

JHJMCC 2022/2023

---

Team: 026

**John H. Jackson Moot Court Competition  
21<sup>st</sup> Edition**

**Versania – Seizure of Vaccines  
In Transit From Arion**

Arion  
(*Complainant*)

**VS**

Versania  
(*Respondent*)

---

**SUBMISSION OF THE COMPLAINANT**

**TABLE OF CONTENTS**

<b>LIST OF REFERENCES.....</b>	<b>ii</b>
<b>LIST OF ABBREVIATIONS .....</b>	<b>ix</b>
<b>SUMMARY OF ARGUMENTS.....</b>	<b>1</b>
<b>STATEMENT OF FACTS.....</b>	<b>3</b>
<b>IDENTIFICATION OF MEASURES AT ISSUE .....</b>	<b>5</b>
<b>LEGAL PLEADINGS .....</b>	<b>5</b>

<i>I. VERSANIA'S SEIZURE OF VACCINES IN TRANSIT IS INCONSISTENT WITH TRIPS ARTS. 51, 52 AND 41.1 .....</i>	<i>5</i>
A. VCIPP s. 61 does not conform with Art. 52 and is inconsistent with Art. 51 .....	5
B. VCIPP s. 61.2 accepts inadequate evidence and is inconsistent with TRIPS Art. 52 ....	7
C. Versania's IPR enforcements create 'barriers to legitimate trade' and is inconsistent with TRIPS Art. 41.1 .....	9
D. Versania fails to safeguard against the abuse of its IPR enforcement procedures.....	11
<i>II. VERSANIA'S SEIZURE OF VACCINES IN TRANSIT TO BOUTICA IS INCONSISTENT WITH GATT ART. V:2 AND IS NOT JUSTIFIABLE UNDER GATT ART. XX(d).....</i>	<i>11</i>
A. ANCOP vaccines are 'traffic in transit' under GATT Art. V:1.....	12
B. Versania restricts 'freedom of transit' by seizing vaccines transiting on Arion's most convenient route for international trade.....	13
C. Versania's seaports are the 'routes most convenient for international transit' for landlocked Arion.....	13
D. The VCIPP is inconsistent with GATT Art. V and does not qualify for GATT Art. XX(d) .....	14
E. Seizing ANCOP vaccines constitute 'disguised restriction on international trade' and is inconsistent with the <i>chapeau</i> of GATT Art. XX.....	14
<i>III. VERSANIA'S IMPORTATION OF VACCINES IN TRANSIT TO BOUTICA IS INCONSISTENT WITH OBLIGATIONS UNDER PARA. 3(c) OF THE 2022 TRIPS WAIVER DECISION .....</i>	<i>17</i>
A. The Panel can establish jurisdiction over the 2022 TRIPS Waiver Decision.....	17

B. The waiver scheme “falls afoul” from Versania’s inconsistent diversion of vaccines and forms the ‘legal basis of the complaint’ under DSU Art. 6.2. ....	18
C. Alternatively, the Panel has jurisdiction because violating a waiver is inconsistent with WTO Art. IX:4.....	19
D. The Decision does not preclude Members from dispute settlement mechanism.....	21
E. Producing ‘necessary’ COVID-19 vaccines does not impede IP innovation .....	22
<b>REQUEST FOR FINDINGS .....</b>	<b>24</b>

### LIST OF REFERENCES

#### I. TREATIES AND AGREEMENTS

Short Title	Full Title and Citation
DSU	<i>Understanding on Rules and Procedures Governing the Settlement of Disputes</i> , 15 April 1994, <i>Marrakesh Agreement Establishing the World Trade Organization</i> , Annex 2, 1869 UNYS 401, 33 ILM 1226 (1994).
GATT	<i>General Agreement on Tariffs and Trade 1994</i> , 15 April 1994, <i>Marrakesh Agreement Establishing the World Trade Organization</i> , Annex 1A, 1867 UNTS 187, 33 ILM 1153 (1994).
Paris Convention	<i>Paris Convention for the Protection of Industrial Property</i> , 20 March 1883 as revised at Stockholm on July 14, 1967.
TRIPS	<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i> , 15 April 1994, <i>Marrakesh Agreement Establishing the World Trade Organization</i> , Annex 1C, 1869 UNTS. 299, 33 ILM 1197 (1994).
VCLT	<i>Vienna Convention on the Law of Treaties</i> , 23 May 1969, 1155 UNTS 331.
WTO Agreement	<i>Marrakesh Agreement Establishing the World Trade Organization</i> , 15 April 1994, 1867 UNTS 154, 33 ILM 1144 (1994).

#### II. WTO DOCUMENTS

Short Title	Full Title and Citation
Doha Declaration	Declaration on the TRIPS Agreement and Public Health, adopted 14 November 2001, WT/MIN(01)/DEC/2.

Enabling Clause	Differential and more favourable treatment reciprocity and fuller participation of developing countries, adopted 28 November 1979, L/4903.
LLDC Ministerial Declaration	WTO Ministerial Meeting of the Group of Landlocked Developing Countries, adopted 4 November 2021, WT/GC/237.
1971 GSP Waiver	Generalized System of Preferences, Decision of 25 June 1971, L/3545.
2022 TRIPS Waiver Decision	Ministerial Decision on the TRIPS Agreement, adopted by the Ministerial Conference since 17 June 2022, WT/L/1141.

### III. WTO REPORTS

#### A. Appellate Body Reports

Short Form	Full Case Title and Citation
<i>Argentina – Footwear (EC)</i>	Appellate Body Report, <i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted 2 March 2000.
<i>Brazil – Retreaded Tyres</i>	Appellate Body Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332, circulated 3 December 2007.
<i>Canada – Aircraft</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , WT/DS70/AB/R, adopted 20 August 1999.
<i>EC – Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Products Containing Asbestos</i> , WT/DS135/AB/R, adopted 05 June 2001.
<i>EC – Bananas III</i>	Appellate Body Report, <i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/AB/RW2/ECU, WT/DS27/AB/RW2/USA, circulated 26 November 2008.
<i>EC – Tariff Preferences</i>	Appellate Body Report, <i>European Communities – Conditions for the Granting of Preferences to Developing Countries</i> , WT/DS246/AB/R, circulated 7 April 2004.
<i>Japan – Alcoholic Beverages II</i>	Appellate Body Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, circulated 4 October 1996.

<i>Korea – Various Measures on Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS/161/AB/R, circulated 11 December 2000.
<i>US – Carbon Steel</i>	Appellate Body Report, <i>United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany</i> , WT/DS213/AB/R and Corr.1, adopted 19 December 2002.
<i>US – Clove Cigarettes</i>	Appellate Body Report, <i>United States – Measures Affecting the Production and Sale of Clove Cigarettes</i> , WT/DS406/AB/R, circulated 4 April 2012.
<i>US – Gasoline</i>	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS52/AB/R, circulated 29 April 1996.
<i>US – Softwood Lumber IV</i>	Appellate Body Report, <i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada</i> , WT/DS257/AB/R, circulated 1 January 2004.
<i>US – Tuna II (Mexico)</i>	Appellate Body Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products - Recourse to Art. 21.5 of the DSU by the United States</i> , WT/DS381/AB/RW/USA, WT/DS381/AB/RW2, circulated 14 December 2018.
<i>US – Upland Cotton</i>	Appellate Body Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/AB/R, adopted 21 March 2005.
<i>US – Wool Shirts and Blouse</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R, adopted 23 May 1997.

### B. Panel Reports

Short Title	Full Case Title and Citation
<i>Australia – Tobacco Plain Packaging</i>	Panel Report, <i>Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging</i> , WT/ DS467/R, adopted 27 August 2018.

<i>Canada – Pharmaceutical Patents</i>	Panel Report, <i>Canada – Patent Protection of Pharmaceutical Products</i> , WT/DS114, circulated 17 March 2000.
<i>China – Intellectual Property Rights</i>	Panel Report, <i>China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights</i> , WT/DS362, circulated 26 January 2009.
<i>China – Publications</i>	Panel Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , WT/DS363/R, circulated 12 August 2009.
<i>China – Rare Earths</i>	Panel Report, <i>China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum</i> , WT/DS431/17, circulated 26 March 2014.
<i>China – Raw Materials</i>	Panel Report, <i>China – Measures Related to the Exportation of Various Raw Materials</i> , WT/DS394/WT/DS395/WT/DS398, circulated 5 July 2011.
<i>Colombia – Ports of Entry</i>	Panel Report, <i>Colombia – Indicative Prices and Restrictions on Ports of Entry</i> , WT/DS366/R, circulated 27 April 2009.
<i>EC and certain member States – Large Civil Aircraft</i>	Panel Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316, circulated 30 June 2010.
<i>EC – Asbestos</i>	Panel Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/12, circulated 18 September 2000.
<i>EC – Trademarks and Geographical Indications</i>	Panel Report, <i>European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs</i> , WT/DS174/290, adopted 20 April 2005.
<i>India – Agricultural Products</i>	Panel Report, <i>Measures Concerning the Importation of Certain Agricultural Products</i> , WT/DS430, circulated 14 October 2014.

