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Engeli – Measures related to
Critical Minerals

Astha
(Complainant)

VS

Engeli
(Respondent)

SUBMISSION OF THE COMPLAINANT

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List of References

I. Conventions and treaties

Short Title	Full Title and Citation
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes, Marrakesh Agreement Establishing the World Trade Organization, Annex 2, 1869 UNTS 401, 33 ILM 1226 (1994).
GATT	General Agreement on Tariffs and Trade 1994, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 UNTS 187, 33 ILM 1153 (1994).
Import Licensing Agreement	Agreement on Import Licensing Procedures, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 436 (1994).

TRIMs Agreement	Agreement on Trade-Related Investment Measures, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 186 (1994).
VCLT	Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, 8 ILM 679 (1969).
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, 1867 UNTS 154, 33 ILM 1144 (1994).

II. WTO Reports

A. Appellate Body Reports

Short Title	Full Title and Citation
<i>Argentina – Financial Services</i>	<i>Argentina – Measures Relating to Trade in Goods and Services</i> , WT/DS453/AB/R, adopted on 9 May 2016.
<i>Argentina – Footwear (EC)</i>	<i>Argentina – Safeguard Measures on Imports of Footwear</i> , WT/DS121/AB/R, adopted on 12 January 2000.
<i>Argentina – Import Measures</i>	<i>Measures Affecting the Importation of Goods</i> , WT/DS438/AB/R; WT/DS444/AB/R; WT/DS445/AB/R, adopted on 26 January 2015.
<i>Brazil – Retreaded Tyres</i>	<i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/AB/R, adopted on 17 December 2007.
<i>Canada – Renewable Energy</i>	<i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector</i> , WT/DS412/AB/R, adopted on 24 May 2013.
<i>China – Publications and Audiovisual Products</i>	<i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , WT/DS363/AB/R, adopted on 19 January 2010.
<i>Colombia – Textiles</i>	<i>Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear</i> , WT/DS461/AB/R, adopted on 22 June 2016.
<i>EC – Asbestos</i>	<i>European Communities – Measures Affecting Asbestos and Products Containing Asbestos</i> , WT/DS135/AB/R, adopted on 5 April 2001.
<i>EC – Seal Products</i>	<i>European Communities – Measures Prohibiting the Importation and Marketing of Seal Products</i> , WT/DS400/AB/R; WT/DS401/AB/R, adopted on 18 June 2014.

<i>India – Patents (US)</i>	<i>Patent Protection for Pharmaceutical and Agricultural Chemical Products, WT/DS50/AB/R, adopted on 16 January 1998.</i>
<i>India – Solar Cells</i>	<i>India – Certain Measures Relating to Solar Cells and Solar Modules, WT/DS456/AB/R, adopted on 14 October 2016.</i>
<i>Indonesia – Import Licensing Regimes</i>	<i>Indonesia – Importation of Horticultural Products, Animals and Animal Products, WT/DS477/AB/R; WT/DS478/AB/R, adopted on 22 November 2017.</i>
<i>Japan – Alcoholic Beverages II</i>	<i>Japan – Taxes on Alcoholic Beverages, WT/DS8/AB/R; WT/DS10/AB/R; WT/DS11/AB/R, adopted on 1 November 1996</i>
<i>Korea – Dairy</i>	<i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products, WT/DS98/AB/R, adopted on 12 January 2000.</i>
<i>Korea – Radionuclides</i>	<i>Korea – Import Bans, and Testing and Certification Requirements for Radionuclides, WT/DS495/AB/R, adopted on 26 April 2019.</i>
<i>Korea – Various Measures on Beef</i>	<i>Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161/AB/R; WT/DS169/AB/R, adopted on 10 January 2001.</i>
<i>Mexico – Taxes on Soft Drinks</i>	<i>Mexico – Tax Measures on Soft Drinks and Other Beverages, WT/DS308/AB/R, adopted on 24 March 2006.</i>
<i>Turkey – Textiles</i>	<i>Turkey – Restrictions on Imports of Textile and Clothing Products, WT/DS34/AB/R, adopted on 19 November 1999.</i>
<i>US – FSC (Article 21.5 – EC)</i>	<i>United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities, WT/DS108/AB/RW, adopted on 29 January 2002.</i>
<i>US – Gambling</i>	<i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/AB/R, adopted on 20 April 2005.</i>
<i>US – Gasoline</i>	<i>United States – Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted on 20 May 1996.</i>
<i>US – Offset Act (Byrd Amendment)</i>	<i>United States – Continued Dumping and Subsidy Offset Act of 2000, WT/DS217/AB/R; WT/DS234/AB/R, adopted on 27 January 2003.</i>
<i>US – Shrimp</i>	<i>United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, adopted on 6 November 1998.</i>
<i>US – Shrimp</i>	<i>United States – Import Prohibition of Certain Shrimp and Shrimp Products –</i>

<i>(Article 21.5 – Malaysia)</i>	<i>Recourse to Article 21.5 of the DSU by Malaysia, WT/DS58/AB/RW, adopted on 21 November 2001.</i>
<i>US – Softwood Lumber IV</i>	<i>United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada, WT/DS257/AB/R, adopted on 17 February 2004.</i>
<i>US – Tuna II (Article 21.5 – Mexico)</i>	<i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Recourse to Article 21.5 of the DSU by Mexico, WT/DS381/AB/RW, adopted on 3 December 2015.</i>

B. Panel Reports

Short Title	Full Title and Citation
<i>Argentina – Financial Services</i>	<i>Argentina – Measures Relating to Trade in Goods and Services, WT/DS453/R, adopted on 9 May 2016.</i>
<i>Canada – Autos</i>	<i>Canada – Certain Measures Affecting the Automotive Industry, WT/DS139/R; WT/DS142/R, adopted on 19 June 2000.</i>
<i>Canada – FIRA</i>	<i>GATT, Canada – Administration of the Foreign Investment Review Act, L/5504 – 30S/140, adopted on 7 February 1984.</i>
<i>Canada – Renewable Energy</i>	<i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector, WT/DS412/R, adopted on 24 May 2013.</i>
<i>Canada – Wheat Exports and Grain Imports</i>	<i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain, WT/DS276/R, adopted on 27 September 2004.</i>
<i>China – Auto Parts</i>	<i>China – Measures Affecting Imports of Automobile Parts, WT/DS339/R; WT/DS340/R; WT/DS342/R, adopted on 12 January 2009.</i>
<i>China – Publications and Audiovisual Products</i>	<i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/R, adopted on 19 January 2010.</i>
<i>China – Rare Earths</i>	<i>China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, WT/DS431/R; WT/DS432/R; WT/DS433/R, adopted on 29 August 2014.</i>
<i>Colombia – Ports</i>	<i>Colombia – Indicative Prices and Restrictions on Ports of Entry, WT/DS366/R,</i>

