area by reference to the elimination of duties and ORRC on "*substantially all the trade*" between the constituent territories. The phrase does not require the elimination of barriers on every single tariff line. Rather, it sets a high threshold that has both a quantitative and a qualitative dimension.²⁸

48. The quantitative dimension asks how much of the parties' actual bilateral trade is liberalized, typically assessed by the share of total two-way trade (by value/volume) brought to zero duty and freed from ORRC, the breadth of tariff-line coverage, and the implementation timeline by which that coverage is achieved.²⁹

49. The qualitative dimension asks which trade is liberalized, whether the agreement removes barriers across the breadth and core of the bilateral relationship, avoids sweeping carve-outs of major sectors, and captures the principal value chains that tie the two economies together.³⁰

50. Applied here, both dimensions are met. Quantitatively, the CMP liberalizes approximately 80% of bilateral merchandise trade, which amounts for the entirety of the parties' critical minerals flows, by eliminating duties and ORRC across the covered product scope (including streamlined border administration such as electronic clearance). That figure is plainly more than "merely some" trade and reflects extensive tariff-line coverage within the sector.

51. Qualitatively, the CMP focuses on the parties' central sector, explicitly designated "critical" by both governments and functionally indispensable to clean-technology value chains and related industrial ecosystems, thereby removing barriers at the core of the bilateral relationship. The remaining sectors are relatively marginal in economic terms, and their exclusion does not hollow out the agreement.

52. On this record, the CMP satisfies both the quantitative and qualitative components of the "substantially all the trade" test under Article XXIV:8(b).

53. Article XXIV:5(b) adds a separate constraint: after forming the FTA, the "*general incidence*" of duties and ORRC towards non-parties must not be higher or more restrictive than

²⁸ Turkey – Textiles (AB), paras. 48, 50, 52

²⁹ *Ibidem*

³⁰ *Ibidem*

it was beforehand. “*General incidence*” is an economic test based on rates applied (rather than bound rates) and on the overall effect of the regime on third-country trade.³¹

54. Here, Engeli’s external tariff on the relevant lines remains 5% for all third countries, including Astha. The CMP lowers protection internally only; it does not introduce new quantitative restrictions, licensing burdens, or other ORRC on outsiders. Because the external stance is unchanged, the general incidence requirement is satisfied.

55. Article XXIV:4 sets the object and purpose for regional agreements: they should facilitate trade among the parties while not raising barriers to others. The CMP does exactly that. It removes duties and restrictive measures across the parties’ principal sector and leaves external barriers untouched.

56. The policy rationale recorded by the parties, securing supply of critical inputs and supporting the transition to green industry, confirms that the agreement facilitates intra-party trade without imposing new frictions on third Members. Taken together, this, permits characterising the CMP as a sector-focused FTA that covers “*substantially all*” actual bilateral trade flows and complies with Article XXIV:8(b) and Article XXIV:5(b).

57. Article XXIV operates as a defence in two cumulative steps. First, the respondent must show that the impugned measures were introduced upon the formation of an FTA that fully satisfies the conditions of Article XXIV. Second, the respondent must show that formation would be prevented absent those measures.³²

58. Both steps are met here. The CMP’s essence is the preferential elimination of duties and ORRC on critical minerals, implemented domestically through the necessary legal instruments (including origin administration and any associated internal adjustments). Those preferences and rules were adopted upon constituting the arrangement between Engeli and Rubina. Without the zero-tariff preference and the origin framework that channels trade into the preferential zone, the CMP would cease to be an FTA in substance, collapsing into non-preferential cooperation. In other words, the measures are definitional of the FTA: should one remove them, and there is no FTA formed.

59. The parties stated aims to reinforce the second step. The CMP seeks to secure Engelian supply of critical minerals and to integrate Rubina more deeply into regional value chains. Those objectives require a preference relative to third-country suppliers. A purely non-preferential cooperation instrument would deliver neither the same incentive alignment for the

³¹ Understanding on the Interpretation of Article XXIV of the GATT 1994, point 2.

³² Turkey – Textiles (AB), paras 45,58, 52

partner nor the same supply security for Engeli. The tariff preference and the associated origin rules are therefore integral to formation, satisfying the “*introduced upon / would be prevented absent*” standard.