<i>Mexico – Corn Syrup</i>	Panel Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States</i> , WT/DS132, circulated 28 January 2000.
<i>Mexico – Soft Drinks</i>	Panel Report, <i>Mexico – Tax Measures on Soft Drinks and Other Beverages</i> , WT/DS308, circulated 7 October 2005.
<i>Russia – Traffic in Transit</i>	Panel Report, <i>Russia – Measures concerning Traffic in Transit</i> , WT/DS512/7, circulated 5 April 2019.
<i>Saudi Arabia – IPRs</i>	Panel Report, <i>Saudi Arabia – Measures concerning the Protection of Intellectual Property Rights</i> , WT/DS567/R, circulated 16 June 2020.
<i>US – Gambling</i>	Panel Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/R, circulated 10 November 2004.
<i>US – Shrimp</i>	Panel Report, <i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i> , WT/DS58, circulated 15 May 1998.
<i>US – Sugar</i>	GATT Panel Report, <i>United States – Restrictions on Imports of Sugar</i> , L/6514, circulated 22 January 1990.
<i>US – Tuna (Mexico)</i>	GATT Panel Report, <i>United States – Restrictions on Imports of Tuna</i> , DS21/R, circulated 3 September 1991.

#### IV. OTHER INTERNATIONAL COURTS

Short Title	Full Case Title and Citation
ECJ, <i>Montex</i>	C-281/05, <i>Montex Holdings Ltd v Diesel SpA</i> , [2006], ECR I-10881.
ECJ, <i>Nokia-Philips</i>	C-446/09 and C-495/09, Joined Cases: <i>Koninklijke Philips Electronics NV c/ Lucheng Meijing Industrial Company Ltd et al. et Nokia Corporation</i> [2011], ECLI:EU:C:2011:796.
ECJ, <i>Polo/Lauen</i>	C-383/98, <i>The Polo/Lauren Company, LP v PT. Dwidua Langgeng Pratama International Freight Forwarders</i> , [2000], ECLI:EU:C:2000.
ECJ, <i>Rolex</i>	C-98/13, <i>Martin Blomqvist v Rolex SA and Manufacture des Montres Rolex SA</i> , [2014], ECLI:EU:C-98/13.
PCIJ, S.S. ‘ <i>Lotus</i> ’ (France v Turkey)	S.S. ‘ <i>Lotus</i> ’, France v Turkey, Judgment, (1927), PCIJ Series A no 10, ICGJ 248 (PCIJ 1927), 7 September 1927.

## V. ELSA DOCUMENTS

Short Title	Full Title
Case	Case, <i>Versania-Seizure of Vaccines In Transit From Arion</i> , John H. Jackson Moot Court Competition, 2022/2023, 21 <sup>st</sup> Edition.
Clarification	21 <sup>st</sup> John H. Jackson Moot Court Competition Clarification Questions.

## VI. SECONDARY SOURCES

1. Abbott, Frederick, “Seizure of Generic Pharmaceuticals in Transit Based on Allegations of Patent Infringement: A Threat to International Trade, Development and Public Welfare” (2009) 1 WIPOJ 43.
2. Castel, J.G., *Extraterritoriality in International Trade: Canada and United States of America Practices Compared* (Toronto: Butterworth, 1988).
3. Feichtner, Isabel, *The Law and Politics of WTO Waivers: Stability and Flexibility in Public International Law* (Cambridge: Cambridge University Press, 2012).
4. Grosse Ruse-Khan, H. and Jaerger, T., “Policing Patents Worldwide? EC Border Measures against Transiting Generic Drugs under EC and WTO Intellectual Property Regimes” (2009) 40:5 IIC 502.
5. Harrison, James, “Legal and Political Oversight of WTO Waivers” (2008) 11:2 J Intl Econ L 411.
6. Howse, Robert, “India’s WTO Challenge to Drug Enforcement Conditions in the European Community Generalized System of Preferences: A Little Known Case with Major Repercussions for “Political” Conditionality in US Trade Policy” (2003) 4:2 Chicago J Intl L 385.
7. Jackson, John H., *World Trade and the Law of GATT: A Legal Analysis of the General Agreement on Tariffs and Trade* (Michigan: Bobbs-Merrill, 1969).
8. Mercurio, Bryan, “‘Seizing’ Pharmaceuticals in Transit: Analysing the WTO Dispute That Wasn’t” *International and Comparative Law Quarterly* 61 (2012) 389-426.
9. Oxford English Dictionary, (2011) *Concise Oxford English Dictionary* (12th ed).
10. Pauwelyn, Joost, Andrew T. Guzman, Jennifer A. Hillman, *International Trade Law*, 2<sup>nd</sup> ed (Frederick: Wolters Kluwer, 2012).



11. Van den Bossche, Peter and Werner Zdouc, *The Law and Policy of the World Trade Organization: Text, Cases and Materials*, 5<sup>th</sup> ed (Cambridge: Cambridge University Press, 2022).
12. Wolfrum, Rüdiger, Peter-Tobias Stoll and Holger P. Hestermeyer, *WTO – Trade in Goods*, Max Planck Commentaries on World Trade Law, Vol 5 (Leiden: Martinus Nijhoff, 2011).
13. Yu, P.K., “The COVID-19 TRIPS Waiver and the WTO Ministerial Decision” (2023, Forthcoming).

**Online Resources**

14. OECD, “International trade during the COVID-19 pandemic: Big shifts and uncertainty” (10 March 2022) <[www.oecd.org/coronavirus/policy-responses/international-trade-during-the-covid-19-pandemic-big-shifts-and-uncertainty-d1131663](http://www.oecd.org/coronavirus/policy-responses/international-trade-during-the-covid-19-pandemic-big-shifts-and-uncertainty-d1131663)>.
15. United Nations, “‘COVID-19 is not over’, Tedros warns World Health Assembly” (22 May 2022) <<https://news.un.org/en/story/2022/05/1118752>>.
16. World Health Organization, “TAG-VE statement on Omicron sublineages BQ.1 and XBB” (27 Oct 2022) <[www.who.int/news/item/27-10-2022-tag-ve-statement-on-omicron-sublineages-bq.1-and-xbb](http://www.who.int/news/item/27-10-2022-tag-ve-statement-on-omicron-sublineages-bq.1-and-xbb)>.
17. World Health Organization, “Tracking SARS-CoV-2 variants“ (last accessed 22 Jan 2022) <[www.who.int/activities/tracking-SARS-CoV-2-variants](http://www.who.int/activities/tracking-SARS-CoV-2-variants)>.
18. World Health Organization, “Weekly epidemiological update on COVID-19” (last accessed 22 Jan 2023) <[www.who.int/publications/m/item/weekly-epidemiological-update-on-covid-19---11-january-2023](http://www.who.int/publications/m/item/weekly-epidemiological-update-on-covid-19---11-january-2023)>.
19. World Health Organization, “WHO policy brief: Reaching COVID-19 vaccination targets” (14 Sept 2022) <[www.who.int/publications/i/item/WHO-2019-nCoV-Policy\\_Brief-Vaccination-2022.1](http://www.who.int/publications/i/item/WHO-2019-nCoV-Policy_Brief-Vaccination-2022.1)>.
20. World Trade Organization, “WTO-IMF COVID-19 Vaccine Trade Tracker” (31 May 2022) <[www.wto.org/english/tratop\\_e/covid19\\_e/vaccine\\_trade\\_tracker\\_e.htm](http://www.wto.org/english/tratop_e/covid19_e/vaccine_trade_tracker_e.htm)>.

**LIST OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Description</b>
AB	Appellate Body
ABR	Appellate Body Report
Art. / Arts.	Article / Articles
DSB	Dispute Settlement Body
DSU	<i>Dispute Settlement Understanding</i>
COVID-19	Novel Coronavirus Disease 2019
EO 46/22	Arion Executive Order 46/22
GATT	<i>General Agreement on Tariffs and Trade</i>
GDP	Gross Domestic Product
IP	Intellectual Property
IPR / IPRs	Intellectual Property Right / Intellectual Property Rights
LLDC	Land-Locked Developing Country
Members	WTO Members
MFN	Most-Favoured Nation
Para. / Paras.	Paragraph / Paragraphs
PR	Panel Report
R&D	Research and Development
TRIPS Agreement	<i>Agreement on Trade-Related Aspects of Intellectual Property</i>
s. / ss.	Section / Sections
UN	United Nations
VCA	<i>Versania Customs Act, 2006</i>
VCIPP	<i>Versanian Code on Intellectual Property Protection, 1995</i>
VIPB	Versanian Intellectual Property Board
VCLT	<i>Vienna Convention on the Law of Treaties</i>
WHO	World Health Organization
WTO	World Trade Organization

**SUMMARY OF ARGUMENTS****I. Versania's seizure of ANCOP vaccines in transit to Boutica is inconsistent with Arts. 51, 52 and 41.1 of the TRIPS Agreement**

- VCIPP s. 61 are IPR enforcement procedures that do not meet Section 4 requirements in Part III of the TRIPS Agreement.
  - VCIPP s. 61.2 enables applications for the suspension of non-IPR infringing goods by applying a legal “production fiction”, treating ANCOP vaccines as products manufactured in Versania. Enforcing the VCIPP extraterritorially is inconsistent with the territorial rights of patents under the TRIPS Agreement and Paris Convention.
  - The VIPB accepts inadequate evidence under incorrect ‘laws of the country of importation’. EO 46/22 states ANCOP vaccines are “for export to Boutica”. Zanos fails to prove valid suspicion of importation into Versania for free circulation and the VIPB accepted evidence that does not satisfy a *prima facie* IPR infringement.
- Seizing ANCOP vaccines manufactured under the 2022 TRIPS Waiver Decision authorization and transiting to an Eligible Member creates ‘barriers to legitimate trade’ and abuses IPR enforcement procedures.

