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JOHN H. JACKSON MOOT COURT COMPETITION
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ALABASTA – CERTAIN MEASURES AFFECTING DIGITAL GOODS AND SERVICES

WANO

(COMPLAINANT)

VS

ALABASTA

(RESPONDENT)

SUBMISSION OF THE COMPLAINANT

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2. *General Agreement of Trade in Service, January 1995* ('GATS'), Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 1869 U.N.T.S. 183.

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LIST OF ABBREVIATIONS

Abbreviation	Full Form
AB	Appellate Body
ABR	Appellate Body Report
Art.	Article
AV	Audio Visual
AVMSD	Audio Visual Media Services Directive
BC-11	Bill C-11
CDTS	Competitive Digital Transformation Strategy
DEL	Digital Economy Law
DMA	Digital Markets Authority
EU	European Union
GATS	General Agreement On Trade And Services
GATT	General Agreement On Trade And Tariffs
IMF	International Monetary Fund
LCR	Local Content Requirements
MoE	Minister of Economy
MLAT	Mutual Legal Assistance Treaty
NT	National Treatment
PR	Panel Report
UNCPC	United Nations Central Product Classification
WTO	World Trade Organisation

STATEMENT OF FACTS

1. Alabasta, Wano, Allos, and Karda are founding members of the WTO. Alabasta is a middle-income country with a robust film-making industry. Wano is a large high-income country, being a global leader in electronic goods and digital services. Alabasta, Allos, and Karda have signed bilateral Data Flow MoUs with each other.
2. Wegapunk is a Wanian company. It is currently the fourth-largest film production company in the world. It has been a supplier of both products and services in Alabasta since 2005, operating with a fully-owned subsidiary, 'WegaBasta'. Wegapunk is the dominant supplier of AV streaming and online shopping services and consumer electronics in Alabasta.
3. Alabasta enhanced its digital competitiveness and privacy regulation, following decades of non-competitiveness and a 2003 recession. Alabasta's leading regulator in this space, their current Minister of Economy, led the formulation of a 'Competitive Digital Transformation Strategy' ("CDTS") in 2005, served on the 'Tech Innovation Committee' and led measures to protect Alabasta's digital competitiveness.
4. Wega-Flix, Wegapunk's streaming service, was launched in Alabasta in 2011 capturing viewership. The functions of local pricing, subscription management, customer support and content determination are done by WegaBasta. It faced competition when 'Atlas', an Allosian entity offering mainly regional content, launched its streaming service in 2018. Privacy concerns were raised about Wegapunk's operations within Alabasta after anonymous whistleblower reports, despite the operation of stringent privacy regulation.
5. In 2019, Alabasta adopted the 'Digital Economy Law'. The measure mandated a 30% local content requirement (4.2). "Local content" is defined as content for which 50% of the costs were incurred locally. It also requires screening and data localisation for Alabastan user data upon acquisition (4.3), and competition-related disciplines prohibiting steering, tying and bundling of services and algorithmic boosting (5-9). The requirements of Section 4.3 are not applicable to suppliers from countries that have entered a Data-Flow MoU with Alabasta. Alabasta established the DEL to enforce the DMA and raised tariffs on economic goods, including an 8% increase on tablets to finance it.
6. In late 2019, in compliance with DEL provisions, Wegapunk notified an LoI to the DMA for the acquisition of Achilles' Films, an Alabastan film production company. In 2020, the DMA rejected the purchase of Achilles' Films, citing the absence of a Data-Flow MoU with Wano. A few weeks later, the DMA approved the takeover of Achilles' Films by Atlas, for a significantly lower price.

7. In January 2021, the MoE submitted a complaint against Wegapunk for algorithmic boosting and bundling of goods and services, post which interim measures were imposed. These included halting promotional activities and imposing temporary quotas. These measures were in place from February 2021-June 2022, after which the complaint was dismissed. However, soon after, in July 2022, the DMA initiated proceedings again and imposed interim measures on Wegapunk citing Wega-Pads anti-steering practices.
8. Wegapunk's challenge to these measures are still pending. Wegapunk also filed a complaint against Atlas for algorithmic boosting, which has not been heard till today due to the MoE's dismissal of a DMA member who was a supporter of Wega-Flix.
9. Following the implementation of the DEL, and conduct of the DMA, competition in the digital product and services sector was significantly disrupted affecting market conditions and Wegapunk's business operations. Mainan entities in the same period significantly gained in market share and profits.
10. In November 2023, Wano held consultations with Alabasta pursuant to Arts. 1 and 4 of the DSU, Art. XXII of the GATS and Art. XXIII of the GATT 1994. Following the failure of consultations, Wano requested the establishment of a WTO Panel.
11. Wano claims that:
    a. Section 4.2 of the DEL is inconsistent with Alabasta's National Treatment obligation under Art. XVII of the GATS;
    b. Section 4.3 and 4.4 of the DEL are inconsistent with Alabasta's Most Favoured Nation obligation under Art. II of the GATS;
    c. The ongoing conduct of the DMA, along with the 2019 tariff increase on tablets, constitutes an overarching measure systematically restricting the import of tablet computers (Wega-Pads), contrary to Art.XI:1 of the GATT 1994.
12. Alabasta denies all claims and contends that in any case:
    a. Any alleged inconsistency with Alabasta's National Treatment Obligation is justified under Art. XIV(a) of the GATS;
    b. Any alleged inconsistency with Alabasta's Most Favoured Nation obligation is justified under Art. XIV(c)(ii) of the GATS;
    c. The alleged inconsistency with XI:1 of the GATT 1994 is justified under Art. XX(d) of the GATT 1994.

SUMMARY OF ARGUMENTS

1. Section 4.2 of the DEL is inconsistent with Art. XVII of the GATS:
    - Alabasta has made a commitment for full national treatment in mode 3 of the AV Services sector. Wegaflix falls under this sub-sector, and therefore, Alabasta owes it a national treatment obligation.
        - Streaming services fall under "Radio and Television Services" under CPC 9613.
        - The service is supplied via 'commercial presence' under mode 3 and not 'cross-border supply' under mode 1.
    - A likeness analysis is unnecessary since this amounts to origin-based discrimination. Even if it is not, the service and service supplier, in this case ATV1 and Able1, are like.
        - They are of similar nature, properties, and end use.
        - They are in a competitive relationship with each other.
        - They fall under the same tariff classification.
    - Section 4.2 amounts to *de facto* discrimination since it modifies the conditions of competition to the prejudice of foreign suppliers.
    - In any case, local content requirements are prohibited under WTO jurisprudence. This applies to services as well.
2. Section 4.2 of the DEL cannot be justified under Art. XIV(A) of the GATS:
    - The design and structure of the measure reveal that this is a protectionist measure, with public morals invoked as a *post hoc* justification.
    - Even if it is designed to protect public morals, it is unnecessary since it makes no material contribution to establishing the objective and is overly trade-restrictive compared to reasonably available alternatives.
    - It does not meet the requirements of the Chapeau test.
        - It amounts to arbitrary or unjustifiable discrimination.
        - It is a disguised restriction on trade in services.
3. Section 4.3 and 4.4 of the DEL are inconsistent with Art. II of the GATS
    - The measures in 4.3 and 4.4 affect trade in services as defined under Art. I:II.
    - The measure applies to 'Like Services'.
        - There exists a presumption of likeness, given the origin-based discrimination of the measure.

- In any case, the services are like, given the factors considered under likeness and the existence of a competitive relationship.