<i>of Entry</i>	adopted on 20 May 2009.
<i>EC – Bananas II</i>	GATT, <i>EEC – Import Regime for Bananas</i> , DS38/R, unadopted, circulated on 11 February 1994.
<i>EC – Bananas III</i>	<i>European Communities – Regime for the Importation, Sale and Distribution of Bananas</i> , WT/DS27/R/USA, adopted on 25 September 1997.
<i>EU – Energy Package</i>	<i>European Union and its Member States – Certain Measures Relating to the Energy Sector</i> , WT/DS476/R, adopted on 21 September 2018.
<i>EU – Palm Oil (Malaysia)</i>	<i>European Union and Certain Member States – Certain Measures Concerning Palm Oil and Oil Palm Crop-based Biofuels</i> , WT/DS600/R, adopted on 26 April 2024.
<i>India – Autos</i>	<i>India – Measures Affecting the Automotive Sector</i> , WT/DS146/R; WT/DS175/R, adopted on 5 April 2002.
<i>India – Solar Cells</i>	<i>India – Certain Measures Relating to Solar Cells and Solar Modules</i> , WT/DS456/R, adopted on 14 October 2016.
<i>Indonesia – Autos</i>	<i>Indonesia – Certain Measures Affecting the Automobile Industry</i> , WT/DS54/R; WT/DS55/R; WT/DS59/R; WT/DS64/R, adopted on 23 July 1998.
<i>Indonesia – Raw Materials</i>	<i>Indonesia – Measures Relating to Raw Materials</i> , WT/DS592/R, Appeal notification 8 December 2022.
<i>Japan – Film</i>	<i>Japan – Measures Affecting Consumer Photographic Film and Paper</i> , WT/DS44/R, adopted on 22 April 1998.
<i>Japan – Semi-Conductors</i>	<i>Japan – Trade in Semi-conductors</i> , L/6309 - 35S/116, adopted on 4 May 1988.
<i>Russia – Railway Equipment</i>	<i>Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof</i> , WT/DS499/R, adopted on 5 March 2019.
<i>Turkey – Rice</i>	<i>Turkey – Measures Affecting the Importation of Rice</i> , WT/DS334/R, adopted on 22 October 2007.
<i>US – Customs User Fee</i>	GATT, <i>United States – Customs User Fee</i> , L/6264 - 35S/245, adopted on 2 February 1988.
<i>US – Renewable Energy</i>	<i>United States – Certain Measures Relating to the Renewable Energy Sector</i> , WT/DS510/R, unadopted, circulated on 27 June 2019.

<i>US – Section 337 Tariff Act</i>	GATT, <i>United States Section 337 of the Tariff Act of 1930</i> , L/6439 - 36S/345, adopted on 7 November 1989.
<i>US – Tuna I (Mexico)</i>	GATT, <i>United States – Restrictions on Imports of Tuna</i> , DS21/R - 39S/155, unadopted, circulated on 3 September 1991.

III. Secondary Sources

Short Title	Full Title and Citation
Al-Obaidi et al. (2014)	Karam M. Al-Obaidi, Mazran Ismail and Abdul Malek Abdul Rahman, ‘Passive Cooling Techniques through Reflective and Radiative Roofs in Tropical Houses in Southeast Asia: A Literature Review’ (2014) 3(3) <i>Frontiers of Architectural Research</i> 283.
Li & Ren (2011)	Yan Li and Shuxia Ren (eds), ‘Architectural Coatings’ in <i>Building Decorative Materials</i> (Woodhead Publishing 2011).
Lambourne & Strivens (1999)	R. Lambourne and T. A. Strivens (eds), <i>Paint and Surface Coatings: Theory and Practice</i> (2nd edn, Woodhead Publishing 1999).
Van den Bossche & Zdouc (2022)	Peter Van den Bossche and Werner Zdouc, <i>The Law and Policy of the World Trade Organization</i> (5th edn, Cambridge University Press 2022).

IV. Other Materials

Short Title	Full Title and Citation
Case	Measures related to Critical Minerals, The John H. Jackson Moot Court Competition, 24th Edition (2025-2026).
Clarification Questions	Clarification Questions and Answers, The John H. Jackson Moot Court Competition, 24th Edition (2025-2026).
Committee on Treaty of Rome	Report on the Treaty Establishing the European Economic Community, L/778, adopted on 29 November 1957.
EC – Cariforum FTA	Economic Partnership Agreement between the CARIFORUM States and the European Community and its Member States, WT/REG255/N/1/Rev.1, entered into force on 16 October 2008.
EFTA – Lebanon FTA	Free Trade Agreement between the EFTA States and Lebanon, WT/REG224/N/1, entered into force on 1 June 2007.

EU Forced Labour Regulation	Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937.
OECD Due Diligence Guidance	OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris.
OECD Guidelines for MNEs	OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris.
Singapore Declaration	Singapore Ministerial Declaration, WT/MIN(96)/DEC, adopted on 13 December 1996.
Transparency Mechanism	Transparency Mechanism for Regional Trade Agreements, Decision of 14 December 2006, WT/L/671; Transparency Mechanism for Regional Trade Agreements, Decision of 14 December 2010, WT/L/806.
Turkey – Syria FTA	Free Trade Agreement between Turkey and Syria, WT/REG225/N/1, entered into force on 1 January 2007.
Working Party – EC/Finland FTA	Report of the Working Party on the Agreements Between the European Communities and Finland, L/4064, adopted on 14 June 1974.
Working Party – EFTA	Report of the Working Party on the European Free Trade Association, L/1235, adopted on 4 June 1960.

List of Abbreviations

Abbreviation	Full form
AB	Appellate Body
ABR	Appellate Body Report
Art.	Article
CMPA	Critical Minerals Partnership Agreement
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
ESG	Environmental, Social and Governance
EU	European Union
FTA	Free Trade Area
GATT	The General Agreement on Tariffs and Trade 1994
GPA	Government Procurement Agreement
HS	Harmonized System
IFDA	Investment Facilitation for Development Agreement
ILO	International Labour Organisation
MITI	Ministry of Trade and Industry
MOC	Ministry of Commerce
OECD	Organisation for Economic Co-operation and Development
PPM	Process and Production Method
PR	Panel Report
PWH	Public Works and Housing
TRIM	Trade-Related Investment Measure
VCLT	Vienna Convention on the Law of Treaties 1969
WTO	World Trade Organization

Statement of Facts

1. Astha, Engeli and Rubina, located in a region called the Tropics, are Members of the WTO and the ILO. Engeli and Astha are founding Members of the WTO and parties to the IFDA, but not the GPA. Engeli is a developed, high-income country and a member of the OECD, while Astha is a developing country. Rubina is a least-developed country that gained independence from Engeli in 2001 and became a WTO Member on 1 April 2025.
2. After the discovery in June 2011 of the Tropics' largest reserve of barite in Rubina, barite was designated a 'critical mineral' by Astha, Engeli and Rubina. In May 2017, Engeli and Rubina established a joint mineral extraction and processing facility in Rubina, allocating 65% of the facility's annual output to Rubina and 35% to Engeli. Astha also holds a number of barite mining reserves, the total size of which is smaller than the reserves in Rubina, and also relies on imports, including from Rubina, to meet domestic demand.
3. In July 2022, Engeli and Rubina concluded the CMPA, aimed at securing Engeli's long-term access to critical minerals while reinforcing Rubina's mineral-sector development. The CMPA, later incorporated into Engelian law through Executive Order 1 of 2022, eliminates all import duties on raw and processed critical minerals traded bilaterally, whereas Engeli otherwise applies a 5% *ad valorem* tariff on such products. It further provides that certain Rubinian minerals are treated as originating in Engeli, including for government procurement. In addition, the CMPA introduces electronic customs clearance and requires the elimination of restrictive measures affecting trade in critical minerals between Engeli and Rubina. Between January and August 2025, Rubina's barite exports to Astha declined by 25%, while exports to Engeli remained stable.
4. Barium sulphate, the principal component of barite, can be utilised to develop cooling paint, which is designed to reduce solar heat absorption and energy use. *Luminex*, an Engeli-based private chemical company with a manufacturing facility in Rubina, was the first to develop a barium sulphate-based cooling paint. *Parisa*, an Astha-based private paint manufacturer, also developed a barium sulphate-based 'thinner and lighter' cooling paint in 2024.
5. In January 2023, Engeli adopted Decree 1 of 2023, launching the relocation of its national capital to Sunshine City and instructing ministries to prioritise domestic goods and services in the procurement process. The PWH Ministry subsequently issued Directive 2 of 2023, requiring the use of domestic construction materials in public building projects.
6. *Raya Developer*, an Engelian company contracted by the PWH Ministry, was tasked with constructing half of the key buildings in Sunshine City. In March 2024, it issued open tenders

for various construction materials, including paints. The criteria for paints included a local content requirement under which bids submitted by suppliers using 30% or more domestic materials or domestic manufacturing were treated as if priced 25% lower, which effectively amounted to a price preference. Despite *Parisa* submitting the more competitive bid (USD 12 per gallon compared to *Luminex*'s USD 18), *Raya Developer* selected *Luminex*. This outcome diverged from its previous procurement practice, where *Parisa* had been selected as the paint supplier for school and hospital construction projects in Engeli.