**II. Versania's seizure of vaccines in transit to Boutica is inconsistent with GATT Art. V:2 and is not justifiable under GATT Art. XX(d)**

- ANCOP vaccines are ‘traffic in transit’ because they are goods destined for Boutica and ‘only a portion of a complete journey’ through Versania.
- Versania's seaports is Arion's route ‘most convenient for international transit’ as the only economically feasible method for exporting its pharmaceutical products. Seizing ANCOP vaccines on this route restricts Arion's ‘freedom of transit’.
- Seizing and destroying ANCOP vaccines under the VCIPP is not justifiable under Art. XX(d). Even if it were provisionally justifiable under Art. XX(d), the measure is inconsistent with the *chapeau* of Art. XX because it constitutes a disguised restriction on the international trade of ANCOP vaccines by restricting foreign vaccine exports, which favours Versania's pharmaceutical industry.

**III. By importing ANCOP vaccines in transit to Boutica, Versania does not meet its obligations under Para. 3(c) of the 2022 TRIPS Waiver Decision.**

- The Panel must validly establish jurisdiction because the 2022 TRIPS Waiver Decision is ‘without prejudice’ to TRIPS flexibilities and therefore an “integral part” of the TRIPS Agreement, which is a covered agreement under the DSU.
  - The waiver scheme “falls afoul” from Versania’s inconsistent diversion of vaccines and forms the ‘legal basis of the complaint’ under DSU Art. 6.2.
  - Arion articulates Claim III in good faith by identifying Para. 3(c) of the Decision as one of the matters in dispute for the Panel and Versania.
- Alternatively, the Panel has jurisdiction to hear this matter because Versania did not comply with the terms and conditions of a waiver granted by the Ministerial Conference under WTO Art. IX:3 which is inconsistent with WTO Art. IX:4.
  - Versania undermines the ‘Decision-Making’ power of the Ministerial Conference that allows Members to address ‘exceptional circumstances’ like a global pandemic and avoid conflict between WTO and international law commitments to trade and public health.
- The 2022 TRIPS Waiver Decision does not preclude Members from the WTO’s dispute settlement mechanism as supported by the *travaux préparatoires*.
- By importing vaccines manufactured under ‘the authorization’ and ‘in accordance’ with the 2022 TRIPS Waiver Decision, Versania did not ensure the VCIPP and VCA were ‘effective’ despite having almost two months to comply.

**STATEMENT OF FACTS**

1. Arion, Versania, and Boutica are neighbouring WTO Members. Arion is a land-locked, developing country with a population of around 180 million citizens. As a lower-middle income country, Arion's pharmaceutical industry is comprised significantly of low-cost, generic versions of branded drugs and predominantly exports 25% of global pharmaceuticals to least-developed countries and smaller developing countries.
2. Versania is a large, developed-country with the world's second highest GDP. Versania hosts several headquarters of large pharmaceutical companies and a booming pharmaceutical industry. Unlike Arion, Versania largely produces high-priced and novel medication and vaccines.
3. Arion heavily depends on Versania's seaports as Arion's only economically feasible and most convenient route to export its pharmaceutical products. The Republic of Boutica, also a developing country, is located to the East of Versania and 3,000 kilometers away from Arion.
4. In March 2020, the WHO declared COVID-19 a pandemic and emphasized the role of "accessible and affordable vaccines" for immunization against COVID-19 and as a "global public good for health in preventing, containing and stopping transmission" to end the COVID-19 pandemic.
5. Many countries, including Arion, Boutica, and Versania, conducted R&D for COVID-19 vaccines. Zanos, a leading Versanian pharmaceutical company, expeditiously developed the 'Zancovac' vaccine and filed for process and product patents in Versania, Arion, and many other countries in November 2020.
6. Zancovac was available for sale to governments at USD 22.5 per dose. In January 2021, Arion diverted funds from its disaster-mitigation budget to pay for two primary doses and an additional booster for the immunocompromised of Zancovac. Boutica also purchased a sufficient supply of Zancovac for two primary doses and one additional booster for the immunocompromised for approximately 70 million citizens.
7. In June 2022, the Arion Government commissioned a study with pharmaceutical company ANCOP Ltd that showed periodic booster shots were required every six months for the entire population to eliminate COVID-19 cases. As periodic boosters would result in a huge financial burden on public funds, Arion and Boutica transferred the distribution and sale of vaccines to its pharmacies, making vaccines available for purchase by the general public.

8. On 17 June 2022, the WTO Ministerial Conference adopted the *2022 WTO Ministerial Decision on the TRIPS Agreement* (hereinafter “2022 TRIPS Waiver Decision”), allowing developing country Members to authorize the use of process patents to produce COVID-19 vaccines and “ensure the equitable access of eligible Members to the COVID-19 vaccine”.
9. ANCOP planned to produce and sell COVID-19 vaccines for USD 15.5 per dose. The announcement attracted domestic and international attention, including the government of the Republic of Boutica. Pending clinical trials and market authorization, pharmaceutical distributors in Boutica entered into advance purchase agreements with ANCOP.
10. On 10 July 2022, Arion passed EO 46/22 using the 2022 TRIPS Waiver Decision, authorizing ANCOP to produce and sell vaccines using Zanos’ process patent. The EO authorized 4,000,000 doses for domestic sale and 3,000,000 doses for export to Boutica. On 20 July 2022, Boutica passed an EO authorizing the import of ANCOP vaccines. Both members notified the Council for TRIPS of their executive orders per Para. 5 of the 2022 Ministerial Decision.
11. On 25 July 2022, Zanos filed an application with the VIP Commissioner alleging patent infringement by ANCOP and requested seizure and destruction of the vaccines. Zanos provided EO 46/22 as evidence that commercially sold COVID-19 vaccines are not “necessary to address the COVID-19 pandemic” and the conditions of the 2022 TRIPS Waiver Decision were not satisfied. The Versanian Minister of Trade stated concern for the “misuse” of the 2022 TRIPS Waiver Decision for “profit-making reasons”.
12. When ANCOP’s vaccines received clinical and market authorization in Boutica, ANCOP released 5 shipments containing 20,000 doses and valued at USD \$310,000 for shipment from its production facility on 12 August 2022,
13. The VIPB accepted Zanos’ application and authorized the Versanian Customs Office to seize and destroy all shipments of ANCOP vaccines in transit from Arion to Boutica. On 15 August 2022, Versania’s Customs Office seized the ANCOP vaccines under VCA s. 75. After detaining the vaccines in appropriate sanitary and temperature conditions, the Customs Office destroyed the vaccines on 30 August 2022.
14. Arion requested consultations with the government of Versania. Both parties considered the consultations to be unsuccessful, leading Arion to request the establishment of this panel under DSU Arts 4.7 and 6, GATT Art XXIII, and TRIPS Art 64.1.

**IDENTIFICATION OF MEASURES AT ISSUE**

- I. Whether Versania's IP and border enforcement procedures are inconsistent with Arts. 41.1, 51 and 52 of the TRIPS Agreement.
- II. Whether Versania's customs laws are inconsistent with GATT Art. V:2 and not justifiable under GATT Art. XX(d).
- III. Whether Versania's importation of vaccines is inconsistent with Para. 3(c) of the 2022 TRIPS Waiver Decision.

**LEGAL PLEADINGS****I. VERSANIA'S SEIZURE OF VACCINES IN TRANSIT IS INCONSISTENT WITH TRIPS ARTS. 51, 52 AND 41.1**

[1] Versania is required to implement domestic IPR enforcement procedures as specified under Part III of the TRIPS Agreement at an *internationally-agreed minimum standard*.<sup>1</sup> These procedures must be applied in a manner that avoids creating 'barriers to legitimate trade' and 'safeguards against their abuse'.<sup>2</sup> Versania's extraterritorial application of inconsistent IPR enforcement procedures pursuant to TRIPS Arts. 51 and 52 under Part III creates barriers to legitimate trade. Versania also failed to safeguard against the abuse of its procedures by allowing Zanos to lodge an application to seize and destroy ANCOP vaccines in transit to Boutica that are necessary to address the COVID-19 pandemic.

**A. VCIPP s. 61 does not conform with Art. 52 and is inconsistent with Art. 51**

[2] VCIPP s. 61 wrongly enables right holders to lodge an application for the 'suspension of release by customs authorities' of non-IPR infringing goods in transit that bear no risk of release to markets in Versania. TRIPS Art. 51 requires Versania to adopt procedures for suspension *in conformity* with Arts. 52 through 61 in Section 4 of the TRIPS Agreement. VCIPP s. 61 is inconsistent with Art. 51 because the VIPB accepts applications based on inadequate evidence and asserts invalid jurisdiction inconsistently with Art. 52 and Art. 51 as "provisions of Section 4 must be read as a coherent set of procedures and not in isolation".<sup>3</sup>

---

<sup>1</sup> ABR, US–Section 211 Appropriations Act, [206]; PR, Saudi Arabia–IPR, [7.183]; PR, EC–Trademarks and Geographical Indications, [7.761].

<sup>2</sup> TRIPS Agreement, Art. 41.1; PR, Saudi Arabia–IPR, [7.182].

<sup>3</sup> PR, China–Intellectual Property Rights, [7.221].