2.4. Executive Order 1 falls outside the scope of Article I:1 GATT

60. Astha also challenges Executive Order 1 of 2022 to the extent it treats critical minerals of Rubinian origin as “domestic” for the purposes of government procurement. That challenge lies beyond the material scope of Article I:1 GATT. Article I:1 applies to customs duties on importation and to the matters referred to in Articles III:2 and III:4.

61. Government procurement, however, is expressly excluded from Articles III:2 and III:4 by Article III:8(a), which removes from national-treatment scrutiny any laws, regulations, or requirements that govern the procurement, by governmental agencies, of products purchased for governmental purposes and not with a view to commercial resale. Measures that come within Article III:8(a) are therefore not “*matters referred to*” in Articles III:2/ III:4 and cannot be brought indirectly within Article I:1.³³

62. Executive Order 1 operates exclusively in the procurement domain. It does not alter customs duties, internal taxes, or the legal conditions for private commercial sales. Its legal design, structure, and operation are confined to public purchasing decisions, i.e., how Engelian authorities classify and treat certain offers in tender procedures. As such, it satisfies the elements of Article III:8(a): it is a rule governing procurement; it applies to purchases by governmental agencies (or entities acting for or on behalf of government within conferred competences); it concerns the very products purchased in the tenders at issue; it serves governmental purposes (consumption in public works and services); and it is not adopted with a view to commercial resale or to use in the production of goods for commercial resale.³⁴

63. Because procurement measures so defined fall outside Articles III:2/III:4, Article I:1 does not apply to Executive Order 1, and this aspect of Astha’s claim must be dismissed for lack of scope. Should the Panel nonetheless reach the merits, the same reasoning confirms that Executive Order 1 is sheltered by Article III:8(a) and cannot ground an MFN claim through Article I:1.

³³ Turkey – Textiles (AB), paras. 58, 59

³⁴ Canada – Renewable Energy/Feed-in tariff program (AB), paras. 5.55-5.61, 5.68, 5.69

3. DIRECTIVE 3 IS NOT A QUANTITATIVE RESTRICTION UNDER ARTICLE I:1 AND IS OTHERWISE JUSTIFIED UNDER ARTICLE XX(a) AND XX(a)

3.1. Identification of the measure at issue

64. Under Article XI:1 of the GATT, WTO Members are prohibited from maintaining quantitative restrictions on imports, including bans, quotas, or other measures that restrict importation through administrative procedures rather than tariffs. In assessing whether a measure falls within the scope of Article XI:1, WTO panels examine both its legal design and its operation in practice, including whether it conditions or limits market access for imported products.

65. The measure at issue is Directive 3 of 2025, adopted by Engeli in March 2025, which regulates the importation of products containing barium sulphate derived from barite. Directive 3 requires that such products be accompanied, at the time of importation, by a responsible supply chain certification issued by private entities recognised by the Engelian authorities. This certification must confirm that no child labour was involved at any stage of the supply chain and must be consistent with internationally recognised standards, including the OECD Due Diligence Guidance and relevant ILO conventions on child labour.

66. Directive 3 is implemented through Engeli's customs risk management system. Under this system, consignments are classified as either "low-risk" or "high-risk" on the basis of objectively defined criteria, including the implementation of international labour standards, the importer's position within the supply chain, and whether the product originates from areas associated with child labour concerns. Low-risk consignments benefit from expedited customs clearance procedures, while high-risk consignments are subject to additional scrutiny. In the latter case, the certification is forwarded to the Ministries of Commerce and Labour for verification, a process that may take up to one month. Where certification is absent or fails verification, the consignment is denied entry and must be re-exported or destroyed within the prescribed timeframe.

67. Astha challenges Directive 3 as applied through this risk management system, under which its consignments of 'thinner and lighter' cooling paint have consistently been designated as high-risk and subjected to prolonged verification procedures. According to Astha, the cumulative effect of these procedures imposes delays and costs that undermine the competitive position of its exports in the Engelian market.

68. At the same time, Directive 3 does not establish a uniform or automatic restriction on imports originating from specific countries or suppliers. Rather, it operates as a conditional and adaptive regulatory framework that links the intensity of customs control to identified risk factors. The measure applies equally to all products containing barium sulphate derived from barite, irrespective of origin, and classification as “low-risk” or “high-risk” is determined on a case-by-case basis and may evolve over time.