4. The challenged measures are not justified under Art. XIV(c)(ii) of the GATS.
   - The measures are not provisionally justified under Art. XIV(c)(ii).
     - The measures are not "necessary" under Art. XIV(c)(ii).
     - Given the lack of contribution, trade restrictiveness and reasonable availability of alternatives the measures are not "necessary".
   - The measures do not meet the requirements of the Chapeau in their application.
     - The measures are arbitrary, constitute an unjustifiable discrimination and amount to a disguised restriction on trade.
5. There is a single overarching measure which systematically restricts Wega-Pad's imports.
   - The tariff increase and ongoing conduct of the DMA together constitute an unwritten overarching measure which systematically restricts imports of Wega-Pads.
     - The combined operation of the measures results in an operation distinct from its components, *i.e.*, disincentivizing Wega-Pad imports by making it onerous.
     - There is evidence of a common policy objective in the form of the CDTS, which was headed by Professor Buggy, who is the head of DMA and MoE and promised to make it a reality. The measures are targeted at Wegapunk.
   - The measure has a limiting effect on Wega-Pad imports, thereby amounting to a quantitative restriction under GATT Art. XI:1.
     - The tariffs are within the scope since they are not being challenged as a single component but as part of an overarching measure. The limiting effect is evident through the design of the measure and data showing a drop in Wega-Pad imports.
6. The measure is not justified under GATT Art. XX(d).
     - It is not designed to secure compliance with any law, since none have the objective to restrict imports. It is not necessary to secure compliance since there are reasonable alternatives to each component, and to the measure as a whole.
     - The measure does not satisfy the Chapeau since it discriminates by targeting Wegapunk, is procedurally arbitrary, and is a restriction on the trade of Wega-Pads disguised as compliance.

MEASURES AT ISSUE

1. Digital Economy Law ('DEL') Section 4.2 which mandates a Local Content Requirement of 30% ('LCR').
2. DEL Section 4.3 and Section 4.4 which mandates data localisation upon the acquisition of an Alabastan entity.
3. The unwritten 'overarching' measure constituting the tariff increase and actions of the Digital Markets Authority ('DMA') limiting imports of Wega-Pads.

LEGAL PLEADINGS

I. SECTION 4.2 OF THE DEL IS INCONSISTENT WITH ART.XVII OF THE GATS

1. Art. XVII of the GATS requires WTO members accord to services and service suppliers of other members treatment no less favourable than that accorded to like domestic services and service suppliers, in sectors where specific commitments are undertaken.[1]
2. It is submitted that Alabasta has made an NT commitment in the AV sector **[1.1]**; Section 4.2 of the DEL is a measure affecting trade in services **[1.2]**; Section 4.2 accords less favourable treatment to foreign services and service suppliers **[1.3]**; and in any case, LCRs are prohibited under the GATS **[1.4]**. Thus, Section 4.2 amounts to a *de facto* discrimination.[2]

1.1 Alabasta has made an NT commitment in the AV sector

3. NT obligations under Art. XVII apply to sectors where commitments have been made, excluding measures explicitly exempted in the Schedule.[3] A limitation, when made, must be unambiguous, and tailored to the mode of supply through which the service is supplied.[4]
4. Alabasta has undertaken specific commitments to liberalize AV services classified under CPC 9613, including "Radio and Television Services",[5] per its GATS Schedule.[6] It has only scheduled an NT exemption for the 30% LCR under Mode 1 ("cross-border supply"). It has indicated 'none', *i.e.*, a full NT obligation under Mode 3 ("commercial presence"). A particular service must fit into only one mode of supply.[7]

[1] GATS 1995, Art. XVII.
[2] PR, EC – Bananas III [7.322].
[3] PR, US – Gambling, [159].
[4] PR, China – Electronic Payment Services, [7.654].
[5] CPCprov 1991; MTN/GNS/W/120.
[6] Case, [Annex-2], [20]; Clarification (b).
[7] ABR, US – Gambling, [180].

5. It is submitted that streaming services fall under "Radio and Television Services" under CPC 9613 **[1.1.1]**; and the service is supplied via commercial presence under mode 3 **[1.1.2]**. Thus, Alabasta's NT obligations are applicable to services like Wega-Flix.

1.1.1 Streaming services fall under "Radio and Television Services" under CPC 9613

6. The principle of technological neutrality mandates that Wega-Flix falls under "Radio and Television Services" (CPC 9613). This principle was recognized in *China-Publications and AV Products (2010)* where China's commitment to 'sound recording distribution services' was extended to include electronic distribution of sound recordings.[8] This evolutionary interpretation has been recognized in numerous other cases.[9] Sectors must be understood evolutionarily,[10] with classification being based on content rather than method of transfer.[11] The use of a new medium to provide a service does not change the service itself.[12] This principle is key to digital services being regulated under the GATS.[13]
7. Even if integrated services fall under multiple sectors, they must be classified based on the sector that gives them their essential character.[14] It is submitted that the essential characteristic of Wega-Flix is providing AV content and not data processing services.
8. Additionally, 'radio and television services' cover the production of TV programmes 'whether live, on tape or other recording medium for subsequent broadcast'.[15] It is submitted that Wega-Flix content meets this definition. 'Combined programme making and broadcasting services' are covered under CPC code 9613. Therefore, streaming services like Wega-Flix fall under 2.D.c Radio and Television Services (CPC 9613) under AV Services.

1.1.2 The service is supplied via commercial presence under Mode 3

9. Alabasta has only scheduled an exemption from its NT obligation under Mode 1 ("cross-border supply"). However, the cross-border supply is inapplicable when the service is being delivered through a significant commercial presence.[16]
10. It is submitted that in the present case, there is significant commercial presence under mode 3. Wega-Flix's locally incorporated subsidiary, WegaBasta, sets prices, does marketing, customer support, content determination, *etc*.[17] The presence of thirty full-time staff at WegaBasta

[8] PR, China – AV, [7.1205], [7.1176]; ABR, China – AV, [397].
[9] PR, EC – IT Products, [7.596-602]; ABR, US – Shrimp, [129-130]; ABR, US – Gambling, [195-208].
[10] PR, EC – IT Products, [7.596-602]; *Meltzer* (2016) 8.
[11] PR, China–AV, [7.1176].
[12] WPEC Note by the Secretariat S/C/W/68, [3]; *Weber and Burri* (2013), 123; *Shin Yi-Peng* (2016), 8; *Rajan-Sabita* (2019), 121, 128.
[13] WPEC Interim Report to GC, S/C/8, [4].
[14] PR, China – Electronic Payment Services, [7.59].
[15] Explanatory note to CPC 96132.
[16] PR, Mexico – Telecoms [7.30].
[17] Case, [13]; Clarification, [27].

headquarters shows substantial business operations via commercial presence.[18] When Alabastan users purchase a Wega-Flix subscription, the e-contract is signed with WegaBasta, so the contracting party is based locally.[19] Since Alabasta has scheduled no limitations on its NT obligations under Mode 3, Alabasta's NT obligations are applicable to Wega-Flix and Section 4.2 of the DEL can be scrutinized for discriminatory effect.

1.2 Section 4.2 of the DEL is a measure affecting trade in services

11. A 'measure' is defined in Art. XXVIII(a) as any law, regulation, rule, procedure, decision, administrative action, *etc*. by a member.[20] 'Affecting' under Art. XVII covers any measure affects service supply.[21] A measure which disrupts equality of competitive opportunities affects service supply.[22] LCR and punitive fines impact trade in services by foreign suppliers.

1.3 Section 4.2 of the DEL provides less favourable treatment to foreign services and service suppliers compared to like domestic services and service suppliers

12. The objective of Art.XVII:1 is to ensure equality of competitive opportunities between like services and service suppliers of other members.[23] It is submitted that Section 4.2 is origin-based discrimination [**1.3.1**]; in any case, services and service suppliers are like [**1.3.2**]; and Section 4.2 modifies competitive conditions against foreign service suppliers [**1.3.3**].