**1. Vaccines in transit to Boutica pose no risk of importation**

[3] Under Art. 51 sentence one, Versania must allow procedures enabling right holders to lodge an application with *valid grounds* for suspecting the importation of counterfeit trademark or pirated copyright goods into Versania for free circulation. Art. 51 sentence two allows Versania to extend applications to ‘other infringements of intellectual property rights’, including patents.<sup>4</sup> These procedures must meet the requirements of the provisions in Section 4. The last sentence allows applications to be made for suspicions concerning ‘goods destined for exportation.’

[4] ANCOP vaccines purchased in advance by Boutica pose no reasonable risk of importation into Versania for free circulation.<sup>5</sup> Furthermore, Zanos used EO 46/22 as inadequate evidence at the VIPB hearing, arguing ‘ANCOP was producing vaccines for commercial sale’.<sup>6</sup> Zanos did not have valid grounds for suspecting ANCOP vaccines would be *imported into* Versania.

**2. Deeming ‘goods in transit’ as ‘imported’ contravenes TRIPS Arts. 1.1 and 2**

[5] TRIPS footnote 13 limits the scope of the obligation in Art. 51 by stating ‘there shall be no obligation to apply such procedures... to goods in transit’.<sup>7</sup> Versania is allowed to implement more extensive procedures than required but such protection cannot ‘contravene the provisions of this Agreement’ per TRIPS Art. 1.1. However, VCA s. 75.3 bypasses this higher threshold by precluding alleged IP infringing goods transiting through Versania from ever qualifying as goods in transit under its border measures.

[6] As VCIPP s. 61.1 prohibits all IPR infringing goods ‘registered in the territory of Versania’ coming from third countries, VCA s. 75 will act pursuant to the VCIPP and deem goods ‘which action is taken pursuant to this section... to have been imported into Versania’.<sup>8</sup> The VIPB facilitates this self-serving mechanism by deciding *alleged* IPR infringing goods produced abroad and in transit ‘to another country of final destination’ as *infringing* goods under Versanian IP laws.

**3. Patents are territorial in nature under Art. 4bis of the Paris Convention**

[7] Extraterritorial application of domestic IP law is inconsistent with the territorial nature of patents under Art. 4bis of the Paris Convention. Under Art. 4bis, a patent registered in one country shall have no effect beyond the territorial boundary of that country. Members cannot derogate from

---

<sup>4</sup> TRIPS Art. 1.2; PR, EC–Trademarks and Geographical Indications, [7.761].

<sup>5</sup> Case, [10].

<sup>6</sup> Case, Annex II [2]; Clarification, II:6.

<sup>7</sup> PR, China–Intellectual Property Rights, [footnote 214].

<sup>8</sup> Clarification, General Clarification.



existing obligations under Arts. 1 through 12, and 19 of the Paris Convention as affirmed in TRIPS Art. 2.

[8] The principle of patent independence, explained by scholar Frederick M. Abbott and arbitrator for the WIPO Arbitration and Mediation Centre, preserves state sovereignty and authority to adopt and implement patent protection within its legal system and territory.<sup>9</sup> The VIPB's Decision to find ANCOP vaccines as IPR infringing under Versanian law is an exercise of power in the territory of another State and cannot be exercised except by virtue of a permissive rule derived from customary international law.<sup>10</sup>

[9] As ANCOP vaccines were neither destined nor posed any risk to Versania, infringing upon Arion and Boutica's state sovereignty is not justifiable and inconsistent with the principle of territoriality.<sup>11</sup> Furthermore, rejecting the extraterritorial enforcement of IP measures using inadequate evidence of risk is consistent with the views of international courts.<sup>12</sup>

**B. VCIPP s. 61.2 accepts inadequate evidence and is inconsistent with TRIPS Art. 52**

[10] VCIPP s. 61.2 enables right holders to provide inadequate evidence and satisfy the VIPB, as competent authorities, of a *prima facie* IPR infringement under the wrong country's laws. VCA s. 75.3 ensures that Versania will always be the 'country of importation' under TRIPS Art. 52. Versania allows right holders and the VIPB to abuse this procedure by applying a "production fiction" which occurs when the transit country fictitiously assumes products in transit to have been produced in the transit country.<sup>13</sup>

[11] The "Versanian customs regime", a combination of VCIPP and VCA border measures, applied a "production fiction" to ANCOP vaccines produced *in Arion* – where they do not infringe IP – as if the vaccines are produced by ANCOP *in Versania*, where it becomes IP infringing. Furthermore, the Versanian customs regime artificially creates both 'valid grounds' for suspected importation and *prima facie* an IPR infringement of Versanian-IPR holders that have registered their patents abroad under TRIPS Arts. 51 and 52.

---

<sup>9</sup> Abbott, *Seizure of Generic Pharmaceuticals in Transit*, 44.

<sup>10</sup> PCJ, SS 'Lotus' [45].

<sup>11</sup> *Ibid*, [214].

<sup>12</sup> Castel, *Extraterritoriality in Intl Trade*, 12-15; ECJ, *Montex v Diesel*, [26-34]; ECJ, *Nokia-Philips*, [56-63].

<sup>13</sup> ECJ, *Nokia-Philips*, [49-52]; ECJ, *The Polo/Lauren Company* [193].

### 1. Versania is not the ‘country of importation’

[12] While the VIPB considers whether a right holder’s evidence is adequate, they do so under the wrong ‘laws of the country of importation’. ANCOP vaccines in transit to Boutica should require the VIPB to consider Zanos’ evidence under Boutica’s laws. However, the ‘country of importation’ is not defined in the TRIPS Agreement. The AB has recognized VCLT Arts. 31 and 32 as “customary rules of interpretation of public international law”.<sup>14</sup>

[13] ‘Importation’ in its ordinary meaning can be defined by the dictionary.<sup>15</sup> The dictionary defines ‘importation’ as “the action of importing or bringing in”.<sup>16</sup> While transit states allow goods to *enter*, they do not *import* transiting goods that continue on its journey. Therefore, Boutica is the country that carries out the action of importing.

[14] ‘Country of importation’ should also be read in light of the object and purpose of the TRIPS Agreement.<sup>17</sup> The First Recital of the TRIPS Preamble notes that Members desire ‘to reduce distortions and impediments to international trade’ and to ensure IPR enforcement measures and procedures ‘do not themselves become barriers to legitimate trade’. The principle to prevent use of IPR protections to ‘unreasonably restrain trade’ under Art. 8.2 must also be borne in mind.<sup>18</sup>

[15] Defining the ‘country of importation’ as the *intended* ‘country of importation’ prevents IPR enforcement from impeding trade. Otherwise, Members would be subject to impossible compliance with *private IP rights* that could differ between each transit country on one route. Furthermore, the uncertainty of overlapping application of each Members’ enforcement measures would distort international trade.

[16] Since Zanos has registered its process and product patents in Boutica, a Member also required to implement the internationally-agreed minimum standard of IP protection under the TRIPS Agreement, Zanos could have lodged its application in Boutica. It was therefore not necessary, reasonable or consistent with international obligations to apply the VCIPP to the vaccines in transit.

### 2. Zanos did not provide ‘adequate evidence’ of a *prima facie* IPR infringement

[17] The Panel should reject the VIPB finding of Zanos’ alleged IPR infringement that used inadequate evidence. Establishing a *prima facie* presumption will necessarily vary from case to

---

<sup>14</sup> ABR, US–Gasoline, [17]; ABR, Japan–Alcoholic Beverages II, [10]; ABR, US–Shrimp, [114].

<sup>15</sup> ABR, US–Offset Act (Byrd Amendment), [248]; ABR, US–Softwood Lumber IV, [58-59].

<sup>16</sup> Oxford English Dictionary, “Importation”, Concise Oxford English Dictionary (12th ed), 715.

<sup>17</sup> ABR, Argentina–Footwear (EC), [91].

<sup>18</sup> PR, Australia–Tobacco Plain Packaging, [7.2402–7.2410].

case.<sup>19</sup> Zanos claims a *prima facie* IPR infringement using EO 46/22 issued by Arion’s Minister of Health.<sup>20</sup> However, the authorization is *in accordance* with the 2022 TRIPS Waiver and neither IPR infringing in Arion or Boutica. As established above, the Panel should reject extraterritorial application of the VCIPP and VCA.

**C. Versania’s IPR enforcements create ‘barriers to legitimate trade’ and is inconsistent with TRIPS Art. 41.1**

[18] Members must not apply IPR enforcement procedures, such as TRIPS Arts. 51 and 52, in a manner that does not create ‘barriers to legitimate trade’ and safeguards against its abuse. As the ANCOP vaccines were manufactured in accordance with the 2022 TRIPS Waiver Decision, the seizure of non-IPR infringing vaccines creates barriers to legitimate trade and is inconsistent with TRIPS Art. 41.1.

**1. ‘Legitimate trade’ as ‘IPR-compliant trade’**

[19] The ordinary meaning of ‘legitimate’ is “conformable to, or authorized by, law: lawful; justifiable”.<sup>21</sup> Therefore, ‘legitimate trade’ should mean ‘trade in goods that is justifiable or authorized by law’. ‘Legitimate trade’ within the TRIPS Agreement would mean goods that are IPR-compliant or authorized under a valid TRIPS-conforming legal instrument.