7. In Saparua, Astha's largest barite-producing area and the location of *Parisa*'s facility, artisanal mining is a long-standing community practice that supports approximately 700 families. In accordance with this local tradition aimed at preserving traditional knowledge and skills within the community, children and adolescents customarily assist their parents in mining from the age of 15, while continuing to attend school. *Parisa* has supported the community through a development programme aimed at supporting the local education system.
8. In March 2025, Engeli adopted Directive 3 of 2025, requiring imports of products containing barium sulphate to be accompanied by a responsible supply chain certification confirming the absence of child labour. Only private sector entities recognised by the Engelian government may issue this certification. Under Engeli's Customs risk management system, additional scrutiny is applied to areas with 'known child labour concerns', regardless of whether a certification has been submitted. When consignments are classified as 'high risk', Engeli's MOC and Ministry of Labour take up to one month to provide verification, whereas 'low risk' consignments are expedited within a week. Goods failing verification must be re-exported at the exporter's expense or are destroyed after three months. *Parisa*'s 'thinner and lighter' cooling paint shipments are consistently classified as 'high risk', leading to significant costs and operational burdens.
9. Between July and September 2025, Astha sought consultations with Engeli pursuant to DSU Art. 4 and GATT Art. XXIII:1. After consultations failed, Astha requested the establishment of a Panel to the DSB on 15 September 2025.

Summary of Arguments

I. The requirement to prioritise domestic materials is inconsistent with GATT Art. III:4

- Due to the strong governmental nexus, the requirement to prioritise domestic materials constitutes a requirement affecting the internal sale of paints, as compliance is necessary to obtain and retain advantages conferred by the government and is operationalised through the domestic content price preference that steers procurement towards domestic paints.
- *Luminex's* and *Parisa's* paints are like products: they share similar physical properties, have the same principal end uses, and fall under the same HS subheading, placing them in a competitive relationship.
- The measure accords less favourable treatment to imported paints, which are ineligible for the 25% price preference. Absent this favourable treatment, *Luminex's* paint would have exceeded the applicable price range.
- The measure also qualifies as a trade-related investment measure under paragraph 1(a) of the TRIMs Illustrative List, which further confirms the violation of GATT Art. III:4.

II. The price preference for domestic content cannot be exempted under GATT Art. III:8(A)

- In the case of the procurement by the PWH Ministry, the government is procuring buildings, while the alleged discrimination concerns building materials and paint; these products are not in a competitive relationship.
- In the case of the procurement by *Raya Developer*, the purchases are made by a privately owned enterprise acting under a commercial contract, not by a governmental agency exercising public authority.
- There is no guarantee that the buildings are intended exclusively for governmental use, and thus the procurement cannot be characterised as being for 'governmental purposes' and 'not with a view to commercial resale'.

III. The CMPA and Executive Order 1 of 2022 are inconsistent with GATT Art. I:1

- The CMPA measures are covered by GATT Art. I:1, and critical minerals from Rubina and Astha are 'like products' as they are physically indistinguishable, interchangeable and serve identical end-uses. Furthermore, the CMPA grants advantages to Rubina that are not granted immediately and unconditionally to Astha.

IV. The CMPA and Executive Order 1 of 2022 cannot be justified under GATT Art. XXIV

- The CMPA suffers from procedural defects, as Rubina was not a WTO Member at the time

of its conclusion, no waiver was sought, and Engeli failed to notify the agreement to the WTO as required by GATT Art. XXIV:7 and GATT Art. XXIV:10.

- The CMPA does not liberalise ‘substantially all trade’, since it is limited to the critical minerals sector and excludes major areas of bilateral trade, including agriculture.
- The restrictive measures at issue are not necessary for the formation of an FTA, as less trade-restrictive alternatives, such as tariff liberalisation without legal fictions concerning origin, were reasonably available.

V. Directive 3 of 2025 is inconsistent with GATT Art. XI:1

- The Customs risk management for barite-containing products, qualifies as an import licence or, in any event, as ‘any other measure’ restricting importation, as entry into Engeli is made conditional upon prior certification and discretionary verification by the authorities.
- By systematically classifying Astha’s consignments as ‘high risk’ and subjecting them to month-long verification delays, with the possibility of re-exportation or even destruction, the measures have a limiting effect.

VI. Directive 3 of 2025 cannot be justified under GATT Art. XX(a) or XX(d)

- With respect to GATT Art. XX(a), the measure seeks to protect public morals by regulating alleged child labour practices occurring outside Engeli’s jurisdiction, but is not ‘necessary’, as the work in Saparua consists of light, artisanal activities by adolescents that do not constitute harmful child labour. Less trade-restrictive alternatives, such as a fair and transparent verification system with due process guarantees, were reasonably available.
- With respect to GATT Art. XX(d), since Engeli has failed to identify any specific, binding domestic laws or regulations with which compliance is being secured, and the mentioned international agreements do not reach the required degree of specificity.
- The measure fails the chapeau of GATT Art. XX, as it is applied in an arbitrary and unjustifiable manner. It lacks transparency, appeal mechanisms, and consideration of Astha’s local conditions, and operates as a disguised restriction on trade designed to favour Engeli’s own processing industry and secure supply chains for its new capital city.

Measures at Issue

Measure 1: The requirement to prioritise domestic materials for the construction of Sunshine City, as established by Decree 1 of 2023, Directive 2 of 2023, and Contract 5/2024-PWH, and implemented *inter alia* through a 25% price preference for paint suppliers using at least 30% domestic materials or manufacturing.

Measure 2: The CMPA and Executive Order 1 of 2022, conferring preferential treatment on critical minerals extracted and processed in Rubina.

Measure 3: The Customs risk management under Directive 3 of 2025, classifying imports containing barium sulphate based on risk and subjecting ‘high risk’ consignments to additional administrative procedures beyond standard Customs processes.

Legal Pleadings

I. THE REQUIREMENT TO PRIORITISE DOMESTIC MATERIALS IS INCONSISTENT WITH GATT ART. III:4

1. A measure violates GATT Art. III:4 when it applies internal laws, regulations and requirements to imported products, according them less favourable treatment than ‘like’ domestic products. The TRIMs Illustrative List offers further indication for establishing a breach of Art. III:4.¹
2. The requirement to prioritise domestic materials is inconsistent with GATT Art. III:4 as it satisfies the three cumulative conditions.² It constitutes a requirement affecting the internal sale and use of *Parisa*’s imported paint [1.1]; *Luminex*’s cooling paint and *Parisa*’s imported paint are like products [1.2]; and *Parisa*’s paint is accorded less favourable treatment [1.3]. Additionally, the requirement corresponds to a TRIM under Paragraph 1(a) of the TRIMs Illustrative List [1.4].

1.1. The requirement to prioritise domestic materials is a law, regulation or requirement affecting the internal sale of paints

3. For a measure to fall within the scope of GATT Art. III:4, it must qualify as a law, regulation or requirement affecting *inter alia* the internal sale or use of products. The requirement to prioritise domestic materials is a law, regulation or requirement [A], affecting the internal sale of products [B].

A. The requirement to prioritise domestic materials is a law, regulation or requirement under GATT Art. III:4

¹ TRIMs Art. 2.2.

² ABR, Korea – Various Measures on Beef, [133].