1.3.1 Likeness analysis is unnecessary since this is origin-based discrimination

13. The AB noted, in *Argentina-Financial Services (2016)*, that when a measure provides distinctions based exclusively on origin, likeness can be presumed.[24] Here, the dichotomy between local and foreign content is based on the location where costs are incurred.[25] Thus, Section 4.2 discriminates based on origin, and likeness can be presumed.[26]

1.3.2 In any case, service and service suppliers are like

14. In the instant case, Wega-Flix must be compared with the TV channels Able1 and ATV1 for likeness.[27] The factors for determining likeness are: (1) the end-uses of the product, (2) consumer tastes and habits, (3) the product's properties, nature, and quality, and (4) tariff classification.[28] However, the final analysis determines whether they are in a competitive

[18] Clarification, [25].
[19] Case, [13].
[20] GATS 1995, Art. XXVIII(a).
[21] PR, China – Electronic Payment Services, [7.652].
[22] ABR, EC – Seals, [5.82]; ABR, US-FSC, [215]; PR, US – Superfund [5.1.9].
[23] ABR, EC – Asbestos, [97]; PR, China – Electronic Services, [7.700]; *Cossy,* (2006*)* 38.
[24] ABR, Argentina – Financial Services, [6.38]; PR, China – Publications and AV Products, [7.975].
[25] Case, [Annex-2].
[26] *Pauwelyn,* (2007) 5
[27] Clarification (f).
[28] ABR, EC – Asbestos, [101]

relationship.[29] It is submitted that the services are similar in nature, properties and end-use **[1.3.2.1]**; and the services are in a competitive relationship **[1.3.2.2]**.

1.3.1.1 The services are similar in nature, properties and end-use

15. Both services provide AV content for entertainment. Wega-Flix provides, "various types of movies, documentaries and series."[30]Able1 and ATV1 provide similar content.[31]
16. Although Wega-Flix operates algorithmically,[32] the means of service delivery does not change the nature of the service itself.[33] Technical differences in delivery do not preclude likeness.[34] To be considered like, approximate or general similarity suffices.[35] Physical differences are irrelevant if a competitive relationship exists.[36]

1.3.2.2 The services are in a competitive relationship

17. This is the primary factor in the weighing analysis. Government data demonstrates that since the launch of Wega-Flix in Alabasta, it has dominated 55% of local viewing time compared to 25% on television, 10% on cable *etc*. although it started from 0.[37]

Year	Wega-Flix (Hours, %)	Television (Hours, %)	Cable TV (Hours, %)
2011	200 (4.3%)	2200 (47.8%)	1800 (47.8%)
2012	400 (9.1%)	2100 (47.7%)	1700 (43.2%)
2013	600 (13.6 %)	2000 (45.5%)	1600 (40.9%)
2014	800 (17.8 %)	1900 (42.2%)	1500 (33.3%)
2015	1000 (21.7%)	1800 (39.1%)	1400 (30.4%)
2016	1200 (25.5%)	1700 (36.2%)	1300 (27.7%)
2017	1400 (29.8%)	1600 (34.0%)	1200 (25.5%)

Table 1: Aggregate hours (2011-17)

18. Additionally, a study by McEasy (see Table 1 above) analysed the number of yearly average viewing hours per medium of consumption.[38] It demonstrates how Wega-Flix has increased by 4-5% on average every year between 2011 to 2017, while television has fallen 1-2% every year. This clearly demonstrates that an increase in Wega-Flix viewership correlates directly with a reduction in other forms of consumption.
19. Similarly, from 2018 to 2023, a decline in Wega-Flix viewership correlates with an increase in the viewership of ATV1 and Able1 (see Table 2 below).[39] 2019, when the DEL was

[29] PR, China – Electronic Payment, [7.700].
[30] Case, [12].
[31] Clarification (e).
[32] Case, [12].
[33] PR, US – Gambling [3.185-3.186].
[34] PR, Canada – Autos, [10.248].
[35] PR, China – Electronic Payment Services, [7.699].
[36] AB, Philippines – Distilled Spirits, [120].
[37] Case, [26].
[38] Case, [27].
[39] Case, [66].

implemented, saw the single largest yearly reduction in hours watched indicating disruption to the algorithm by the LCR.[40]

20. In addition, it has been submitted above that the tariff classification under UN CPC shows that the services are similar in all relevant respects. When like services are provided by different entities, the service supplier is considered like too.[41] Thus, there is likeness between services and service suppliers.

Year	Wega-Flix (Hours, %)	ATV1 (Hours, %)	Able1 (Hours, %)
2018	1300 (65.0%)	400 (20.0%)	300 (15.0%)
2019	1200 (60.0%)	450 (22.5%)	350 (17.5%)
2020	1000 (52.6%)	500 (26.3%)	400 (21.1%)
2021	900 (47.4%)	550 (28.9%)	450 (23.7%)
2022	800 (42.1%)	600 (31.6%)	500 (26.3%)
2023	700 (36.8%)	650 (34.2%)	550 (28.9%)

Table 2: Aggregate hours (2018-23)

1.3.3 Section 4.2 modifies the conditions of competition against foreign suppliers

21. A measure can be formally neutral but lead to *de facto* discrimination if it asymmetrically affects foreign suppliers.[42] It is submitted that Section 4.2 is *de facto* discriminatory.

22. Foreign service providers will find it far harder to source local content. Local providers ATV1 and Able1 already produce 85% and 55% of their content locally, while Wega-Flix only has 4% local content at this moment.[43] It will be harder for Wega-Flix to alter existing business patterns and catalogues.[44] Origin-neutral taxes which disproportionately cause hardship to foreign suppliers have been previously ruled to be discriminatory.[45] Furthermore, the fine of 7.5% of annual turnover is a significant financial burden. Financial burdens alter the competitive position as they alter the business model and content strategy.[46]

1.3 In any case, Local Content Requirements are prohibited

23. *India-Autos (2001)* noted that indigenization requirements modify competitive conditions by forcing manufacturers to use domestic inputs. It held that LCRs inherently discriminate against foreign products violating NT obligations.[47] The WTO has consistently held thus in numerous automotive and renewable energy cases.[48]

[40] Case, [41].
[41] PR, EC – Bananas III (Ecuador), [7.322]; PR, Canada – Autos, [10.307].
[42] ABR, Thailand – Cigarettes, [128]; *Ehring* (2002), 921–977.
[43] Case, [30].
[44] PR, Turkey – Rice, [7.219].
[45] ABR, Japan – Alcoholic Beverages II [21].
[46] ABR, Thailand – Cigarettes, [130].
[47] PR, India – Autos, [7.196].
[48] ABR, Canada – Autos, [10.85]; ABR, Canada – Renewable Energy, [5.63]; ABR, China – Auto Parts, [195]; PR, Indonesia – Autos, [14.91]; PR,

24. The mandate for local sourcing of services under Section 4.2 distorts competition in the same way an LCR does for goods. The explicit prohibition on LCRs under the TRIMs Agreement further supports the embargo on LCRs under all WTO agreements.[49] Thus, Section 4.2 of the DEL must be struck down as it is an LCR.

II. SECTION 4.2 OF THE DEL CANNOT BE JUSTIFIED UNDER ART XIV(A) OF THE GATS

25. Alabasta bears the burden of proving the public morals exception,[50] that (i) the measure falls within the scope of Art. XIV(a); and (ii) it satisfies the requirements of the Chapeau.[51]
26. Evidence regarding the design, structure and expected operation of the measure must be considered to determine if the purported objective is true.[52] Alabasta was in severe recession since 2003 with projections of low growth rates, which the IMF attributed to its lack of digital competitiveness.[53] The economic context preceding major policy changes must be factored into the analysis of the true intention of the policy.[54] Resultantly, the Alabastan Ministry of Economy commissioned the CDTS in 2005, which was completed by the state-owned Alabastan University.[55] It explicitly advocated "state support to promote domestic production of electronic goods and digital services".[56]
27. Professor Mario Buggy who is known for promoting Mainan technology,[57] and whose political platform was making the CDTS a reality became Minister of Technology and implemented the DEL.[58] Thus, it is submitted that Section 4.2 is a protectionist measure disguised as a public morals measure. Even if that is not the case, it is submitted that it is not necessary [**2.1**]; and fails to satisfy the Chapeau [**2.2**].