[20] ‘Legitimate trade’ is also located in TRIPS Preamble Recital 1 and shines light to its object and purpose. Recital 1 limits IP rights as to ‘not themselves become barriers to legitimate trade’ and subjects TRIPS IP rights to limitations so that they will not become barriers to trade.<sup>22</sup> TRIPS Arts. 7 and 8 must also be considered when interpreting TRIPS provisions as the objectives and principles of the Agreement, and the guidance of the Doha Declaration bears specifically on the interpretation of TRIPS provisions.<sup>23</sup>

[21] Art. 7 clarifies the ‘Objectives’ of the TRIPS Agreement, which include ‘promotion of technological innovation’ and the ‘transfer and dissemination of technology to the mutual advantage of producers and users of technical knowledge, *in a manner conducive to social and economic welfare*’. Art. 8 defines TRIPS ‘Principles’, allowing Members to ‘adopt measures necessary to *protect public health and nutrition*’. TRIPS Art. 8 also notes that the protections to

---

<sup>19</sup> ABR, US–Shirts and Blouses, page 14.

<sup>20</sup> Clarification, Part II:6.

<sup>21</sup> Oxford English Dictionary “Legitimate”, 1563.

<sup>22</sup> PR, Canada–Pharmaceutical Patents, [7.25]; PR, Australia–Tobacco Plain Packaging, [7.2402].

<sup>23</sup> PR, Australia–Tobacco Plain Packaging, [7.2410]; ABR, US–Clove Cigarettes, [265].

intellectual property in the Agreement should not be used to ‘unreasonably restrain trade or adversely affect the international transfer of technology.’ TRIPS Art. 8 principles is reinforced by the Doha Declaration, considered a subsequent agreement to TRIPS under the VCLT,<sup>24</sup> “can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect public health and, in particular, to promote access to medicines for all”.<sup>25</sup>

[22] Read in the ordinary meaning, its context, and in light of the object and purpose of TRIPS, ‘legitimate trade’ should be understood as lawful trade that is consistent with TRIPS Arts. 7 and 8 objectives and principles. Therefore, ‘barriers to legitimate trade’ are actions or measures that abuse TRIPS IP protection mechanisms to unreasonably restrain lawful trade or adversely affect the international transfer of technology. As the 2022 TRIPS Waiver Decision is a valid legal instrument to authorize the production of vaccines without the consent of the right-holder, the Panel should find that the trade in vaccines between Arion and Boutica was ‘legitimate trade’ for the purposes of Art. 41.1.

## **2. Seizing lawful vaccines creates barriers to trade**

[23] ANCOP vaccines were manufactured under the 2022 TRIPS Waiver Decision and therefore not IP infringing because (1) Arion and Boutica are ‘Eligible Members’ under the waiver; (2) Arion and Boutica notified the TRIPS Council of their waiver use; and (3) the transaction between Arion and Boutica increases their citizens’ access to COVID-19 vaccines. Furthermore, a transaction between Arion and pharmaceutical distributors does not nullify the waiver’s applicability as ‘what appears on their face to be a private action can be attributable to a government connection’ through a *sufficient nexus*.<sup>26</sup> It was the government of Boutica that authorized an EO to import ANCOP vaccines and transferred distribution and sale responsibilities to its pharmaceutical distributors, demonstrating such a nexus.

[24] Versania’s seizure of legitimate vaccines is a barrier because it applies IPR enforcement procedures through VCIPP s. 61 in a manner that unreasonably restrains trade, despite TRIPS flexibilities that allow for measures to protect public health. Furthermore, Versania creates barriers for other eligible Members of the 2022 TRIPS Waiver to produce and export COVID-19 vaccines

---

<sup>24</sup> ABR, US–Clove Cigarettes, [268].

<sup>25</sup> Doha Declaration, [4].

<sup>26</sup> PR, Saudi Arabia–IPR, [7.51].

amidst the COVID-19 pandemic. Versania's failure to incorporate both TRIPS Art. 31*bis* and the 2022 TRIPS Waiver decision is inconsistent with TRIPS Art. 41.1.<sup>27</sup>

**D. Versania fails to safeguard against the abuse of its IPR enforcement procedures**

[25] Lastly, Versania failed to provide for safeguards against its IP enforcement procedures by enabling Zanos to apply for both seizure *and destruction* with inadequate evidence, which was accepted by the VIPB. As per TRIPS Art. 59, destruction is only allowed by the VIPB if *allegedly* IP infringing goods are truly IP infringing. Additionally, destruction can only occur in accordance with the principles of proportionality under TRIPS Art. 46 where judicial authorities must consider 'the seriousness of the infringement and the remedies ordered... [and] the interests of third parties.'

[26] Because ANCOP vaccines in transit for importation into Boutica meet neither the requirement for valid suspicion of importation into Versania or *prima facie* an IPR infringement under Boutican law, VCIPP and VCA undermines the interests of third parties and the proportionality principle. The grossly disproportionate remedy of destruction is evidence of abusing IPR enforcement measures and therefore inconsistent with TRIPS Arts. 41.1, 51 and 52.

**II. VERSANIA'S SEIZURE OF VACCINES IN TRANSIT TO BOUTICA IS INCONSISTENT WITH GATT ART. V:2 AND IS NOT JUSTIFIABLE UNDER GATT ART. XX(d)**

[27] Seizing vaccines in transit to Boutica is inconsistent with GATT Art. V:2 because it restricts freedom of transit for ANCOP vaccines in transit travelling via the route most convenient for international trade for Arion. Seizure and destruction are not justifiable measures because VCIPP s. 54 is inconsistent with the GATT and therefore not provisionally justified under Art. XX(d). Furthermore, seizing and destroying ANCOP vaccines illuminates a disguised restriction on international trade, contrary to the *chapeau* of Art. XX.

[28] The GATT 'freedom of transit' principle is derived from Art. V:2 first sentence. Therefore, any measures inconsistent with Art. V:2 first sentence violates 'freedom of transit'. This is consistent with the view of previous Panels where V:2 second sentence merely extends the MFN principle to 'traffic in transit'<sup>28</sup> and where a Member would have been "inconsistent with either the first or second sentence of Article V:2" if not for their justification under Art. XXI(b).<sup>29</sup>

---

<sup>27</sup> Clarification, Part VI:3.

<sup>28</sup> PR, Colombia–Ports of Entry, [7.428].

<sup>29</sup> PR, Russia–Traffic in Transit, [7.199].

Therefore, to establish a violation of the GATT Art. V:2, it is sufficient to show an inconsistency with the first sentence without establishing a distinction under the second sentence.

**A. ANCOP vaccines are ‘traffic in transit’ under GATT Art. V:1**

[29] Under the first sentence of the GATT Art. V:2, Members ‘shall [ensure] freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties.’ ‘Traffic in transit’ is defined in Art. V:1 to mean ‘goods’ moving ‘across the territory of a contracting party when the passage across such territory, with or without trans-shipment [...] or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes’.<sup>30</sup>

[30] Determining whether transiting goods constitute ‘traffic in transit’ is related to the intention behind the travel destination of the goods. Based on a plain reading of Art. V:1, for ‘goods’ to be ‘traffic in transit’, their passage across the transit country must be part of a ‘complete journey’, implying that the goods must continue their transit to complete the intended journey.

[31] The ANCOP vaccines fall within the scope of ‘traffic in transit’ because they were moving through Versania only as a portion of their complete journey and were never intended for importation into Versania. The vaccines were intended to be exported from Arion into Boutica, as shown by EO 46/22. Therefore, the vaccines constitute ‘traffic in transit’ as defined by Art. V:1.

[32] The first sentence of Art. V:2 imposes an obligation on Versania to ensure freedom of transit through its territory.<sup>31</sup> “Freedom” should be interpreted in its ordinary meaning: “the unrestricted use of something”.<sup>32</sup> As such, freedom of transit in the context of the first sentence of Art. V:2, obliges Members to provide “unrestricted access” for the transit of goods in international trade, regardless of whether they have been trans-shipped, warehoused, break-bulked, or have changed modes of transportation.<sup>33</sup> Furthermore, “to or from the territory of other contracting parties” means “the place of entry and place of exit of the traffic in transit”.<sup>34</sup> Therefore, Members must guarantee freedom of transit through their territory for any traffic in transit entering from any other Member, as well as exiting to any other Member.<sup>35</sup>

---

<sup>30</sup> PR, Colombia–Ports of Entry, [7.396].

<sup>31</sup> Ibid, [7.400].

<sup>32</sup> Ibid, [7.399, 7.401].

<sup>33</sup> Ibid, [7.414].

<sup>34</sup> PR, Russia–Traffic in Transit, [7.171].

<sup>35</sup> PR, Russia–Traffic in Transit, [7.172].

[33] Versania failed to provide unrestricted access through its territory for the vaccines in transit to Boutica by authorizing customs authorities under the VCIPP and VCA to seize and destroy the vaccines transiting through it. Although the vaccines were changing form of transportation to be shipped on to Boutica, Versania was required to provide unrestricted access through their territory. This is because ‘freedom of transit’ must be provided to ‘traffic in transit’ regardless of changing mode of transportation.<sup>36</sup> Therefore, seizure and destruction was a clear violation of Versania’s obligation to provide unrestricted access to goods in transit under the first sentence of Art. V:2.