4. According to DSU Art. 3.2, the Panel should clarify the provisions of the covered agreements in accordance with customary rules of interpretation, which can be found in VCLT Art. 31 and 32.³ Under VCLT Art. 31(1), the terms of the treaty must be given their ordinary meaning in their context and in light of their object and purpose. As confirmed by the AB, dictionaries may assist in identifying the ordinary meaning.⁴ A law is ‘a rule, usually made by a government, that is used to order the way in which a society behaves’.⁵ The panel in *Canada – FIRA* held that ‘regulations’ mean ‘mandatory rules applying across the board’, while ‘requirements’ include those an enterprise voluntarily accepts to obtain an advantage from the government.⁶
5. Decree 1 of 2023 contains mandatory rules applying across the board to all ministries involved with the construction of Sunshine City. Directive 2 of 2023 likewise lays down binding obligations of general application applicable to all contractors engaged in the construction of public buildings and utilities. Accordingly, Decree 1 and Directive 2 constitute regulations.
6. In any event, compliance with the requirement to prioritise domestic materials is a condition to obtain and retain the advantage of being awarded the Sunshine City construction contract. This is made explicit in Contract 5/2024-PWH, specifically in clause 4.2, which requires *Raya Developer* to align its procurement with Decree 1 of 2023 and Directive 2 of 2023. Clause 4.3 reiterates the obligation to prioritise the use of domestic goods, and clauses 4.3 and 4.4 establish monthly reporting duties on procurement and sourcing decisions. Taken together, these provisions make continued compliance a condition for retaining the advantage, and avoiding its withdrawal or other contractual consequences. Hence, the requirement to prioritise domestic materials is a requirement under GATT Art. III:4.
7. That qualification does not change merely because the measure is operationalised by a private contractor. As stated by the panel in *Japan – Film*, the term ‘requirement’ is intended to be broad, and in certain cases encompasses private action.⁷ In order to determine whether private action amounts to such a requirement, a governmental nexus must be established.⁸ The Panel in *Canada – Autos* confirmed that such nexus may arise through a broad range of government action effective in influencing the conduct of private parties.⁹
8. *Raya Developer*’s price preference for domestic paints is the operationalization of the Engelian

³ DSU Art 3.2.; ABR, US – Gasoline, 16-17; ABR, Japan – Alcoholic Beverages, 10; ABR, India – Patents, [46]; ABR, Korea – Dairy, [80].

⁴ ABR, US – Offset Act (Byrd Amendment), [248]; ABR, US – Softwood Lumber IV, [58]-[59].

⁵ Cambridge English Dictionary, ‘Law’, <https://dictionary.cambridge.org>, accessed 4

December 2025.

⁶ PR, Canada – FIRA, [5.4]-[5.6]; PR, EEC – Bananas II, [146].

⁷ PR, Japan – Film, [10.376].

⁸ PR, Canada – Autos, [10.107].

⁹ Ibid.

government's requirement to prioritise the use of domestic materials for the construction of Sunshine City. Taken together, Decree 1 of 2023, Directive 2 of 2023 and Contract No. 5/2024-PWH, specifically in clause 4.2, 4.3, and 4.4, create a nexus that requires contractors to implement domestic content requirements in their procurement criteria. Hence, the price preference for domestic paints is the operationalization of the measure, and due to the strong governmental nexus forms part of this measure, which qualifies as a requirement.

B. The requirement to prioritise domestic materials affects the sale and use of products

9. The AB has clarified that the term 'affecting' has a broad scope of application.¹⁰ A requirement affects the sale or use of products when it alters the competitive conditions in the market.¹¹ In *India – Autos*, the Panel held that this is the case when a measure creates incentives that steer purchasers toward domestic products.¹²
10. The procurement criteria for paints for Sunshine City, operationalizing the requirement, apply a price preference under which bids for domestic paints are evaluated as if priced 25% lower, while bids for imported paints receive no such adjustment. This mechanism steers *Raya Developer* toward selecting domestic paints. Imported paints are therefore placed at a competitive disadvantage in the procurement process. The measure thus affects the conditions of the internal sale and use of paints.

1.2. Domestic and imported paints are like products

11. *Luminex's* paint and *Parisa's* paint are presumed to be like products because the only distinguishing factor is origin [A]. In any event, they are like products [B].

A. *Luminex's* and *Parisa's* paints are presumed to be like products

12. Several Panels have ruled that likeness is presumed in cases where origin is the exclusive basis for the difference in treatment, a practice recognised by the AB.¹³
13. *Raya Developer's* procurement criteria draw a *de jure* distinction by granting a price preference only to paint suppliers that use at least 30% domestic materials or domestic manufacturing. The only factor determining eligibility is origin, so the paints at issue are presumed to be like products within the meaning of GATT Art. III:4.

B. In any event, the paints are like products

¹⁰ ABR, US – FSC (Article 21.5 – EC), [208-209].

¹¹ PR, US – Renewable Energy, [7.161].

¹² PR, India – Autos, [7.307]; PR, China – Auto Parts, [4.55].

¹³ ABR, Korea – Radionuclides, [5.231]; PR, Canada – Wheat Exports and Grain Imports,

[6.164]; PR, Turkey – Rice, [7.214]; PR, China – Publications and Audiovisual Products [7.1446]; PR, Russia – Railway Equipment, [7.921]; PR, US – Renewable Energy, [7.145].

14. In any event, the paints are like if they are in a competitive relationship, which is assessed on a case-by-case basis under the four general criteria for likeness: (i) the properties, nature, and quality of the products; (ii) their end uses; (iii) consumers' perceptions and behaviour; and (iv) tariff classification.¹⁴
15. With regard to the properties, nature, and quality of the products, both products are architectural coating paints containing the same core physical properties. Each fulfils the decorative and protective functions expected of interior and exterior building paint, namely enhancing the appearance of buildings while protecting structural materials from environmental degradation and prolonging their service life.¹⁵ *Luminex's* cooling feature stems from barium sulphate, a standard functional extender, filler and pigment widely used in the paint industry.¹⁶ In this instance, it is employed to enhance solar reflectance.¹⁷ This constitutes an incremental form of product differentiation within the market, where coatings can have multiple functional variants.¹⁸ It does not alter the product's properties in a way that prevents a competitive relationship. Additionally, the specific paint formula is simply one of several compositional solutions available to achieve the same required performance characteristics in response to a given market need.¹⁹ Differences in formulation, including the use of reflective pigments, therefore do not sever the competitive relationship, but represent alternative technical solutions for satisfying the same essential end-use.
16. With regard to the products' end uses, the tender confirms that both products were evaluated as interchangeable solutions for the same end use: coating and protecting interior and exterior building surfaces.²⁰ This is the function for which both paints were submitted and evaluated. The cooling effect of *Luminex's* paint is a supplementary performance benefit, not a distinct end use. It remains a paint used to coat and protect buildings, just like *Parisa's* product. Both paints therefore address the same demand and are used interchangeably for the same end use.
17. Tariff classification is an additional indicator of likeness.²¹ Although the Harmonized System (HS) is not part of the WTO Agreement, the AB recognised that the 'context' to be considered under VCLT Art. 31 is not limited to the treaty text. It may also include instruments relating to

¹⁴ ABR, EC – Asbestos, [101].

¹⁵ DSU Art. 13(2); Yan Li, 'Architectural Coatings' (ch 13) in Yan Li and Shuxia Ren (eds), *Building Decorative Materials* (Woodhead Publishing 2011), 284–324.

¹⁶ Case, [6]; R Lambourne and T A Strivens (eds), *Paint and Surface Coatings: Theory and Practice* (2nd edn, Woodhead Publishing 1999) 13.

¹⁷ Paint and Surface Coatings (n 19) 290; Karam M

Al-Obaidi, Mazran Ismail and Abdul Malek Abdul Rahman, 'Passive Cooling Techniques through Reflective and Radiative Roofs in Tropical Houses in Southeast Asia: A Literature Review' (2014) 3(3) *Frontiers of Architectural Research* 286.

¹⁸ Ibid 332.

¹⁹ Ibid.

²⁰ Case, [14]–[15].