2.1 Even if so designed, the measure is not "necessary"

28. For a trade-restrictive measure to be "necessary", it must be closer to the pole of indispensable than 'making a contribution.'[59] It is submitted that Section 4.2 does not contribute to protecting Alabastan culture [**2.1.1**]; and it is overly trade-restrictive [**2.1.2**].

2.1.1 Section 4.2 makes no material contribution to protecting Alabastan culture

29. 50% of the production costs being spent locally has no nexus to ensuring greater representation of culture. Section 4.2 applies to all content regardless of cultural value, including game shows,

India – Solar Cells, [7.73]; PR, Brazil – Taxation [7.772]; PR, Canada – Renewable Energy [7.167].
[49] TRIMS Annexe Illustrative List Art.1(a).
[50] ABR, US – Gambling, [292], [309]; ABR, US – Gasoline, [23]; *Wolfrum* (2008) 291.
[51] ABR, US – Gambling, [292].
[52] PR, EC-Bananas, [6.127]
[53] Case, [23].
[54] PR, US – Anti Dumping Act (1916), [6.59].
[55] Case, [24].
[56] Ibid.
[57] Case, [25].
[58] Case, [41].
[59] ABR, Korea – Beef, [161].

reality TV shows, etc. Wega-Flix can spend 50% locally for certification and still produce inauthentic content. Only local industries get a definite protectionist boost. Furthermore, there is no 'genuine and sufficiently serious threat' posed to Alabastan culture.[60] Television and cable TV display 60-85% local content.[61] Consumers watch these television channels for local content.[62]

2.1.2 It is Overly Trade Restrictive

30. There must not be reasonably available alternatives that achieve the same object in a less trade-restrictive manner.[63] While Wega-Flix is the major foreign streaming service right now, potential service providers will be affected by altered conditions of competition.[64]
31. Alternatives like direct subsidies and tax incentives by the government for film and television can incentivize local content and storytelling. The *Canadian Film or Video Production Tax Credit* (CPTC) was started in 1995 and has proven enormously successful.[65] The Producer Offset scheme in Australia does the same.[66] Government agencies can support local AV production like South Korea's KOFIC.[67]
32. Some administrative costs in implementing the scheme do not change the reasonable availability of these measures.[68] Alabasta is a middle-income country and enforcement costs usually financed by the public purse should not be shifted onto foreign producers and imported goods.[69] Thus, Section 4.2 is overly trade restrictive and not necessary.

2.2 Section 4.2 fails to meet the Chapeau requirements

33. The Chapeau serves as a guard against the protectionist abuse of exceptions, requiring good faith and reasonable application.[70] It is submitted that Section 4.2 amounts to arbitrary and unjustifiable discrimination, and is disguised restriction on trade.
34. The rigidity or flexibility of a measure is a key test for arbitrary or unjustifiable discrimination.[71] The 7.5% fine of annual turnovers is not adjustable, and is a fine that will be applied by default on even the smallest infraction below 30%. No transition period or technical assistance is provided. The process itself is biased since complaints by the Minister of Information take priority by law.[72] The Minister of Economy, Prof. Buggy, has shown himself

[60] ABR, US – Gambling, [299].
[61] Case, [30].
[62] Case, [32].
[63] ABR, US – Gambling, [307].
[64] ABR, Thailand – Cigarettes (Philippines), [135].
[65] CAVCO, CPTC Guidelines, 3rd March 2020.
[66] SA, Producer Offset Guidelines October 2024.
[67] *Kim* (2016), 9-10.
[68] PR, US-Gasoline, [6.26-6.28].
[69] ABR, Korea-Beef, [180-181].
[70] PR, US – Gambling, [6.581].
[71] ABR, US–Shrimp, [144], [177].
[72] Case, [65].

biased against foreign entities by his tweets and official communications.[73] There is no appeals mechanism or judicial review provided for either. Furthermore, there was no attempt to negotiate with members or entities who would be affected by this measure. The AB has found measures incompatible with the Chapeau due to engage in good faith negotiations.[74]

35. A measure can be a disguised restriction if its objective is to conceal the pursuit of trade restrictive objectives.[75] Based on the legislative history discussed above, this is an industrial policy disguised as a cultural preservation measure.[76] Panels should be sceptical of moral justifications that appear after disputes arise.[77] The alleged cultural preservation objective was raised post hoc and is contradicted by the CDTS' focus on economic competitiveness, the lack of reference to cultural preservation in the Act and the indiscriminate application of the DEL to all AV content. Thus, Section 4.2 meets requirements for Art. XIV(a).

III. SECTIONS 4.3 AND 4.4 OF THE DEL ARE INCONSISTENT WITH ART. II:I OF THE GATS

36. The essence of the MFN obligation under Art. II:I is to assure to all WTO members 'equality of opportunity' to supply 'like' services, regardless of the origin of the services or nationality of the service suppliers.[78] It is admitted that there is 'treatment less favourable'.[79] Hence, it is submitted that the measures fall within the scope of Art. II:I of the GATS **[3.1]** and apply to 'like services' **[3.2]**. Thus, the measures violate Respondent's MFN obligation.

3.1 The Measures fall within the scope of Art. II:I of the GATS

37. A measure falls within the scope of Art. II:I if it constitutes a measure affecting 'trade in services'.[80] The term "affecting" is considered broad and implies that a measure has "*an effect on*" trade in services supplied in one of the modes in Art. I:2. In the instant case §§ 4.3 and 4.4 of the DEL, mandating data localization in Alabasta *prima facie* affect trade in AV Services. Resultantly, the measure falls within the scope of GATS Art. II:I.

3.2 The measures apply to 'Like Services'

38. The interpretation of 'likeness' under Art. II:1 is informed by its objective; to determine "*whether the products or services and service suppliers, respectively, are in a competitive relationship with each other*".[81] It is submitted that in the instant case, there is a presumption

[73] Case, [34], [40].

[74] ABR, US – Shrimp, [122], [144]; *Mavroidis* (2020) 584.

[75] PR, EC – Asbestos, [8.236].

[76] AB, EC – Seal Products, [5.144].

[77] PR, China – Raw Materials, [7.498-499]; AB, US – Gambling, [291].

[78] ABR, EC – Bananas III, [78]; ABR, Canada – Autos, [168-170].

[79] Case [77], Clarification (g).

[80] ABR, EC – Bananas III, [78].

[81] ABR, Argentina – Financial Services, [6.31]; PR, China – Electronic Payment Services, [7.706].

of likeness between the services **[3.2.1]**; and that in any case, the services are 'like' **[3.2.2] – [3.2.3]**. Consequently, the measures are inconsistent with GATS Art II:I.

3.2.1 There is a presumption of Likeness between the services

39. Like in the GATT,[82] the "presumption of likeness" has been applied under GATS Art. II:I.[83] Presumption of likeness between products or services is created when a distinction is based "*exclusively on the origin*" of the product or service.[84]

40. In the instant case, the measure at issue, *i.e.*, § 4.3(c) of the DEL, makes a distinction solely on the basis of the existence of 'Data Flow MoUs' with other countries to exempt enterprises from those countries from the aforementioned DL requirement. Differential treatment is offered to service suppliers based on a distinction made exclusively on the origin of the service supplier, as such benefits are available only to service suppliers in countries that Alabasta has a Data Flow MoU with. Thus, it is submitted that the presumption of likeness must be applied.