69. Importers and suppliers retain the ability to modify their risk profile by implementing effective due diligence and compliance measures, thereby qualifying for expedited clearance.

70. In this sense, Directive 3 regulates the way products may be imported, rather than imposing a fixed or absolute restriction on market access as such.

3.2. Directive 3 is not inconsistent with Article XI:1 GATT

71. Astha alleges that Directive 3 constitutes a quantitative restriction prohibited by Article XI:1 GATT 1994. That provision prohibits restrictions or prohibitions on importation other than duties, taxes, or other charges.

72. Article XI:1 targets measures that limit the quantity or amount of imports³⁵, either by their explicit terms or by their design, architecture, and structure.³⁶ Procedural requirements governing the importation process do not fall within the scope of Article XI:1 unless they have a limiting effect on import volumes.

73. Directive 3 imposes no quota, numerical ceiling, or import ban on cooling paint or barite-derived products. All consignments may enter the Engelian market provided that the certification requirements are met. Classification as high-risk does not prohibit importation but merely triggers verification procedures. Only consignments that fail to comply with the certification requirements are denied entry, consistent with the measure’s regulatory objective.

74. The one-month verification period for high-risk consignments affects processing time rather than the quantity of goods permitted to enter the market.³⁷ Panels have recognised that the imposition of procedural conditions on importation do not constitute restrictions under Article XI:1.³⁸ Directive 3 represents such a procedural mechanism, designed to ensure compliance without limiting the volume of compliant imports.

³⁵ India – Quantitative Restrictions (AB), paras. 204 - 209

³⁶ Argentina — Import Measures (AB) para. 5.217.

³⁷ Colombia — Textiles (Panel) para. 5.68

³⁸ *Ibidem*

75. Even assuming, for the sake of argument, that the authorities Astha cites concern restrictive gatekeeping regimes, non-automatic licensing and channeling arrangements that allowed administrators to ration import volumes, create de facto quotas, or funnel traffic through capacity-constrained entry points, they are not apposite here. In those systems, even fully documented shipments faced uncertainty because approvals were discretionary, subject to caps or allocation windows, and compliance did not guarantee entry.

76. By contrast, Directive 3 sets objective, transparent conditions applied uniformly at all ports; provides automatic clearance once those conditions are met; limits any risk-based checks to verification of compliance; imposes no numerical limits (no quotas, allocation shares, seasonal ceilings, or licensing tallies); and does not channel trade to gateways or alter routing options.

77. In short, Directive 3 is a market-access rule contingent on compliance, not a rationing device: it guarantees entry for compliant consignments and does not cap import volumes.

78. Members retain sovereign authority to administer customs procedures, including risk-based verification, provided such procedures do not operate as limits on import quantities. Directive 3 establishes conditional market access based on compliance with certification requirements, not quantitative rationing. Commercial impacts such as additional costs or delays do not convert procedural customs measures into quantitative restrictions. Directive 3 therefore does not violate Article XI:1 GATT 1994.

79. Even where a measure does not expressly impose quotas or numerical limits, Article XI:1 is only engaged if the measure operates, in practice, to restrict the quantity of imports. This requires identifying a genuine limiting effect on trade volumes, rather than a mere regulation of the conditions under which importation occurs.

80. Directive 3 does not produce such a limiting effect. The measure does not cap the volume of goods that may enter Engeli, nor does it allocate access to the market through discretionary approvals or numerical thresholds. All consignments that satisfy the certification requirement are entitled to enter the market, irrespective of quantity or frequency.

81. The distinction between low-risk and high-risk consignments affects only the sequencing and duration of verification procedures. It does not determine whether, or how much, may be imported. The existence of a defined maximum verification period further confirms that the measure regulates timing rather than quantity.

82. Members retain regulatory autonomy in the administration of customs procedures, including the use of risk-based controls to ensure compliance with domestic laws and international obligations. Such administrative mechanisms fall outside the scope of Article

XI:1 unless they are structured in a manner that effectively restricts imports. Directive 3 neither confers discretion to deny entry to compliant products nor introduces structural constraints that would inherently restrict trade flows.