²¹ ABR, Japan – Alcoholic Beverages II, 22.

the treaty within the meaning of VCLT Art. 31(2).²² The HS is such an instrument because all parties to this dispute follow it.²³

18. The HS classification system distinguishes paints according to the nature of the medium in which their pigments are dispersed: non-aqueous (3208) or aqueous (3209). Differences in pigment are therefore irrelevant. As established in [§15], barium sulphate is a pigment or extender, not a medium, so its presence or amount in *Luminex*'s paint has no bearing on the HS heading. There is therefore no basis to assume that the two paints would fall under different headings. Hence, the paints are in a competitive relationship and constitute like products.

1.3. Imported paints are accorded less favourable treatment

19. Less favourable treatment implies a lack of effective equality of opportunities.²⁴ The operationalisation by private contractors of the requirement to prioritise domestic materials leads to less-favourable treatment. For instance, the price preference for paint places foreign suppliers at a substantial disadvantage in the bidding process, as their bids do not benefit from the 25% price preference granted to domestic bids. The measure therefore eliminates effective equality of opportunities for like imported goods. Hence, *Parisa*'s paint was treated less favourably.

1.4. TRIMs Illustrative List Paragraph 1(a) substantiates the GATT Art. III:4 breach

20. Under VCLT Art. 31(2), the context for interpreting a treaty consists first and foremost of its text, which includes its preamble and annexes.²⁵ That text must be interpreted so that no clause is rendered inutile or redundant.²⁶ The TRIMs Agreement and the GATT are both part of Annex 1A of the WTO Agreement.²⁷ As confirmed by the AB, they form an inseparable package of rights and disciplines.²⁸
21. TRIMs Agreement Art. 2.2 cites the Illustrative List as examples of non-compliance with the national treatment standards of GATT Art. III:4.²⁹ The AB confirmed that satisfying the elements of Paragraph 1(a) of the Illustrative List of the TRIMs Agreement entails a violation of GATT Art. III:4.³⁰ The TRIMs Agreement therefore constitutes relevant context for the interpretation of GATT Art. III:4. Interpreting GATT Art. III:4 in a way that allows a TRIM listed in the Illustrative List to be found consistent with Art. III:4 would render that list

²² ABR, EC – Chicken Cuts, [195].

²³ Clarification Question 76, Section I.

²⁴ GATT PR, US – Section 337 Tariff Act, [5.11].

²⁵ DSU Art. 3.2.

²⁶ ABR, US – Gasoline, 23; ABR, Japan – Alcoholic Beverages, 12; ABR, Korea – Dairy, [80].

²⁷ WTO Agreement Art. II:2; ABR, Korea – Dairy, [81].

²⁸ ABR, Argentina – Footwear, [81].

²⁹ ABR, Canada – Renewable Energy/Feed-in Tariff Program, [5.26].

³⁰ Ibid, [5.24].

meaningless.

22. If the requirement to prioritise domestic materials qualifies as a TRIM within the meaning of TRIMs Agreement Art. 1 [A]; and falls within the Illustrative List Paragraph 1(a) [B], this confirms the conclusion that such a measure is prohibited by GATT Art. III:4.³¹

A. The requirement to prioritise domestic materials is covered by TRIMs Agreement Art. 1

23. TRIMs Agreement Art. 1 provides that the Agreement applies to ‘investment measures related to trade in goods’. In *Canada – Renewable Energy/Feed-In Tariff Program*, the Panel held that a measure aiming to encourage investment in local production constitutes an ‘investment measure’ and noted that investment-oriented objectives further supported that finding.³² The requirement to prioritise domestic materials, as implemented through procurement criteria such as the paint tender’s price preference, encourages suppliers to invest in local production to qualify for that advantage.³³ It thus constitutes an investment measure within the meaning of TRIMs Agreement Art. 1.

24. As to whether the measure is ‘related to trade in goods’, the Panel in *Indonesia – Autos* held that measures that favour domestic products over imported products necessarily relate to trade.³⁴ Here, the measure itself explicitly calls for the prioritisation of domestic materials. Paint suppliers obtain a price preference only if at least 30% of their inputs are domestic, directly favouring domestic products. Therefore, the measure is ‘trade-related’. In conclusion, the measure concerned is an investment measure related to trade in goods covered by TRIMs Agreement Art. 1.

B. The requirement to prioritise domestic materials falls under the Illustrative List Paragraph 1(a)

25. Illustrative List Paragraph 1(a) covers measures conditioning an advantage on the use of domestic products. In *Indonesia – Autos*, the Panel confirmed that such inconsistency arises even when the local content requirement is not binding as such, provided that the advantage is conditional on the use of domestic content.³⁵ Here, the advantage of a price preference is conditional on the prioritisation of domestic products. The contested measure therefore is covered by Illustrative List Paragraph 1(a).

26. In conclusion, the measure is a TRIM covered by TRIMs Agreement Art. 1 and falls under the

³¹ ABR, *Canada – Renewable Energy/Feed-in Tariff Program*; PR, *India – Solar Cells*, [7.54].

³² PR, *Canada – Renewable Energy/Feed-in Tariff Program*, [7.109]-[7.110].

³³ Contract No. 5/2024-PWH, [4.2].

³⁴ PR, *Indonesia – Autos*, [14.82].

³⁵ *Ibid*, [14.90].

Illustrative List Paragraph 1(a). This substantiates a breach of GATT Art. III:4.

II. THE REQUIREMENT TO PRIORITISE DOMESTIC MATERIALS CANNOT BE EXEMPTED UNDER GATT ART. III:8(A)

27. For a measure to be covered by the derogation in GATT Art. III:8, it must be shown that (i) the measure constitutes ‘laws, regulations or requirements governing the procurement of products purchased’; (ii) it involves procurement ‘by governmental agencies’; (iii) the procurement is undertaken ‘for governmental purposes’; and (iv) the procurement is ‘not with a view to commercial resale or with a view to use in the production of goods for commercial sale’.³⁶

28. In the event that Engeli would rely on the procurement of buildings by the PWH Ministry, the laws, regulations or requirements do not govern the procurement of products purchased [2.1]. In the event that Engeli would rely on the procurement of paints by *Raya Developer*, the procurement is not ‘by a governmental agency’ [2.2]. In both cases, the procurement is neither ‘for governmental purposes’ nor ‘with a view to commercial resale or with a view to use in the production of goods for commercial sale’ [2.3].

2.1. The requirement to prioritise domestic materials does not govern the procurement of products purchased

29. The AB has confirmed that the phrase ‘products purchased’ must be interpreted in light of the term ‘products’ in GATT Art. III:4. Accordingly, it refers to products that are subject to the alleged discrimination, or to products that are in a competitive relationship with them.³⁷

30. The foreign products discriminated against are foreign construction materials and, more specifically, foreign paints. The products purchased are buildings, such as government offices and public housing complexes.³⁸ Construction materials and paints are not in a competitive relationship with buildings. Therefore, the requirement to prioritise domestic materials does not govern the procurement of products purchased.

2.2. The procurement of paints is not procurement by a governmental agency

31. As shown in [§7], the governmental nexus needed for a measure to constitute a ‘requirement’ under GATT Art. III:4 must be interpreted broadly. In contrast, procurement ‘by a governmental agency’ under GATT Art. III:8(a) must be construed more narrowly. As the AB clarified in *Canada – Renewable Energy/Feed-In Tariff Program*, governmental agencies are

³⁶ PR, Canada – Renewable Energy/Feed-In Tariff Program, [7.122].

³⁷ ABR, Canada – Renewable Energy/Feed-In Tariff

Program, [5.63]; ABR, India – Solar Cells, [5.24].

³⁸ Case, [13].

entities performing functions of government and acting for or on behalf of government.³⁹

32. *Raya Developer* was not created by statute, nor entrusted with any delegation of public authority. Its procurement therefore remains commercial conduct carried out in its own name and independently. This is confirmed by Contract No. 5/2024-PWH itself: the assessment and choice of sources is made by the contractor and must only be reported *ex post*.⁴⁰ Non-compliance with the contract triggers ordinary contractual remedies (notice, suspension of payment, termination), not the exercise of governmental powers, underscoring that the Ministry's relationship with *Raya* is governed by contract law rather than public law.⁴¹ Therefore, *Raya Developer* is not performing functions of government nor acting for or on behalf of the government, and its purchases are not procurement by a 'governmental agency'.