**B. Versania restricts ‘freedom of transit’ by seizing vaccines transiting on Arion’s most convenient route for international trade**

[34] The ANCOP vaccines constitute ‘traffic in transit’. By seizing and destroying vaccines destined for Boutica through Versania’s sea ports, Arion was denied access to its most convenient route for international trade. Therefore, Versania is inconsistent with the first sentence of the GATT Art. V:2.

[35] The Panel noted in *Russia – Traffic in Transit*, “where a measure prohibits traffic in transit from another Member from entering at all points along a shared land border, the measure will necessarily be inconsistent with the first sentence of Art. V:2”.<sup>37</sup> Arion and Versania share a land border, which goods destined for international transit must traverse in order to access Versania’s sea ports. Further, VCIPP s. 61 and VCA s. 75 are broad border measures authorizing seizure and destruction as a remedy at *any point* along the shared border by any customs official. As such, the nature of the seizure measure is on its face directly inconsistent with the first sentence of Art. V:2.

**C. Versania’s seaports are the ‘routes most convenient for international transit’ for landlocked Arion**

[36] To meet all requirements under the first sentence of Art. V:2, transiting goods must have been travelling ‘via the rout[e] most convenient for international transit’. This qualifies the obligation on transit countries to guarantee freedom of transit *only* “on those routes ‘most convenient’ for transport through its territory”.<sup>38</sup>

[37] Arion is land-locked and surrounded by other countries including Versania. It also has a tall chain of mountains along its southern border. Any goods in a large quantity destined for an

---

<sup>36</sup> PR, Colombia–Ports of Entry, [7.416].

<sup>37</sup> PR, Russia–Traffic in Transit, [7.174].

<sup>38</sup> PR, Colombia–Ports of Entry, [7.414].

overseas country, such as the vaccines at issue, require more than one method of transportation. Further, it must also be economically feasible to support such a complex transit process. As a country reliant on pharmaceutical exports, accounting for 25% of global pharmaceutical exports in volume, Arion requires access to Versania's sea ports to send goods abroad. Shipment via sea freight is the only realistic method for Arion to be able to send goods overseas. Therefore, based on Arion's location, geography and the nature of the goods, access to Versania's sea ports constitutes its 'most convenient route for international transit' to Boutica.

[38] For these reasons, Versania has violated its obligation to ensure freedom of transit via Arion's most convenient route for international transit under the first sentence of the GATT Art. V:2.

**D. The VCIPP is inconsistent with GATT Art. V and does not qualify for GATT Art. XX(d)**

[39] In order for measures to be justifiable under the GATT Art. XX(d), the laws or regulations they secure compliance with must not themselves be inconsistent with the GATT.<sup>39</sup> The VCIPP is directly inconsistent with Art. V of the GATT. The VCIPP s. 54 extends the protections afforded to patent holders under the statute to 'goods in transit'. As such, this constitutes a *prima facie* inconsistency of GATT Art. V:2 because all allegedly IPR infringing goods are denied freedom of transit. This prevents any goods suspected of infringement from reaching their intended destination. Therefore, even without failing the *chapeau*, Versania is ineligible for provisional justification under Art. XX(d) because the VCIPP, which seizure and destruction are designed to ensure compliance with, is inconsistent with the GATT itself.

**E. Seizing ANCOP vaccines constitute 'disguised restriction on international trade' and is inconsistent with the *chapeau* of GATT Art. XX**

[40] The seizure and destruction measures are being applied as a disguised restriction on international trade. Versania's real aim, concealed beneath the guise of patent protection, is to limit international competition with their own pharmaceutical industry and enforce domestic patent rights abroad. As such, they are not justifiable under the *chapeau* of the GATT Art. XX.

**1. The VIPB ordered the vaccines in transit be seized and destroyed to restrict international competition in generic pharmaceutical products**

[41] For a WTO-inconsistent measure to be justified under Art. XX, it must not constitute a disguised restriction on international trade. Discrimination is not required for a disguised

---

<sup>39</sup> PR, Colombia–Ports of Entry, [4.130].



restriction to exist.<sup>40</sup> ‘Disguised’ under the *chapeau* implies an intention that is concealed ‘beneath deceptive appearances’; ‘alter so as to deceive’; and ‘misrepresent’.<sup>41</sup> Versania is using seizure and destruction in order to limit pharmaceutical competition abroad.

[42] Recital 4 of the TRIPS Preamble recognizes that IPR ‘are private rights.’ Therefore, while the purpose of TRIPS is to set minimum international standards for IPR protection, it is not intended to allow Members to enforce domestic patent rights extraterritorially by removing goods in transit from the international market. This is consistent with the WTO overall, as the GATT does not allow the extraterritorial application of domestic laws.<sup>42</sup>

[43] Prior context to the seizure and destruction illustrates how these measures serve Versania’s real aim to restrict international competition and is supported by reasonable inferences, consistent with the facts at issue.<sup>43</sup> Both Arion and Boutica procured primary doses of Zancovac for their populations at a higher price point than ANCOP VAX. Prior to the marketing of ANCOP VAX, Zancovac was the least expensive vaccine candidate on the market. The introduction of a lower priced competitor to international markets would result in reduced profit accruing to Zanos, creating an incentive for Versania to apply the measures of seizure and destruction to prevent competition. As a result of ANCOP’s transaction with Boutica, Zanos would have lost USD \$67.5M in potential revenue. It is therefore reasonable to infer that Zanos lodged its application with the VIPB because it hoped to restrict international competition.

[44] The true aim of restricting international competition is also demonstrated by the actions of the Versanian Minister of Trade. In response to the announcement by the Boutican government to make ANCOP’s vaccine available for purchase through commercial channels that caught the attention of Zanos and led to the VIPB’s decision to seize and destroy the shipments, the Minister highlighted the “mass sales of patent-infringing booster vaccines on a commercial sale” as Versania’s cause for concern prior to Zanos lodging its application with the VIPB.<sup>44</sup> Therefore, in ordering customs authorities to seize and destroy the vaccines, the VIPB applied Versanian customs measures as a direct response to plans for the commercial sale of the vaccines to private distributors, demonstrating Versania’s real aim to prevent international competition in

---

<sup>40</sup> PR, China–Rare Earths, [7.826].

<sup>41</sup> PR, EC–Asbestos, [8.236].

<sup>42</sup> GATT PR, US–Tuna (Mexico), (1991).

<sup>43</sup> ABR, Canada–Aircraft, [198].

<sup>44</sup> Case, [13].

pharmaceutical products. Seizure and destruction accomplish this goal by eliminating competing goods completely, ensuring a total restriction on their trade or further circulation.

[45] To determine the true aim of a measure, its “protective application [...] can most often be discerned from its design, architecture and revealing structure”.<sup>45</sup> Under VCIPP s. 61.2, seizure and destruction are intended to protect the ‘exclusive rights conferred by a patent’. While patent-holders make applications to the VIPB alleging patent-infringement, the decision to apply the enforcement measures under s. 61.2 rests with the VIPB. These measures can be applied without due process and without recognition for other contextual considerations, such as global vaccine demand due to the COVID-19 pandemic. In light of Versania’s motives, as outlined above, the design and structure of the seizure and destruction measures illustrate that they were applied to restrict trade under the guise of IPR protection.

## **2. Seizing and destroying vaccines in transit during a pandemic is not commensurate with allegedly IPR infringing risks**

[46] Seizing and destroying vaccines intended for COVID-19 inoculation is not commensurate with the risks of IPR infringement, which further illustrates that Versania’s motivations outlined above are their real objective hidden behind IPR concerns. Assessing a ‘disguised restriction’ involves the same considerations as ‘unjustifiable discrimination’.<sup>46</sup> Therefore, the measure should be assessed to determine whether it is tailored to and commensurate with the risks related to the purpose it is intended to protect.<sup>47</sup>

[47] In this case, Versania will claim that ‘the protection of patents’ is its aim in accordance with Art. XX(d). While seizure and destruction may be rationally connected to the goal of protecting patents,<sup>48</sup> they are not commensurate with the risks of allowing the vaccines to circulate during a pandemic given the significant public health need.

[48] The vaccines were intended as booster doses for Boutica’s population in the ongoing efforts against the COVID-19 pandemic. Given the exceptional circumstances which the 2022 TRIPS Waiver is designed to address, seizing and destroying vaccines produced pursuant to the Waiver diminishes any Member’s ability to enhance their protection against COVID-19. A global public health crisis necessitates prioritizing vaccine access, which benefits all Members by limiting

---

<sup>45</sup> PR, EC–Asbestos, [8.236].

<sup>46</sup> ABR, US–Gasoline, [25].

<sup>47</sup> ABR, US–Gasoline, [25].

<sup>48</sup> ABR, Brazil–Retreaded Tyres, [227].

overall spread of the virus. Therefore, these measures are excessive, confirming that Versania's real aim was to reduce competition in the international market by completely removing the goods from circulation.

### **III. VERSANIA'S IMPORTATION OF VACCINES IN TRANSIT TO BOUTICA IS INCONSISTENT WITH OBLIGATIONS UNDER PARA. 3(c) OF THE 2022 TRIPS WAIVER DECISION**

[49] The Panel must establish jurisdiction because the 2022 TRIPS Waiver is an "integral part" of TRIPS public health flexibilities, as affirmed by the Doha Declaration. Versania's actions are inconsistent with Para. 3(c) of the 2022 TRIPS Waiver and TRIPS flexibilities. The Ministerial Conference adopted Para. 3(c) using the word 'shall' under its WTO Agreement Art. IX Decision-Making Powers. Therefore, by not meeting its obligations under Para. 3(c) of the 2022 TRIPS Waiver Decision and TRIPS public health flexibilities, Versania's inconsistent diversion of COVID-19 vaccines caused the waiver scheme to "fall afoul" and form the legal basis of this complaint. This is consistent with past Panel and AB establishing jurisdiction over specific provisions of the 'Enabling Clause' Decision as an "integral part" of the GATT.