3.2.1.1 The Services are 'Like'

41. The basis of comparison under Art. II:I is the likeness of services *and* service suppliers, necessitating evaluation of their similarity[85] on a case-by-case basis,[86] with the burden of proof on the asserting party.[87]

42. Factors relevant for determining likeness under Art II of the GATS are the characteristics of service and service suppliers, consumer preferences in respect of the services[88] and service classifications, for instance, in the UN Central Product Classification (CPC).[89] It is submitted that, the AV content streamed on 'Atlas' and 'Wega-Flix' provided by service suppliers in Allos and Wano constitute 'like services'.

43. There is no difference between characteristics of the service. Both services constitute OTT, on-demand, subscription-based AV streaming from a foreign service supplier.[90] In the context of 'trade in services' specifically, panels may also inquire into the 'mode of service supply' as defined in Art I:2 to determine the likeness of services and service suppliers.[91] In the instant

[82] PR, Argentina – Hides and Leather, [11.168]; PR, China – Auto Parts [7.216]; PR, Canada – Wheat Exports and Grain Imports, [6.164 – 6.167].
[83] ABR, Argentina – Financial Services, [6.36-6.38]; PR, China – Publications and AV Products, [7.975].
[84] ibid; PR, China – Publications and AV Products, [7.1446-7.1447].
[85] ABR, EC – Asbestos, [90].
[86] PR, China – Electronic Payment Services, [7.701], [7.705]; ABR, EC – Asbestos, [101]; ABR, Japan – Alcoholic Beverages II, [p. 20].
[87] ABR, United States – Shirts and Blouses from India, [14].
[88] ABR, Argentina – Financial Services, [6.32-6.33].
[89] PR, EC – Bananas III (Ecuador), [7.322], [7.346]; ABR, Canada – Periodicals, [21].
[90] Case, [12], [21], Clarification, [24].
[91] ABR, Argentina – Financial Services, [6.33]; Panel Report, China – Electronic Payment Services, [7.704], [7.706].

case both service suppliers have significant commercial presence in Alabasta, given WegaBasta[92] and the acquisition of Achilles' Films.[93]

44. Consequently, the 'mode of supply' for both services is Mode 3.[94] Both services are classified under UN CPC SubClass 9613, that is, 'combined programme making and broadcasting services'.[95] Likeness must also be established 'holistically',[96] without scrutinising the service and service supplier separately.[97] It is thus submitted that these services are 'like services' for the purpose of Art II:1.

3.2.1.2 The Services are in a 'Competitive Relationship' with each other

45. The AB has held that the, "*analysis of "likeness" serves the same purpose in the context of both trade in goods and trade in services, namely, to determine whether the products or services and service suppliers, respectively, are in a competitive relationship with each other."*[98] The existence of a competitive relationship and suppliers "competing in the same business sector"[99] are strong indicators of the 'likeness' between services.[100]

46. It is submitted that Atlas and Wega-Flix are in a competitive relationship, being suppliers that operate in the same business sector, that is, OTT streaming services. Atlas provides subscription-based, on-demand streaming services,[101] subject to the same regulatory requirements as Wega-Flix. The competing takeover of Achilles Films to provide exclusively hosted content also indicates suppliers "competing in the same business sector".[102]

47. Applying considerations such as 'consumer preferences'[103] or considering 'exchangeability or substitutability of services'[104] would also establish the accepted competitive relationship. Respondent's own government officials from the DMA,[105] and their Ministry of Culture[106] have made comparisons indicating acknowledgement of their competitive relationship.[107]

48. Therefore, it is submitted that under Art. II:I of the GATS the services offered are 'like services' and are competing with each other. Accordingly, §§ 4.3 and 4.4 of the DEL are inconsistent with Respondent's MFN obligations under Art II:I of the GATS.

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[92] Case, [13].
[93] Case, [53].
[94] GATS Art I:II.
[95] MTN/GNS/120.
[96] ABR, Argentina – Financial Services, [6.29].
[97] PR, Canada – Autos, [10.248]; PR, EC – Bananas III, [7.62].
[98] ABR, Argentina – Financial Services, [6.31].
[99] PR, China – Electronic Payment Services, [7.706].
[100] ABR, Japan – Alcoholic Beverages II, [pp. 20-21]; PR, Canada – Autos, [10.245], [10.246].
[101] Clarifications [40].
[102] Case [15], [21]; Clarification, [40].
[103] ABR, EC – Asbestos, [117].
[104] *Wolfrum* (2008) 84; PR, Korea – Alcoholic Beverages, [10.74].
[105] Case [64].
[106] Case [66].
[107] ABR, Philippines – Distilled Spirits, [119]; ABR, EC – Asbestos, [99].

IV. INCONSISTENCY WITH GATS ART II:I IS NOT JUSTIFIED UNDER GATS ART. XIV(C)(II)

49. Art XIV(c)(ii) of the GATS, like Art. XX(d) of the GATT, acts as a general exception to violations under Art. II:I, which allows measures that secure compliance with existing domestic privacy laws or regulations. In the instant case, the existing law, is the Alabastan Data Protection Law as amended in 2022 to incorporate the OECD Declaration on 'Government Access to Personal Data held by Private Sector Entities'.[108]
50. Like Art. XX(d),[109] Art. XIV contemplates a two tier analysis which requires *firstly*, a measure to be justified under a sub-paragraph in Art. XIV and *secondly*, that the measures satisfy the requirements of the Chapeau of Art. XIV,[110] with the burden of proof on the Respondent.[111]
51. It is submitted that, §§ 4.3 and 4.4 of the DEL are not justified under Art. XIV(c)(ii) as they do not fall within Art. XIV(c)(ii) **[4.1],** and do not satisfy the requirements of the Chapeau **[4.2].**

4.1 The measure is not Provisionally Justified under Art. XIV(c)(ii)

52. For a measure to be provisionally justified under Art. XIV(c), a two-step analysis is required. Firstly, the measure must be *designed* to secure compliance with a GATS inconsistent law covering an exception within Art. XIV(c); and secondly, the measures must be "necessary" to secure such compliance.[112] It is submitted that, the measures are not "necessary" to secure compliance with domestic privacy laws **[4.1.1].**

4.1.1 Measures are not "Necessary" within the meaning of Art. XIV(c)

53. In determining the necessity of a measure, WTO panels have employed a 'weighing and balancing test'[113] to factors including the relative importance of the objective,[114] the contribution of the measure to that objective, and its trade-restrictiveness.[115] Additionally, the reasonable availability of alternative WTO-consistent measures must also be considered.[116] The relative importance of privacy is evident from its treatment as an exception.[117] However, it is submitted that considering the other factors relevant to the 'weighing and balancing' the measures are outside the scope of 'necessity' under Art. XIV **[4.1.1.1 – 4.1.1.3].**

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[108] Clarification [7].
[109] ABR, US – Shrimp, [147]; ABR, US – Gasoline, [p. 22].
[110] ABR, Argentina – Financial Services, [6.161]; ABR, US – Gambling, [291-292].
[111] ABR, United States – Wool Shirts and Blouses, [pp. 14-16].
[112] ABR, Argentina – Financial Services, [6.161]; ABR, US – Gambling, [294]; ABR, EC – Seal Products, [5.185]; ABR, Thailand – Cigarettes (Philippines), [177].
[113] ABR, Korea – Various Measures on Beef, [164].
[114] ABR, EC – Asbestos, [172]; ABR, Korea – Beef, [162].
[115] ABR, US – Gambling, [304]; ABR, EC – Seal Products, [5.169], [5.214].
[116] ABR, Argentina – Financial Services, [6.182]; ABR, Brazil-Tyres, [156]; ABR, Colombia – Textiles, [5.75], [5.77].
[117] *Mishra* (2020), 354 .