2.3. The procurement is neither for governmental purposes nor with a view of commercial resale or to use in the production of goods for commercial sale

33. The phrase 'for governmental purposes' refers to products purchased for the use of government, consumed by government, or provided by government to recipients in the discharge of its public functions. Contract No. 5/2024-PWH concerns the construction of half of the key buildings in Sunshine City. This includes, but is not limited to government office buildings and public housing complexes.⁴² The buildings outside these categories, and the paint that will be used to paint them, are not products purchased 'for governmental purposes'.

34. Furthermore, it is implausible that Engeli will retain ownership of such a significant portion of the city's buildings on a purely non-commercial basis. No guarantees are given that these buildings will remain outside the commercial market. In the absence of evidence excluding commercial exploitation, the procurement must be regarded as being with a view to commercial resale or use in the production of goods for commercial resale.

35. In conclusion, Engeli cannot invoke the derogation provided for in Art. III:8(a).

III. THE CMPA AND EXECUTIVE ORDER 1 OF 2022 ARE INCONSISTENT WITH GATT ART. I:1

36. Engeli's preferential treatment of critical minerals extracted and processed in Rubina, as granted under the CMPA, was codified into Engeli's domestic legislation by Executive Order 1 of 2022.⁴³ The CMPA contains several components, including (i) tariff preferences for critical minerals extracted and processed in Rubina, (ii) an origin rule deeming Rubinian critical

³⁹ ABR, Canada – Renewable Energy/Feed-In Tariff Program, [5.60], [5.61].

⁴⁰ Contract No. 5/2024-PWH, [4.3].

⁴¹ Clarification Question 69, Section I.

⁴² Case, [13].

⁴³ Clarification Question 53, Section I.

minerals to originate in Engeli, (iii) commitments on customs procedures, (iv) commitments to eliminate restrictions affecting trade in critical minerals, and (v) ESG cooperation.⁴⁴

37. A measure violates GATT Art. I:1 when it grants an advantage to products of one country and fails to accord that advantage immediately and unconditionally to like products of all other Members. The components of the CMPA are covered by GATT Art. I:1 [3.1]; affect like critical minerals [3.2]; confer an advantage on Rubinian critical minerals [3.3]; and fail to extend that advantage immediately and unconditionally to like products from other Members [3.4].

3.1. The preferential treatment is covered by GATT Art. I:1

38. GATT Art. I:1 covers customs duties and, in addition, rules and formalities in connection with importation.⁴⁵ The latter must be interpreted broadly.⁴⁶ The first component of the CMPA, the elimination of customs duties, is by definition an element concerning ‘customs duties’. The other components under the CMPA qualify as ‘rules and formalities in connection with importation’. The second component, the origin rule under which minerals extracted in Rubina and/or processed in the joint facility under Engeli’s allocated share are legally deemed to ‘originate in Engeli’, directly affects how imports are classified and treated for the purposes of Engeli’s import regime. The third component, the simplified electronic customs clearance, provides Rubinian consignments with a more efficient and expedited border process. The fourth, a commitment to eliminate restrictive measures affecting trade in the sector, necessarily encompasses prospective conditions of importation. Fifth, to the extent that ESG standards must be met before importation, they also qualify as rules in connection with importation. Therefore, each of the components of the CMPA falls within the scope of GATT Art. I:1.

3.2. The critical minerals from Astha and Rubina are like

39. Likeness is presumed when differential treatment between imports is based solely on origin.⁴⁷ Given that the CMPA only considers critical minerals from Rubina to originate in Engeli, there is a distinction solely based on (Rubinian) origin. Therefore, critical minerals from Rubina and Astha are presumed to be like.
40. Nonetheless, the minerals may also be considered like under the four-criteria test, considering physical properties, end-uses, consumers’ tastes and habits and tariff classifications.⁴⁸ First, the critical minerals concerned have the same physical characteristics, as they are

⁴⁴ Case, [22]-[23]; Clarification Question 47, Section I.

⁴⁵ PR, EC – Bananas III, [7.107].

⁴⁶ Ibid.

⁴⁷ PR, Russia – Railway Equipment, [7.898]-[7.899].

⁴⁸ ABR, EC – Asbestos, [98]-[99]; PR, EU – Energy Package, [7.576].

indistinguishable; they have the same composition regardless of origin. Second, they serve identical end-uses across the same industrial applications. Third, there are no distinct consumers' tastes or habits; industrial consumers view Asthan and Rubinian minerals as interchangeable, and final consumers cannot differentiate between critical minerals from different origins when used interchangeably as fungible inputs.⁴⁹ There is no evidence that labour practices in Saparua regarding barite have had any impact on consumer's perceptions or the competitive relationship of barite. The identical end-use and consumers' habits are evidenced by *Luminex*, an Engelian industrial consumer of barite, using a mix of barite from different sources for its cooling paint.⁵⁰ Finally, they fall under the same tariff classification because the HS codes for critical minerals do not differentiate based on origin. Hence, the critical minerals concerned are in a competitive relationship and thus like products.

41. Any consideration given to non-product-related PPMs would interfere with the sovereignty of States to regulate the activities occurring in their territory and would lead to barriers to trade, especially for developing countries, an approach the GATT Panel in *US – Tuna I* cautioned against.⁵¹ In any event, there is no evidence that labour practices in Saparua regarding barite have had any impact on the competitive relationship of all critical minerals concerned.

3.3. The CMTA grants an advantage to products originating in Rubina

42. GATT Art. I:1 refers to 'any advantage, favour, privilege or immunity granted', a notion interpreted broadly in case law.⁵² According to the Panel in *EC – Bananas III*, an advantage exists when a measure grants more favourable competitive opportunities.⁵³
43. First, the elimination of import duties permits Rubinian critical minerals to enter duty-free, while Engeli continues to apply a 5% *ad valorem* tariff to all other Members. Second, the CMTA's rule of origin allows Rubinian products to qualify as 'domestic' for tariff and even procurement purposes, an advantage not available to other Members' products. Third, simplifying customs procedures and eliminating restrictive measures facilitate market access, whereas other exporters face greater administrative burdens. Finally, the CMTA's bilateral ESG commitments enhance predictability and tailored compliance pathways specifically for Rubina; other Members are afforded no comparable arrangement. Hence, each of these measures grants more favourable competitive opportunities to Rubinian products vis-à-vis like

⁴⁹ PR, Mexico – Taxes on Soft Drinks, [8.74].

⁵⁰ Case, [16].

⁵¹ GATT Panel, *US – Tuna I*, [5.9]; D. SIFONIOS (2018) 9-12.

⁵² PR, *US – Customs User Fee*, [122]; PR, *Colombia – Ports of Entry*, [7.340], [7.345].

⁵³ PR, *EC – Bananas III*, [7.239].

Asthan products, thereby granting an advantage.

3.4. The advantage is not accorded immediately and unconditionally to other Members

44. The advantage must be granted immediately and unconditionally to all like products. The term ‘unconditionally’ means that any condition imposed must preserve equal competitive opportunities for like products of all Members.⁵⁴ The advantages are available exclusively to critical minerals originating in Rubina. No other Member can qualify for the above-mentioned advantages without first obtaining a bilateral agreement with Engeli. Access to the advantage therefore depends entirely on Engeli’s discretionary decision to negotiate and conclude such an agreement. Such uncertain access cannot preserve equal competitive opportunities for like products of all Members. Engeli’s stated intention to ‘expand’ the CMPA framework does not cure this defect. A hypothetical, future extension, contingent on Engeli’s unilateral choices, does not constitute an immediate and unconditional extension of the advantage. Therefore, the advantages are not granted immediately and unconditionally to all Members.
45. In conclusion, the CMPA is covered by GATT Art. I:1; the critical minerals concerned are like products; and the measures confer an advantage on critical minerals from Rubina not granted immediately and unconditionally to Astha. Hence, the CMPA is in breach of GATT Art. I:1.