[50] Alternatively, the Panel can exercise jurisdiction because Para. 3(c) of the Decision forms part of the waiver's terms and conditions that govern its application. Failure to respect the waiver's application is inconsistent with WTO Agreement Art. IX:4. Both the WTO Agreement and TRIPS are 'covered agreements' under the DSU and the Decision does not preclude WTO dispute settlement mechanisms.

#### **A. The Panel can establish jurisdiction over the 2022 TRIPS Waiver Decision**

[51] Establishing jurisdiction over a WTO Decision is consistent with past Panel and AB jurisdiction over the 'Enabling Clause' Decision, which began as the 1971 GSP Waiver under GATT 1947. The Enabling Clause was considered an "integral part" of the GATT "notwithstanding" the MFN obligation under GATT Art. 1:1.<sup>49</sup> "Notwithstanding" was ordinarily defined by the Panel and AB as "in spite of".<sup>50</sup>

[52] Similarly, Para. 9 of the 2022 TRIPS Waiver Decision states it is 'without prejudice' to the TRIPS Agreement's flexibilities, including public health flexibilities affirmed by the Doha Declaration as well as Members' rights and obligations outside the scope of the Decision. 'Without

---

<sup>49</sup> ABR, EC-Tariff Preferences, [90].

<sup>50</sup> Ibid.

prejudice’ used in the Decision allows Members to comply with international human rights commitments concerning public health “in spite of” commitments to protect IPRs. Therefore, the 2022 TRIPS Waiver Decision is an “integral part” of the TRIPS Agreement’s flexibilities.

[53] The Panel should further note the striking similarities between the 2022 TRIPS Waiver Decision and the Enabling Clause. Para. 3(c) of the 2022 TRIPS Waiver Decision meets a fundamental concern of developing countries by introducing more public health flexibilities under the TRIPS Agreement. TRIPS public health flexibilities were affirmed by the Doha Declaration, which the Panel and AB have deemed as a subsequent agreement to the TRIPS Agreement within the meaning of VCLT Art. 31(3)(a).<sup>51</sup>

[54] TRIPS therefore must be interpreted in conformity with its flexibilities in accordance with TRIPS Art. 8 principles that guard public health and the Doha Declaration. This is consistent with the history of the Enabling Clause, that began as the 1971 Waiver Decision to cover additional preferential measures to developing countries.<sup>52</sup> When GATT 1947 entered into force, the Contracting Parties stated one of its objectives was to raise standards of living through *universally-applied commitments* embodied in the GATT provisions.<sup>53</sup>

**B. The waiver scheme “falls afoul” from Versania’s inconsistent diversion of vaccines and forms the ‘legal basis of the complaint’ under DSU Art. 6.2.**

[55] In the Enabling Clause, the AB noted the use of the word ‘shall’ in specific provisions of the Enabling Clause that “sets out an obligation for developed-country Members”.<sup>54</sup> The AB viewed that when a complaining party considers that another Member does not meet these obligations, “the scheme allegedly falls afoul” and forms the legal basis of the complaint and therefore the “matter” in dispute.<sup>55</sup>

[56] The AB also noted that the “special status” of the Enabling Clause has “particular implications for WTO dispute settlement” because Members must allege more than mere inconsistency with GATT Art. I:1 to argue that a measure is not justified under the Enabling Clause.<sup>56</sup> Versania’s inconsistent diversion of COVID-19 vaccines away from Boutican citizens is inconsistent with

---

<sup>51</sup> ABR, US–Clove Cigarettes, [262]; PR, Australia – Tobacco Plain Packaging, [7.2295].

<sup>52</sup> ABR, EC–Tariff Preferences, [107-108].

<sup>53</sup> Ibid.

<sup>54</sup> ABR, EC–Tariff Preferences, [158].

<sup>55</sup> ABR, EC–Tariff Preferences, [113].

<sup>56</sup> Ibid, [110].

TRIPS' public health flexibilities. Therefore, Para. 3(c) of the 2022 TRIPS Waiver Decision is a necessary component to make out actions that are inconsistent with TRIPS flexibilities.

[57] Furthermore, Para. 3(c) of the 2022 TRIPS Waiver Decision replicates the word 'shall' and therefore sets out an obligation for all Members. This is consistent with the views of various scholars, including John H. Jackson who wrote, "perhaps the most important single power of the [GATT] Contracting Parties is the waiver power".<sup>57</sup> Furthermore, the Panel previously found that "all terms, conditions and procedures set out in a waiver decision have to be complied with for a waiver to justify measures that fall within its scope".<sup>58</sup>

[58] As Versania failed to 'ensure the availability of effective legal means' to *prevent the importation into their territories*, Versania did not meet its obligation under Para. 3(c) of the 2022 TRIPS Waiver Decision and the scheme fell "afoul", forming the legal basis of this complaint.<sup>59</sup>

**C. Alternatively, the Panel has jurisdiction because violating a waiver is inconsistent with WTO Art. IX:4**

[59] Should the Panel decline jurisdiction over a Ministerial Decision, the Panel must hear this Claim as a violation of WTO Agreement Art. IX:4. When the Ministerial Conference decides to waive a Member's obligation under IX:3, the Decision must state the 'terms and conditions' governing the application of the waiver under Art. IX:4. Para. 3(b) of the 2022 TRIPS Waiver Decision creates a waiver pursuant to WTO Agreement Art. IX:3 and therefore Para. 3(c) forms part of its 'terms and conditions'.

[60] The 2022 TRIPS Waive Decision was adopted on consensus by the Ministerial Conference to address the exceptional circumstances of the COVID-19 pandemic. Members agreed to a "collective waiver" that waives TRIPS Art. 31(f) obligations. Due to its effect on multiple Members, the waiver decision of the *LDC Members' Obligations under TRIPS 70.9 with respect to Pharmaceutical Products* and the 2003 TRIPS Waiver have both been referred to as "collective waivers" in the waiver paragraphs and by the WTO Secretariat.<sup>60</sup> The 2022 Ministerial Decision is a collective waiver that concerns multiple, if not all, Members.

---

<sup>57</sup> Jackson, 139; Feichtner, 237; Harrison 416.

<sup>58</sup> PR, US–Sugar Waiver, [5.8]; Feichtner, 237.

<sup>59</sup> ABR, EC–Tariff Preferences, [113].

<sup>60</sup> *WTO Secretariat in Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. Information on Waivers*, IP/C/W/387, (24 October 2002); *LDC Members' Obligations under TRIPS Art. 70.9 with respect to Pharmaceutical Products* (8 July 2002), [16, 20].

[61] Arion, Versania and most WTO Members have signed and ratified both the *International Covenant on Economic, Social, and Cultural Rights* and the *International Covenant on Civil and Political Rights*.<sup>61</sup> Arion and Versania must ensure access to affordable medicines to guarantee “inherent right to life” under ICCPR Art. 6 and observe the right to enjoy the highest attainable standard of physical and mental health under ICESCR Art. 12.

[62] Accordingly, the last paragraph of the 2022 Ministerial Decision refers to the *Doha Declaration* as to not prejudice public health. The AB has also ruled that WTO law “is not to be read in clinical isolation from public international law”.<sup>62</sup> To ensure that Members remain consistent with international law such as the UDHR, ICCPR, and ICESCR, the WTO has previously granted collective waivers to the TRIPS Agreement, which resulted in the first amendment of the WTO Agreement since its entry into force to add Art. 31*bis* to the TRIPS Agreement.<sup>63</sup>

[63] Waivers are granted exceptionally and Arion urges the Panel to note the importance of WTO Agreement Art. IX “Decision-Making” powers that allow the WTO to respond accordingly to contemporary global matters of vital importance. An example of this is the Kimberly Waiver, that brought Members’ domestic measures into compliance with the UN Security Council embargo against blood diamonds.<sup>64</sup> This also ensures consistency with GATT Art. XXXVIII that requirements for “effective cooperation” and joint collaboration with the UN and its organs and agencies, which include the WHO. Versania undermines the ‘Decision-Making’ power of the Ministerial Conference that allows Members to address ‘exceptional circumstances’ like a global pandemic and allows WTO Members to avoid conflict between international commitments to trade and public health.

[64] The AB has also indicated that Panels are *required* to address the issues that are put before them “as a matter of due process, and the proper exercise of the judicial function”.<sup>65</sup> Panels are also not “in a position to choose freely whether or not to exercise its jurisdiction” if it would seem to “diminish” the right of the complainant to “seek redress of a violation of obligations” within the

---

<sup>61</sup> Clarifications, [IX:4].

<sup>62</sup> ABR, US–Gasoline, [7.68].

<sup>63</sup> Feichtner, 187.

<sup>64</sup> Waiver Concerning Kimberly Process Certification Scheme for Rough Diamonds, WT/L/518.

<sup>65</sup> ABR, Mexico–Corn Syrup, [36].

meaning of DSU Art.23.<sup>66</sup> The Panel should prevent abdicating its responsibility by referring this dispute to the TRIPS Council.