4.1.1.1 The measure does not effectively contribute to the objectives of the DPL

54. In assessing the effectiveness of a measure, the analysis must be restricted to examining the sufficiency of evidence, without becoming arbiters of various technical opinions on cybersecurity or privacy measures.[118] The principle of 'technological neutrality' must be observed in assessing a measure's effectiveness, enabling technological choices by service suppliers.[119] Generally, technical evidence weighs against the effectiveness of data localisation or data residency measures to contribute to the objectives of privacy.[120] DL mandates do not reduce vulnerabilities to cyberattacks, fraud, or government access if the data is encrypted.[121]
55. The data localisation mandate contained within DEL § 4.3 exempts service suppliers from the requirement in case of an existing Data-Flow MoU. However, the Data-Flow MoUs themselves do not guarantee that Alabastan user data would be treated in accordance with the OECD GAPD. Rather, Allos and Karda are only bound by their domestic privacy law, based on the OECD DTDF. This declaration recognises the benefit of transborder data flow and prescribes that governments will take alternative measures when their measures affect transborder data flows.[122] Therefore, the measures in § 4.3 and 4.4, using the Data-Flow MoUs as the basis for differential treatment, do not contribute to the objectives of the GAPD.

4.1.1.2 DL requirements create significant trade restrictions

56. DL requirements have disruptive economic impacts and are a threat to trade in a digital economy.[123] Such measures impose unnecessary compliance and operational costs on foreign service suppliers.[124] It violates the principles of 'network neutrality' requiring unrestricted consensual transfer of data, ensuring 'non-discriminatory access' to information and disrupting trade and economies of scale.[125] Such a trade restriction also decreases the quality of service provided, and hence competition in the service sector,[126] given the importance of data processing in the deliverance of the services affected.[127] Other service suppliers in the sector continue to benefit from free transborder flow of data.[128] Further, there is no international consensus on the effectiveness of DL requirements in achieving the policy objectives of data privacy and cybersecurity laws due to the requirement of opening individual data centres.[129]

[118] PR, EC – Asbestos [8.182], [8.181].
[119] PR, China – AV Products, [7.763]; *Peng* (2016) 761.
[120] *Maurer* (2015), 53, 61-62; *Cory* (2017), 3-4; USITC (2017).
[121] *Hon* (2017), 32, 70, 105.
[122] OECD Declaration on Transborder Data Flow, Recital 6.
[123] *Meltzer* (2014), 90, 92; *Bauer* (2014), 4.
[124] Case, [Annex 6], Case [52].
[125] *Hon* (2016), 251, 253-254.
[126] ABR, Brazil – Tyres, [150]; *Cohen* (2017), 107, 108-109.
[127] Case, [52].
[128] Case, [21], [64].
[129] *Bennett* (2012), 33.

International commitments either bar members from adopting DL measures,[130] or emphasise the importance of consensual, free cross border data trade.[131] Thus, it is submitted that DL requirements have a disruptive economic effect on free trade in the digital economy.

4.1.1.3 There were alternative GATS compliant measures available to Alabasta

57. Alabasta could have opted for alternative accountability measures, or less restrictive prescriptive measures to achieve protection.[132] Increased accountability measures hold service providers accountable for breaching domestic laws, irrespective of the location of the data or service provider, and are theoretically less trade restrictive in the absence of fixed standards.[133] These measures include privacy trust marks,[134] self-certification,[135] or origin-neutral sanction system that have been adopted by other Members.[136] Service suppliers like Wega-Flix were already accountable to stringent measures,[137] and followed privacy standards like the OECD TDF binding in countries like Allos.[138] These alternatives are less restrictive.
58. Alternatively, Alabasta could have implemented less restrictive 'prescriptive measures' on dealing with user data than DL requirements. § 4.3(b) defines personal data to include basic identifiers, sensitive information and all other digital information,[139] with no exception for encrypted data. The DL requirement also includes all the tasks of collection, recording, systematization, accumulation, storage, clarification and extraction of personal data.
59. Furthermore, Alabasta did not sufficiently consult the relevant stakeholders,[140] or consider less restrictive alternatives like MLATs.[141] Alabasta could have limited the treatment or definition of personal data, to exclude data processing services consented to by the customer.
60. The Russian Data Protection Law, which mandates DL, requires only the master copy of data to be stored locally, allowing for cross-border data transfers.[142] Therefore, Alabasta had less trade restrictive GATS compliant measures available. Thus, the measures are not 'necessary'.

4.2 The Measures do not meet the requirements of the Chapeau

61. The Chapeau of Art XIV(c) requires measures in their application to not be "arbitrary" or "unjustifiable" and not constitute a disguised restriction on trade.[143] It is submitted that in the

[130] TPP Agreement, Art. 14.13, [2–3].
[131] U.S.-E.U. Trade Principles on Information, Communication Technology Services, Art. 2; Japan-U.S. Trade Principles for ICT Services, Art. 3.
[132] *Mishra (2020),* 356-358.
[133] *Kuner* (2009), 263, 269.
[134] *Greenleaf* (2005), 1; *Mishra* (2020), 356-358.
[135] APEC, APEC Cross-Border Privacy Rules System.
[136] GDPR Art. 3(2).
[137] Clarification [6].
[138] Clarification [7].
[139] Case, [Annex-2].
[140] PR, US – Gambling, [6.528, 6.531].
[141] U.S. v. Microsoft Corporation, 584 U.S. _ 138 S.Ct. 1186 (2018).
[142] *Savelyev* (2016), 128.
[143] ABR, US – Gambling, [356]; PR, Argentina – Financial Services, [7.748].

instant case, the measures in their application are arbitrary using the Data-Flow MoUs as the basis of differentiation and the measures constitute a disguised restriction on trade in services.

62. Alabasta's Data Flow MoUs require Parties to adopt measures that protect individuals, in keeping with the OECD GAPD.[144] They do not impose any binding obligations on Parties with respect to data processing, data storage or any technical requirements.[145] Differentiating on this basis is arbitrary as such MoUs do not secure the personal data of Alabastan citizens in Allos or Karda. Service suppliers like Wega-Flix, which abided with earlier privacy legislation, are now mandated into DL, while competitive service suppliers continue to operate with the earlier protections, solely on the basis of MoUs that do not create any privacy obligations. Therefore, the measures are arbitrary in their application.

63. Disguised restrictions on trade in services amounts to disguised discrimination,[146] and includes the considerations involved in determining arbitrariness and trade restrictiveness.[147] The broad objective of determining disguised restrictions is to avoid protectionism in matters of carved out exceptions,[148] and avoid concealments of trade restrictive objects of measures that may be provisionally justifiable under a general exception.[149] The DEL, unlike the DPL, was a protectionist measure influenced by decades of digital non-competitiveness,[150] concerns over the dominance of Wega-Flix,[151] and Alabasta's current MoE linking the DEL to "protecting" the Alabastan economy.[152] Prof. Buggy's goal to take down 'big tech',[153] followed by evidently discriminatory measures that disproportionately target 'big tech' companies like Wega-Punk indicate that the measure constitutes a disguised discrimination. Consequently, the measure constitutes a disguised restriction on trade. Therefore, it is submitted that the measures in question do not meet the requirements of the Chapeau under Art. XIV(c).

V. THE OVERARCHING MEASURE IS A QUANTITATIVE RESTRICTION UNDER GATT ART. XI:1

64. Art. XI of the GATT guards against quantitative restrictions, not allowing for measures which prohibit or restrict imports/exports between countries.[154] An Art. XI:1 violation requires that there be a measure in existence, and the measure must amount to a quantitative restriction.[155]

[144] Case, [Annex-1].
[145] Case, [44]; Clarification, [7].
[146] ABR, US – Gasoline, [25].
[147] PR, Brazil – Tyres, [7.319].
[148] ABR, Korea – Alcoholic Beverages, [119]; ABR, Japan – Alcoholic Beverages [97], [16].
[149] PR, EC-Asbestos, [8.236].
[150] Case, [23].
[151] Case, [31].
[152] Case, [40].
[153] Case, [40], [57].
[154] GATT 1994, Art. XI:1.
[155] PR, Argentina – Imports Measures, [6.244].