IV. THE CMPA AND EXECUTIVE ORDER 1 OF 2022 CANNOT BE JUSTIFIED UNDER GATT ART. XXIV

46. Engeli bears the burden of proving that the contested measure is justified by GATT Art. XXIV.⁵⁵ It must first be established that the alleged FTA is between Members, pursuant to GATT Art. XXIV:5, and was duly notified under Art. XXIV:7. The AB has further clarified that a Member invoking Art. XXIV must show the following: (i) the measure was introduced upon the formation of an FTA that complies with Art. XXIV:8(b) and 5(b), and (ii) the measure was necessary for the formation of that FTA.⁵⁶ The CMPA satisfies none of these conditions. It was concluded while Rubina was not a Member [4.1] and the agreement has never been notified to the Members [4.2]; hence, GATT Art. XXIV does not apply. In any case, the CMPA does not comply with Art. XXIV:8(b) [4.3] and multiple measures fail the necessity test [4.4].

4.1. GATT Art. XXIV does not apply as Rubina was not a Member at the time the CMPA was signed

47. According to GATT Art. XXIV:5, an FTA has to be concluded between the territories of Members. An exception may only apply if the FTA is approved by a two-thirds majority

⁵⁴ ABR, EC – Seal Products, [5.88].

⁵⁵ ABR, Turkey – Textiles, [58]; PR, Turkey –

Textiles [9.57], [9.58].

⁵⁶ ABR, Turkey – Textiles, [58].

pursuant to GATT Art. XXIV:10. Although Rubina was not a Member at the time of signing, Engeli did not request such approval. The CMPA is thus not an FTA in the sense of Art. XXIV.

4.2. The CMPA was not notified pursuant to GATT Art. XXIV:7(a)

48. Even if the Panel were to recognise a GATT Art. XXIV exception with regard to FTAs with non-Members, this provision remains subject to the notification obligation laid down in Art. XXIV:7(a). In practice, FTAs involving non-Members have consistently been notified.⁵⁷ General Council decisions clarify that this should occur as early as possible, and no later than three months after its entry into force.⁵⁸ More than three years after its conclusion, Engeli has still not notified the CMPA.⁵⁹ Hence, the notification requirement is not met.

4.3. The CMPA does not meet the requirements of GATT Art. XXIV:8(b)

49. GATT Art. XXIV:8(b) defines an FTA as one in which ‘duties and other restrictive regulations of commerce are eliminated on substantially all the trade’. This condition must be satisfied ‘upon the formation’ of the FTA.⁶⁰ Therefore, it cannot be met retroactively through subsequent changes in trade flows. There is no consensus on the meaning of ‘substantially all the trade,’ however GATT working parties agree that this assessment comprises both quantitative and qualitative components.⁶¹ On the former, Members have suggested numbers of 80% or more.⁶² On the latter, the Preamble to the Understanding on the Interpretation of GATT Art. XXIV, which forms part of the relevant context for interpretation under VCLT Art. 31(2), confirms that excluding a major sector reduces an agreement’s contribution to the expansion of world trade.⁶³ An exclusion of a major sector, no matter what percentage of current trade it constitutes, would therefore be contrary to the spirit of GATT Art. XXIV and the GATT as a whole.⁶⁴

50. On the quantitative aspect, the CMPA removes trade barriers only with respect to trade in critical minerals. This represented 70% of total trade between Engeli and Rubina in 2022, the year the CMPA was signed.⁶⁵ This falls below the indicative thresholds, meaning the CMPA

⁵⁷ EC – Cariforum, WTO Doc. WT/REG255/N/1/Rev.1 (16 October 2008); EFTA – Lebanon, WTO Doc. WT/REG224/N/1 (30 August 2017); Turkey – Syria, WTO Doc. WT/REG225/N/1 (26 October 2023).

⁵⁸ WTO Doc. WT/L/671 (18 December 2006) [2]; WTO Doc. WT/L/806 (16 December 2010) [1].

⁵⁹ Clarification Question 13, Section I.

⁶⁰ ABR, Turkey – Textiles, [58].

⁶¹ ABR, Turkey – Textiles, [48]; Working Party, ‘Report of the Working Party on the European Free Trade Association’ (4 June 1960) GATT Doc L/1235, [48], [49].

⁶² Committee on Treaty of Rome, ‘Report on the

Treaty Establishing the European Economic Community’ (20 December 1957) GATT Doc L/778, Annex 4, [29], [34]; Working Party, ‘Report of the Working Party on the European Free Trade Association’ (4 June 1960) GATT Doc L/1235, [48].

⁶³ DSU Art. 3.2; Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, Preamble.

⁶⁴ Working Party, ‘Report of the Working Party on the Agreements Between the European Communities and Finland’ (1 August 1974) GATT Doc L/4064, [12].

⁶⁵ Clarification Question 87, Section I.

did not cover ‘substantially all trade’ upon its formation. Were the Panel to decide that the requirement can be assessed using subsequent trade flows, the CMPA remains non-compliant. Although the critical minerals’ share of bilateral trade increased from 70% in 2022 to 80% in 2024, this coincided with the commencement of the Sunshine City construction in 2023, which led to a temporary surge in demand for construction materials. Engeli should not be regarded as having satisfied the ‘substantially all the trade’ requirement solely on the basis of a temporary, project-driven spike in trade flows, particularly seeing as the spike was caused, as is our submission, by a WTO-incompatible trade arrangement.

51. On the qualitative aspect, the CMPA concerns only one sector. The remaining bilateral trade consists of the agricultural sector.⁶⁶ Moreover, both Engeli’s and Rubina’s agricultural sectors are expanding. Current projections indicate that agricultural trade could triple over the next decade.⁶⁷ As noted above, the exclusion of this entire sector is problematic irrespective of its quantitative share. Consequently, the CMPA fails to satisfy the quantitative and qualitative components. It therefore cannot be regarded as an FTA within the meaning of Art. XXIV.

4.4. Additionally, the CMPA fails the necessity test

52. Pursuant to GATT Art. XXIV:5, a measure is justified only if its absence would prevent the formation of the FTA.⁶⁸ The AB has clarified that the existence of less trade-restrictive alternatives rebuts necessity.⁶⁹
53. Most CMPA components are not necessary, as less trade-restrictive alternatives are available. First, tariff integration can be achieved through a rule of origin conferring Rubinian origin on critical minerals extracted or substantially processed in Rubina without reclassifying products as domestic in Engeli. Unlike the CMPA’s approach, such a rule would establish a genuine territorial link to Rubina, rather than a legal fiction, and avoid the conferral of domestic status, including for preferential treatment in government procurement compared to foreign products. Second, electronic customs clearance could be implemented equally for all trading partners. Third, the CMPA’s commitment to eliminate restrictive measures affecting trade in critical minerals could likewise be implemented on the same basis for all trading partners. Fourth, cooperation on ESG standards does not require origin-based differentiation either. The CMPA’s sustainability objectives can be pursued through the ILO and other existing multilateral frameworks.⁷⁰ Therefore, the CMPA fails the necessity test.

⁶⁶ Clarification Question 15, Section II.

⁶⁷ Ibid.

⁶⁸ ABR, Turkey – Textiles, [58].

⁶⁹ Ibid, [62].

⁷⁰ WTO Agreement, Preamble.

54. In conclusion, the CMTA was concluded while Rubina was not a Member and was never notified under GATT Art. XXIV:7(a). The CMTA neither constitutes an FTA within the meaning of GATT Art. XXIV:8(b) nor satisfies the necessity requirement of GATT Art. XXIV:5. Engeli therefore cannot rely on GATT Art. XXIV to justify its breach of GATT Art. I:1.