[65] Arion does not need to demonstrate that the identified measure at issue causes the violation of the relevant obligation. Nor does the burden of proof fall upon Arion as the claim does not invoke an affirmative defence.<sup>67</sup> Arion has not acted in bad faith and does not contravene DSU Arts. 3.7 and 3.10, which precludes a Panel's jurisdiction.<sup>68</sup> In sum, violations of obligations contained in a waiver's terms and conditions are inconsistent with Art. IX:4 of the WTO Agreement, therefore this claim falls within the Panel's terms of reference under DSU Arts. 1.1, 3.2 and 6.2.

**D. The Decision does not preclude Members from dispute settlement mechanism**

[66] Para. 7 of the 2022 TRIPS Waiver Decision does not preclude the WTO's dispute settlement mechanism. The prohibition on non-violation complaints under GATT XXIII:1(b) and (c) is a restatement of the TRIPS moratorium. Though Para. 7 does not *explicitly* include the availability of GATT Art. XXIII:1(a), the AB has emphasized that Members can only renounce their WTO rights and obligations *explicitly*, in particular to their rights to initiate WTO dispute settlement proceedings.<sup>69</sup>

[67] Furthermore, previous drafts of the 2022 TRIPS Waiver Decision included a paragraph prohibiting Members from challenging any measure taken in conformity with the provision of the waivers contained in this Decision 'through the WTO's Dispute Settlement Mechanism'.<sup>70</sup> The Panel should note the complete omission of this provision from the adopted 2022 Decision.

**F. By importing vaccines manufactured under the 2022 TRIPS Waiver, Versania's legal means are not 'effective'**

[68] Under its valid jurisdiction, the Panel should find that Versania is in violation of its obligation under Para. 3(c) of the 2022 TRIPS Waiver Decision because the vaccines Versania 'imported' pursuant to VCA s. 75.3 were produced under an authorization in accordance with the Decision and were not patent-infringing. Under VCA s. 75.3, any goods acted on by Versanian customs authorities are deemed to be imported into Versania. By seizing the vaccines in transit from Arion

---

<sup>66</sup> ABR, Mexico–Taxes on Soft Drinks [53].

<sup>67</sup> ABR, US–Wool Shirts and Blouses.

<sup>68</sup> ABR, EC–Bananas III, [227]; ABR, Corrosion-Resistant Steel Sunset Review, [89]; ABR, Peru–Agricultural Products [5.19].

<sup>69</sup> ABR, EC–Large Civil Aircraft, [6.426-6.427]; Peru–Additional Duties, [5.116].

<sup>70</sup> Revised Decision Text, IP/C/W/669/ Rev.1, [6]; Draft Decision Text, IP/C/W/669, [5].

to Boutica, Versania imported the vaccines. Under Para. 3(c) of the 2022 TRIPS Waiver Decision, Members must ensure ‘effective legal means’ to prevent importation, sale, and diversion of vaccines produced under the authorization in accordance with the Decision. The vaccines produced by ANCOP were manufactured under Executive Order 46/22, a valid authorizing instrument pursuant to Para. 2 of the Decision, which was in accordance with the conditions of the Decision, engaging Versania’s obligation to prevent the importation of ANCOP vaccines.

[69] The obligation in Para. 3(c) must not only serve to prevent importation, sale, and inconsistent diversion, but must be effective in facilitating an Eligible Member’s use of the waiver. “Effective” is not defined in the TRIPS Agreement. Within the context of the waiver, the Panel should understand “effective” in its plain meaning. The dictionary defines “effective” as producing the result that is wanted or intended or producing a successful result.<sup>71</sup> The intended result of the legal means authorized to be used under Para. 3(c) is to ensure that waiver-compliant vaccines reach their intended destination as authorized by the Decision and only that destination.

[70] Under Para. 3(b) of the 2022 TRIPS Waiver Decision, only products manufactured under an authorization *in accordance* with the Decision may be exported to eligible Members. Assuming the good faith of Members to manufacture vaccines that comply with the Decision, no products would be manufactured under the authorization *not in accordance* with the Decision and therefore exported under Para. 3(b).

[71] This obligation operates, therefore, to facilitate the initial transit of waiver vaccines from the country of production to the destined country of importation, and to enable Members to take action against waiver vaccines that have been re-exported from the destined country of importation. The General Council Chairperson’s statement on the Doha Decision, which became Art. 31*bis* to the TRIPS Agreement, serves to clarify the intention of collective waivers to TRIPS Art. 31(f), as he stated that the purpose of the 2003 Decision “would be defeated if products supplied under this Decision are diverted from the markets for which they are intended.”<sup>72</sup>

#### **E. Producing ‘necessary’ COVID-19 vaccines does not impede IP innovation**

[72] The authorization for ANCOP to produce COVID-19 vaccines using the process patented by Zanos for export to Boutica was in accordance with the Decision because they were necessary.

---

<sup>71</sup> Cambridge Dictionary, “Effective”.

<sup>72</sup> General Council Chairperson’s statement, WT/GC/M/82, [29].



COVID-19 is ongoing and new variants continue to emerge.<sup>73</sup> The WHO continues to stress that the pandemic is not over and reiterates the need for greater vaccine access in the months ahead.<sup>74</sup> The object and purpose of the Decision is to facilitate equitable access of eligible Members to the COVID-19 vaccine covered by its authorization.<sup>75</sup>

[73] Arion's trade of the ANCOP vaccines was necessary to address the COVID-19 pandemic because the pandemic is ongoing. As Members have the right to determine their public health needs, and because vaccine inequity in developing countries persists, two years after the first vaccine candidate was introduced to global markets, production and export for sale should not be excluded from the scope of the Decision and the exceptional circumstances it seeks to address. Fiscal constraints are a significant impediment to vaccine equity and developing countries should not be penalized for using the flexibilities in WTO agreements to protect public health using instruments agreed to on consensus.<sup>76</sup>

[74] Zanos enjoyed a 2-year period of profit. From just the sale of 2 primary doses that Arion bought from Zanos for Arion citizens, the purchase amounts to USD \$8 billion dollars, before calculating additional costs of an extra dose for the immunocompromised. The pandemic is still ongoing and as of 11 January 2023, nearly 2.9 million cases and over 11,000 deaths were reported between 2 to 9 January 2023.

[75] The WHO states that "reducing transmission through established and proven disease control methods/measures" is a crucial aspect to reduce the occurrence of mutations that have negative public health implications. Variants of concern as defined by the WHO include demonstrated decrease in vaccine effectiveness.<sup>77</sup> This gives rise to cyclical effect of (1) lack of vaccination increasing transmission; (2) increasing transmission risk and emergence of new variants; (3) where new variants diminish vaccine effectiveness; (4) requiring new vaccines to stop transmission. It is therefore just as necessary to provide booster doses of vaccines as it is to provide primary doses to address the ongoing exceptional circumstances presented by the pandemic.

---

<sup>73</sup> World Health Organization, TAG-VE statement on Omicron sublineages BQ.1 and XBB" (27 October 2022).

<sup>74</sup> United Nations,"COVID-19 is not over"; The World Health Organization, WHO policy brief.

<sup>75</sup> 2022 TRIPS Waiver Decision, [3(b)].

<sup>76</sup> Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics, WT/MIN(22)/31, [3, 10-12].

<sup>77</sup> WHO, COVID-19 Tracker, *online*.

[76] For these reasons it is imperative the Panel finds that Arion's use of the 2022 TRIPS Waiver Decision was consistent with its conditions and resulted in IPR-compliant vaccines for export and sale to Boutica.

[77] As of May, 2022, trade facilitated the delivery of 15.2 billion doses of COVID-19 vaccines.<sup>78</sup> International trade is an indispensable mechanism to promote vaccine equity and to facilitate distribution of vaccines to developing countries. The WTO and its Members continue to play an integral role in manufacturing, importing and exporting vaccines while maintaining internationally agreed standards for the protection of intellectual property rights.

[78] Arion's use of the 2022 TRIPS Waiver Decision is an example to how the WTO can facilitate social and economic development without compromising those standards. The authorization was properly implemented, pursued the goal of increasing vaccine equity consistent with its object and purpose, and Zanos was adequately remunerated by Arion, taking into account the economic value arising from the use of Zanos' patents in its production of COVID-19 vaccines.<sup>79</sup>

[79] For these reasons, Versania's diversion of vaccines, produced under the authorization in accordance with the Decision, necessary to address the COVID-19 pandemic, violates its obligations under Para. 3(c) to prevent such diversions inconsistent with its provisions. Vaccine equity continues to be a threat to international public health and the WTO should remain committed to advancing global social well-being through the unimpeded operation of the 2022 TRIPS Waiver Decision until the exceptional circumstances of the pandemic are resolved.

### **REQUEST FOR FINDINGS**

In light of the above, Arion respectfully requests that the Panel find:

- I. That Versania's IP and border enforcement procedures are inconsistent with Arts. 41.1, 51 and 52 of the TRIPS Agreement.
- II. That Versania's customs laws are inconsistent with GATT Art. V:2 and not justifiable under GATT Art. XX(d).
- III. That Versania's importation of vaccines is inconsistent with Para. 3(c) of the 2022 TRIPS Waiver Decision.

---

<sup>78</sup> Vaccine Trade Tracker, WTO, *online*.

<sup>79</sup> Clarification, V:2.