65. From 2019 to 2022, the Respondent, through DEL and the DMA, has systematically targeted Wegapunk's services and imports, forming a single overarching measure which systematically restricts the import of Wega-Pads.
66. It is submitted that the ongoing conduct of the DMA and the tariff increase constitute a single overarching measure with systematic application **[5.1];** and the measure is a quantitative restriction under GATT Art. XI:1 **[5.2].**

5.1 The Measures Form an Overarching Measure with Systematic Application

67. Alabasta's consistent conduct against Wegapunk is akin to a 'death by thousand cuts', where the cumulative effect exceeds the impact of the individual measures taken in isolation.
68. It is submitted that the tariff increase and actions of the DMA are existing measures **[5.1.1].** Together they constitute a separate singular overarching measure **[5.1.2],** which is applied systematically by Alabasta to restrict the imports of Wega-Pads **[5.1.3].**

5.1.1 Tariff Increase and Ongoing Conduct Are Measures in Existence

69. When challenging an unwritten overarching measure, the Complainant must first establish the separate existence of individual measures, and that they are attributable to the Respondents.[156] A measure for the purpose of WTO dispute resolution is 'any act or an omission attributable to a WTO member'.[157] These challenged measures can be written or unwritten.[158]
70. The increase in tariffs is a written measure reflected in the amendment to the Customs Code.[159] Further, the actions of the DMA are unwritten measures which can be challenged as ongoing conduct.[160] A measure amounts to ongoing conduct if there is evidence of repeated application and a likelihood that the conduct will continue in the future.[161] There is evidence of repeated application since the targeted conduct against Wegapunk started from 2019 and is going on in 2022, with there being five different instances of actions against them.[162] This conduct includes bias, arbitrariness, and procedural violations. Furthermore, there is a likelihood that the conduct will continue since it is driven by an underlying policy **[demonstrated in 5.1.2.2]**.[163]

5.1.2 There Exists a Separate Singular Overarching Measure

71. The existence of a single overarching measure can be demonstrated if the component measures 'operate in combination' to form part of a 'plan or coordinated effort'.[164] They should result in

[156] PR, Argentina – Imports Measures, [6.223].
[157] PR, Russia – Railways, [5.232]; ABR, US – Corrosion-Resistant Steel Sunset Review, [81].
[158] ABR, US – Zeroing (EC), [192].
[159] Clarification, [20].
[160] PR, US – Orange Juice (Brazil), [7.176].
[161] PR, US – Orange Juice (Brazil), [7.172].
[162] Case, [48-65].
[163] PR, US – Orange Juice (Brazil), [7.172]; ABR, Argentina – Import Measures, [5.143].
[164] PR, Russia – Railway Equipment, [7.947].

a measure distinct from its components.[165] The Complainant can employ circumstantial evidence such as statements, policies, statistics, and surveys to prove the existence of the measure.[166]

72. It is submitted that the combined operation of the measures results in a measure distinct from its components **[5.1.2.1],** and they contribute to the realization of a common objective **[5.1.2.2].**

5.1.2.1 The Combined Operation Results in A Measure Distinct from Its Components

73. It is submitted that the combined operation of the measures restricts Wega-Pad imports, which is not attributable to any single measure, *i.e*., the measures have other aims. However, when taken together, they create a virtually impenetrable barrier to imports of Wega-Pads.[167]
74. Wegapunk's services, such as Wega-Flix, are integrally linked to its flagship product, Wega-Pads, with the platform serving as a driver of consumer appeal for the tablets.[168] However, the DMA has systematically obstructed Wegapunk's operations. By blocking Wegapunk's domestic acquisitions, the DMA shunted Wega-Flix's growth, diminishing its market competitiveness. Additionally, the DMA imposed restrictive measures barring large stores from selling Wega-Pads, limiting market access.[169] The DMA initiated complaints and imposed interim measures, without investigation, harming reputation and suppressing demand.
75. Each component creates an additional layer of protection impacting promotion, market access, and demand, thereby reinforcing a maze of restrictions that when combined, limits imports.[170] They decrease competitiveness of Alabasta's market, increasing costs and risks for Wegapunk.

5.1.2.2 There Is Evidence of Common Policy Objective Behind the Measure

76. The existence of a 'single' measure can be evaluated by looking at the relationship of the components with the overarching policy or framework.[171] It is submitted that the CDTS is the underlying framework behind enacting the DEL and implementing the challenged overarching measure.
77. The study which recommended the CDTS, which was commissioned by the Ministry of Economy itself, advocates for state support for domestic production of electronic goods and de-liberalisation of market access conditions for imported goods, thereby promoting import

[165] ABR, Argentina – Import Measures, [5.108]; PR, US – Export Restraints, [8.85].
[166] ABR, Russia – Railway Equipment, [5.234].
[167] PR, Indonesia – Chicken, [7.637].
[168] Case, [Footnote 4].
[169] Case, [58].
[170] PR, Indonesia – Chicken, [7.637].
[171] ABR, Argentina – Import Measures [5.126]; PR, Indonesia – Chicken, [7.679].

substitution, anti-competitive policies and ousting of 'big tech'.[172] Not only was the study headed by Professor Buggy, but when he ran for parliament, he promised to make it a reality.[173]

78. Statements and speeches made by high ranking officials have been taken as evidence of policies of the government, and can be used to demonstrate a common policy objective.[174] The link between the CDTS and the overarching measure stems from Professor Buggy himself. His statements such as "big tech is out of control☹" and "we need to be technologically competitive…time to act" right before introducing the DEL evidences his intent to implement the CDTS.[175]
79. They indicate the policy of import substitution with respect to electronic goods and the mounting of an anti-competitive attack against 'big tech' *i.e.,* Wegapunk, establishing the link between the policy objective of domestic economic growth and the trade restrictive measures.

5.1.3 The Measure Has Systematic Application

80. For there to be systematic application of a measure, it must form part of an underlying system or plan.[176] The components all form part of the underlying plan and implement the common policy objective of the CDTS, as demonstrated above **[5.1.2.2].**
81. Furthermore, specific attacks on the basis of origin are evidence of systematic application.[177] The measures disproportionately target Wegapunk while favouring domestic and regional players as evidenced by the rejected acquisition of Achilles Films and imposition of interim measures on Wegapunk and not Atlas for algorithmic boosting. Professor Buggy's statement 'big tech must play by fair rules' and his conduct of filing complaints against Wegapunk without evidence along with firing DMA members to impede Wegapunk's investigation, indicate that the DEL is being used to specifically target 'big tech' *i.e.*, Wegapunk.[178]
82. Thus, the measures constitute an overarching measure since they contribute in different degrees towards the realization of common policy objectives that guide Alabasta's policies of national economic sovereignty against 'big tech'. The components of the measure operate in conjunction, governing the importation and replacement of Wega-Pads in the Alabastan market.[179]

[172] Case, [Annex-3].
[173] Case, [25].
[174] ABR, Argentina – Import Measures, [4.14, 5.132].
[175] Case, [40].
[176] PR, Russia – Tariff Treatment, [7.374].
[177] PR, Argentina – Import Measures, [6.230].
[178] Case, [56], [57], [64].
[179] PR, EC – Seal Products, [7.26].