83. Accordingly, when assessed in light of its design and practical operation, Directive 3 cannot be characterized as a restriction on imports within the meaning of Article XI:1 GATT 1994.

3.3. Directive 3 is justified under Article XX(a) GATT

84. Even if Directive 3 were found inconsistent with Article XI:1, it would be justified under Article XX(a) GATT 1994 as necessary to protect public morals.

85. The measure addresses documented child labour risks in artisanal barite mining. External audits and civil society reporting identified the involvement of children in hazardous mining activities. These findings generated significant public concern in Engeli. Engeli, Astha, and Rubina are all parties to ILO Conventions addressing child labour, reflecting a shared commitment to its elimination.

86. Public morals encompass standards of right and wrong prevailing within a society,³⁹ and Members enjoy a margin of appreciation in defining such standards.⁴⁰ Protecting children from hazardous labour constitutes an objective of fundamental moral importance.⁴¹

87. Directive 3 is designed to achieve this objective by conditioning market access on certification confirming the absence of child labour and by subjecting high-risk consignments to enhanced scrutiny. The measure therefore establishes a direct and genuine connection between the policy objective and the trade regulation.

88. The necessity analysis confirms several factors.⁴² First, the protection of children from hazardous labour. Second, Directive 3 makes a material contribution by incentivising supply chain due diligence,⁴³ requiring audits, monitoring, and corrective action consistent with international standards. Third, the measure is moderately trade-restrictive: it imposes no ban or quota, allows expedited clearance for low-risk consignments, and limits verification delays for high-risk consignments to a defined maximum period. Fourth, no reasonably available alternative would achieve an equivalent level of protection.⁴⁴ Bilateral engagement did not yield meaningful commitments from Astha, reliance on host-State enforcement proved

³⁹US – Gambling (AB), para. 296

⁴⁰*Ibidem*

⁴¹*EC – Seal Products (AB)*, para 5.199

⁴²Korea – Beef (AB) paras 161–166

⁴³Brazil – Tyres (AB) para. 150

⁴⁴Korea – Beef (AB) para 166

insufficient, and other tools such as international audits or traceability technologies would either require consent or fail to address mine-level practices. For these reasons, Directive 3 satisfies the requirements of Article XX(a) GATT 1994.

89. Directive 3 contributes materially to the protection of public morals by addressing the structural drivers of child labour within complex mineral supply chains. Rather than relying exclusively on State-to-State enforcement, the measure reallocates responsibility across the supply chain, engaging private economic actors who are best placed to identify and mitigate labour risks at the source.

90. The certification requirement compels importers and upstream suppliers to conduct audits, monitor labour practices, and engage with local producers to ensure compliance with child labour standards. These obligations generate continuous incentives for behavioural change, encouraging the regularisation of labour practices and the disengagement from non-compliant operations.

91. Enhanced verification of high-risk consignments reinforces this contribution. By increasing scrutiny where documented risks exist, Directive 3 raises the expected cost of non-compliance and strengthens incentives to implement effective due diligence. The measure therefore contributes not only to preventing products linked to child labour from entering Engeli's market, but also to discouraging the persistence of such practices within affected supply chains. Importantly, Engeli is not required to demonstrate that Directive 3 will eliminate child labour entirely. It suffices that the measure makes a material contribution to reducing the identified risk, in line with Engeli's chosen level of moral protection and its international commitments.

3.4. Directive 3 is justified under Article XX(d) GATT

92. Directive 3 is also justified under Article XX(d) GATT as it is a measure necessary to secure compliance with laws and regulations that are not inconsistent with the GATT 1994.

93. Directive 3 forms part of Engeli's legal framework governing the importation of goods and the enforcement of prohibitions relating to child labour in mineral supply chains. The relevant "laws or regulations" within the meaning of Article XX(d) include Engelian customs legislation requiring importers to demonstrate compliance with applicable import conditions, domestic measures implementing Engeli's obligations under the ILO Conventions on child labour, and regulations mandating responsible business conduct and due diligence in high-risk supply chains. These instruments pursue legitimate regulatory objectives and are not inconsistent with the GATT 1994. Directive 3 is designed to secure compliance with these laws

by operationalising them at the border, where customs authorities exercise their enforcement competence. Given the transnational structure of mineral supply chains, Engeli cannot directly enforce its child-labour prohibitions extraterritorially. Conditioning importation on responsible supply-chain certification therefore constitutes the primary mechanism through which Engelian authorities can ensure that imported products comply with domestic legal requirements prohibiting child labour.