5.2 The Measure Is a Quantitative Restriction Under Art. Xi:1

83. It is submitted that the overarching measure amounts to a quantitative restriction on the import of Wega-Pads under Art. XI:1 since the overarching measure falls within the scope of the Art. **[5.2.1]** and it has a limiting effect on the import of Wega-Pads **[5.2.2].**

5.2.1 The Overarching Measure (And Tariffs) Falls Within the Scope Of XI:1

84. The category of 'any other measures' under Art. XI:1 is broadly defined as any measure restricting the importation, exportation, or sale for export of products.[180] Overarching measures, of the like of the challenged measure, have been held to fall under this category.[181] Although Art. XI:1 excludes duties, the measure in challenge is the singular overarching measure, of which the tariff increase is just one component.[182] In *Brazil – Retreaded Tyres (2007),* fines were included within scope of Art. XI:1, in a situation analogous to the present challenge.[183]

5.2.2 The Measure Restricts Imports of Wega-Pads Since it has a Limiting Effect

85. Restrictions in Art. XI:1 can refer to measures that create uncertainties, affect investment plans, restrict market access for imports, or make importation prohibitively costly.[184] The scope of the term 'restriction' is 'broad' and refers to any condition which has a limiting effect.[185] It is submitted that the overarching measure has made the importation more onerous than if it had not existed, thus generating a disincentive to import.[186]

86. This amplified and exacerbated limiting effect deriving from the inherent interaction of the measures examined in **[5.1.2.1]** then needs to be considered by importers when making import-related decisions.[187] In complying with the requirements, not only would the importers' ability to import be impaired, they would be materially discouraged to undertake business in the country.[188]

87. The limiting effect is not only evidenced by the design of the measure, but by statistical data as well. The volume of imports of Wega-Pads into Alabasta reduced from 2018 to 2023, even though the global market for tablets saw a 20% growth in trade flows.[189] Thus, the overarching measure has a limiting effect on imports, and is a quantitative restriction under Art. XI:1.

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[180] PR, Japan – Semi-Conductors, [104]; PR, Brazil – Retreaded Tyres, [7.372].
[181] PR, Indonesia – Import Licensing Regimes, [2.49, 2.64, 7.266, 7.270].
[182] PR, India – Autos, [7.373, 7.261]
[183] PR, Brazil – Retreaded Tyres, [7.370].
[184] PR, Colombia – Ports of Entry [7.240].
[185] PR, China – Raw Materials, [7.206].
[186] PR, India – Autos, [7.269].
[187] PR, Indonesia – Import Licensing Regimes, [7.268].
[188] Ibid.
[189] Case, [68], [69].

VI. THE QUANTITATIVE RESTRICTION IS NOT JUSTIFIABLE UNDER GATT ART. XX.

88. The Respondent has claimed that the measure in challenge is justified under GATT Art. XX. This defence is premised on the fact that the overarching measure is deemed to exist, which the respondent must accept if it seeks to justify it through this affirmative defence.

89. It is submitted that the measure does not qualify for an exception paragraph (d) under Art. XX **[6.1],** and is inconsistent with the Chapeau of Art. XX **[6.2]**.[190]

6.1 The Overarching Measure does not meet the Requirements of Art. XX(D).

90. Art. XX(d) requires that a measure be designed to secure compliance with laws and regulations not inconsistent with the GATT **[6.1.1],** and be 'necessary' to secure compliance **[6.1.2]**.[191] It is submitted that the overarching measure restricting Wega-Pad imports fails on both counts.

6.1.1 It is not Designed to Secure Compliance

91. The overarching measure is designed to systematically restrict imports of Wega-Pads. No existing law in Alabasta mandates this restriction, including the DEL. It is thereby submitted that even if individual measures are designed to secure compliance with the DEL, the challenged measure is not.

92. The true objective of the measure is not compliance with the laws.[192] As established in part **[5.1.2.1]**, the objective of the measure is to give effect to policies of national economic sovereignty, import substitution and control over 'big tech' which is masquerading as compliance.

93. Further, the examination of the 'manner' in which the measure at issue is 'applied', *i.e.,* procedural requirements, can be used to evaluate compliance.[193] The DMA's *prima facie* complaints, imposition of restrictions without evidence, delays, and biased dismissal of members fails to comply with the procedure under the DEL.[194]

6.1.2. It is not Necessary to Secure Compliance

94. The determination of a measure's necessity involves the weighing and balancing of the material contribution of the measure to the objective, the measure's trade-restrictiveness, and the reasonable alternatives.[195] 'Necessary' here lies closer to 'indispensable' rather than 'making a contribution to.'[196] DMA's delays, targeted enforcement, and systematic pattern of investigations against Wegapunk are not material contributions to the objective of the DEL.

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[190] ABR, Brazil – Retreaded Tyres, [215]; ABR, US – Gasoline, [22].
[191] ABR, Korea – Various Measures on Beef, [157].
[192] ABR, India – Solar Cells, [5.58].
[193] ABR, , Brazil – Retreaded Tyres, [230].
[194] Case, [64], [65].
[195] ABR, EC – Seal Products, [5.214].
[196] ABR, Korea – Various Measures on Beef, [161].

95. Further, the measure's trade restrictive nature is evident through its literal design to restrict imports. There are less trade-restrictive alternatives available to Alabasta. DEL's impact assessment report included alternatives to the tariff increase, such as increase of VAT on both imported and domestic goods.[197] The tariff increase was adopted on MoE's insistence and only applied to imports of electronic tablets, 42% of which are Wega-Pads.[198]
96. Parts **[4.1.1.3]** and **[2.1]** of this WS have listed alternatives for other individual measures.

6.2. The Overarching Measure Is Inconsistent with the Chapeau of Art. XX

97. The Art. XX Chapeau states that a measure must not cause arbitrary or unjustifiable discrimination, and must not amount to a disguised restriction on international trade.[199] It evaluates not only the content of the measure, but the manner in which a measure is applied.[200] It is submitted that the overarching measure fails both these requirements.

6.2.1 It causes Arbitrary and Unjustifiable Discrimination

98. Arbitrary or unjustifiable discrimination includes three elements. The measure's application must result in discrimination, the discrimination must be arbitrary or unjustifiable, and discrimination must occur between like countries.[201] Since the overarching measure only restricts imports of Wega-Pads, it discriminates by specifically targeting Wano and not others. By restricting imports, the measure discriminates between domestic and foreign goods.
99. Arbitrary discrimination is also caused when a process lacks transparency, predictability, and procedural fairness.[202] *Prima facie* complaints against Wegapunk have been accepted without merit, leading to prolonged interim measures enforced for over a year and later dismissed. The complaint against Atlas has been unjustly delayed, with new biased evidence being allowed later in the proceedings and members of the DMA being arbitrarily dismissed.[203]

6.2.2 It is a Disguised Restriction on International Trade

100. The measure must not be a trade restriction disguised as compliance.[204] The measure relates to the conditions under which Wega-Pads may be imported and placed on the Alabastan Market. As demonstrated in parts **[2.2] [4.2],** it has a limiting effect on the import of Wega-Pads under the policy objective of CDTS. Thereby, the measure is a disguised restriction to international trade.

[197] Clarification, [19].
[198] Ibid.
[199] ABR, US – Shrimp, [150].
[200] ABR, US – Gasoline, [21].
[201] ABR, US – Shrimp, [150].
[202] Ibid, [181-183].
[203] Case, [64].
[204] PR, Turkey – Pharma [7.148].

REQUEST FOR FINDINGS

For the above Reasons, Wano urges the Panel to find that:

1. The 30% minimum local content requirement mandated by Section 4.2 of the Digital Economy Law, and its application to Wanian entities is inconsistent with the National Treatment obligation of Alabasta under Art.XVII of the GATS.
2. The inconsistency of the measure contained in Section 4.2 of the Digital Economy Law is not justified by invoking the exception under Art.XIV(a) of the GATS.
3. The data localisation obligation upon acquisition of an Alabastan entity contained in Section 4.3(b), and its application to Wanian entities by Section 4.4 of the Digital Economy Law, is inconsistent with the Most Favoured Nation obligation of Alabasta under Art.II of the GATS.
4. The inconsistency of the measures contained in Sections 4.3 and 4.4 of the Digital Economy Law are not justified by invoking the exception under Art.XIV(c)(ii) of the GATS.
5. The increase in tariffs and ongoing conduct of the DMA constitutes a single overarching measure which systematically restricts imports of tablet computers (Wegapads).
6. The overarching measure is not justified by GATT Art. XX(d).