94. The certification requirement enables customs authorities to verify compliance in a structured and evidence-based manner, while the risk-based verification system ensures that enforcement resources are focused on consignments presenting objectively identified risks. Enhanced scrutiny of high-risk consignments strengthens compliance incentives and prevents circumvention of Engelian import requirements through opaque or unverifiable sourcing practices. Directive 3 is necessary within the meaning of Article XX(d).

95. First, securing effective compliance with child-labour prohibitions and related customs obligations constitutes an important regulatory objective.

96. Second, the measure makes a material contribution to that objective by requiring importers and upstream suppliers to conduct audits, monitor labour practices, and implement corrective action consistent with internationally recognised standards.

97. Third, the measure is not excessively trade-restrictive: it does not impose quantitative limits, does not prohibit importation, applies uniformly across origins, and provides expedited clearance for low-risk consignments while limiting verification delays for high-risk consignments to a defined maximum period. No reasonably available alternative measure would secure compliance to an equivalent degree while being less trade restrictive. Prior bilateral engagement did not result in verifiable compliance assurances, and reliance on exporting-country enforcement alone cannot ensure adherence to Engelian import requirements. Other alternatives, such as voluntary codes of conduct or post-import monitoring, would lack enforceability at the border and would fail to prevent the entry of non-compliant goods. Directive 3 therefore satisfies the necessity requirement under Article XX(d) GATT 1994.

3.5. Directive 3 complies with the chapeau of Article XX

98. The chapeau of Article XX prohibits the application of measures in a manner that constitutes arbitrary or unjustifiable discrimination⁴⁵ between countries where the same conditions prevail, or a disguised restriction on international trade.

99. The differential treatment of Astha is justified by objectively different conditions.⁴⁶ The high-risk classification reflects documented child labour risks in Saparua, which are distinct from labour issues affecting other suppliers. Child labour in hazardous mining engages specific international standards and presents a heightened moral concern.

100. Application of Directive 3 is not a distinguished restriction on international trade.⁴⁷ Risk classification is based on objective criteria and conducted on a case-by-case basis. Reclassification remains available where exporters demonstrate compliance improvements. Engeli pursued prior engagement through official correspondence before adopting Directive 3, and the measure responds rationally to the specific risks identified. Certification requirements apply regardless of origin, the criteria are transparent and internationally grounded, and no exemptions favour domestic producers. The design and operation of the measure therefore confirms that it pursues a genuine public morals objective.

⁴⁵ US – Gasoline (AB) paras. 22–23.

⁴⁶ EC – Seal Products (AB) para. 5.310

⁴⁷ US – Shrimp (AB) para.158

Request of Findings

For the above reasons, Astha urges the Panel to find that:

1. The domestic-input price preference applied in the Sunshine City paint procurement does not constitute a “law, regulation or requirement” attributable to Engeli within the meaning of Article III:4 GATT 1994; and
2. In the alternative, the measure falls within the scope of government procurement covered by Article III:8(a) GATT 1994 and is therefore excluded from the application of Article III:4;
3. Accordingly, Astha’s first claim should be dismissed in its entirety.
4. The Critical Minerals Partnership (CMP) tariff preference, if found to constitute an advantage within the meaning of Article I:1 GATT 1994, is justified under Article XXIV of the GATT 1994 as part of a WTO-consistent free trade area; and
5. Executive Order 1 of 2022 falls outside the scope of Article I:1 GATT 1994, as it applies exclusively to government procurement and is sheltered by Article III:8(a) GATT 1994;
6. Accordingly, Astha’s second claim should be dismissed in its entirety.
7. Directive 3 of 2025 does not constitute a quantitative restriction or other prohibited measure within the meaning of Article XI:1 GATT 1994; or, in the alternative,
8. Any inconsistency with Article XI:1 GATT 1994 is justified under Articles XX(a) and/or XX(d) GATT 1994 and is applied consistently with the chapeau of Article XX;
9. Accordingly, Astha’s third claim should be dismissed in its entirety.