V. ENGELI'S CUSTOMS RISK MANAGEMENT UNDER DIRECTIVE 3 IS INCONSISTENT WITH GATT ART. XI:1

55. GATT Art. XI:1 prohibits quantitative restrictions on imports, including quotas, import licences, and any other measures. Only a governmental measure falls within the ambit.⁷¹ Engeli's Customs risk management under Directive 3 functions as an import licence, and alternatively, as 'any other measure' [5.1] that restricts the importation of products [5.2].

5.1. The Customs risk management constitutes an import licence, and in any event any other measure

56. As shown in [§20], another WTO Agreement may be relied upon as context for interpreting the GATT. To interpret the term 'import licence', the Panel should refer to the Agreement on Import Licensing Procedures, as it contains a definition in Art. 1.1. An import licensing system exists where importation is conditioned on administrative requirements beyond ordinary customs formalities.⁷² The Engelian Government adopted Directive 3, a governmental measure mandating importers, upon entry into Engeli, to present a responsible supply chain certificate for products containing barium sulphate, and subjecting consignments from designated 'high risk' territories to additional verification. By conditioning importation on compliance with requirements beyond standard customs procedures, it establishes an import licensing system.

57. In the alternative, 'any other measure' is a comprehensive category covering all measures that restrict the importation of products.⁷³ Engeli's Customs risk management restricts importation by subjecting already certified consignments from 'high risk' territories to lengthy and opaque verification procedures, thereby delaying, impeding, and ultimately restricting the importation of goods. It therefore constitutes 'any other measure' under GATT Art. XI:1.

5.2. The Customs risk management constitutes a restriction on the importation of products containing barium sulphate under GATT Art. XI:1

58. A measure constitutes a quantitative restriction when it restricts imports. A 'restriction' exists

⁷¹ ABR, US – Corrosion-Resistant Steel Sunset Review, [81]; PR, Turkey – Textiles, [9.63]; PR, Argentina – Hides and Leather, [11.18].

⁷² Import Licensing Agreement Art. 1.1.

⁷³ PR, Japan – Semi-Conductors, [104].

when two cumulative conditions are met.⁷⁴ The Customs risk management satisfies both: it is a measure ‘on’ importation [A], and it has limiting effects on the importation of products [B].

A. The Customs risk management is a measure ‘on’ importation

59. The measure must apply in relation to the process of importing goods.⁷⁵ Importers of products containing barium sulphate must undergo customs risk assessment before their goods can enter Engeli. Consignments classified as ‘high risk’ are withheld at the border pending administrative clearance. Directive 3 therefore operates ‘on’ importation.

B. The Customs risk management has limiting effects

60. Limiting effects need not be quantified and may be inferred from a measure’s design, architecture and revealing structure.⁷⁶ Any past or potential limiting effect may be challenged.⁷⁷ The Customs risk management has a limiting effect on importation by design. While ‘low risk’ consignments are granted immediate entry, ‘high risk’ consignments face prolonged verification procedures lasting an additional month.⁷⁸ The verification process is discretionary and opaque, as it relies on undefined risk criteria and lacks procedural safeguards. Engeli only refers to open-ended considerations such as ‘known concerns’, convention participation, and supply-chain position, without clarifying how they are applied.⁷⁹ Furthermore, failed verification may result in re-exportation or destruction of goods.⁸⁰ The combined effect of these elements demonstrates the limiting effect of Engeli’s risk management, and in any event, the potential limiting effect on the importation by its design, architecture, and structure.

61. In conclusion, Engeli’s Customs risk management under Directive 3 constitutes a measure that operates on importation and has limiting effects on the importation of products. It therefore amounts to a quantitative restriction inconsistent with Art. XI:1.

VI. ENGELI’S CUSTOMS RISK MANAGEMENT UNDER DIRECTIVE 3 CANNOT BE JUSTIFIED UNDER GATT ART. XX(A) OR ART. XX(D)

62. GATT Art. XX provides justification for departures from GATT obligations if two cumulative conditions are met: (i) the measure must be provisionally justified under one of the specific subparagraphs; and (ii) the measure must be applied in conformity with the requirements of the chapeau.⁸¹ The Customs risk management does not meet the requirements of either

⁷⁴ PR, EU and Certain Member States – Palm Oil (Malaysia), [7.971].

⁷⁵ PR, EU and Certain Member States – Palm Oil (Malaysia), [7.972].

⁷⁶ ABR, Argentina – Import Measures, [5.217].

⁷⁷ PR, Indonesia – Raw Materials, [7.74].

⁷⁸ Case, [36].

⁷⁹ Clarification Question 14, Section I.

⁸⁰ Case, [36].

⁸¹ ABR, US – Gasoline, p. 22; ABR, US – Shrimp, [119]–[120]; ABR, Brazil – Retreaded Tyres, [139].

subparagraph a) [6.6.1] or subparagraph d) [6.6.2], nor the requirements of the chapeau [6.6.3].

6.1. The Customs risk management does not meet the conditions of GATT Art. XX(a)

63. For a measure to be provisionally justified under Art. XX(a), (i) it must be designed and (ii) necessary to protect public morals.⁸² The Customs risk management does not fall within the territorial scope [A]. In any event, it is not necessary to protect public morals [B].

A. The Customs risk management does not fall within the scope of GATT Art. XX(a)

64. GATT Art. XX(a) cannot be applied extraterritorially. Extraterritorial enforcement of public morals would upset the balance of rights and obligations under the WTO's multilateral trading system.⁸³ Directive 3 targets alleged child labour occurring outside Engeli's territory. Hence, it seeks to protect public morals extraterritorially and falls outside the scope of art. XX(a).

B. The Customs risk management is not necessary to protect public morals

65. Determining necessity requires a process of weighing and balancing a series of factors: the importance of the objective, the contribution of the measure to that objective, and the trade-restrictiveness of the measure, followed by a comparison with possible alternative measures.⁸⁴

A measure is not necessary if its trade-restrictiveness outweighs its contribution, and if reasonably available, less trade-restrictive alternatives provide an equal level of protection.⁸⁵

66. Regarding the contribution to the objective, import restrictions alone do not address the underlying drivers of youth participation in artisanal mining and, without any accompanying developmental measures, risk undermining community livelihoods and incentivising illicit extraction.⁸⁶ This is particularly relevant, as Astha has explained that the practice does not prevent schooling and that *Parisa* has operated a community development programme in Saparua since 2021. Hence, the measure does not make a contribution to the objective.

67. In terms of trade-restrictiveness, Engeli operates two parallel systems: a certification system and a risk-based verification system. This dual structure increases the measure's trade-restrictiveness, as the verification system disregards valid certification, subjecting exporters to a prolonged verification process that undermines their competitiveness. Additionally, Directive 3 lacks a review mechanism, raising due-process concerns. If verification fails, Engeli may even destroy the exported goods, amounting to the destruction of an important critical mineral.

68. Furthermore, the risk classification relies on non-specific criteria, including the presence of

⁸² ABR, Colombia – Textiles, [5.67].

⁸³ GATT PR, US – Tuna I, [5.27].

⁸⁴ ABR, Brazil – Retreaded Tyres, [178]; ABR, China — Publications and Audiovisual Products,

[242]; ABR, EC – Seal Products, [5.169].

⁸⁵ ABR, US – Gambling, [306]-[307]; ABR, Argentina – Financial Services, [6.234].

⁸⁶ Case, [34].

‘known child-labour concerns’.⁸⁷ This creates a significant risk that consignments from areas without child-labour issues may still be denied entry, illustrated by the classification of *Parisa*’s ‘thinner and lighter’ cooling paint as ‘high risk’. The *Saparua* practice involves light, non-hazardous tasks carried out by adolescents aged 15 and above, who have completed compulsory schooling and work under parental supervision. Their activities concern *inter alia* basic extraction from shallow deposits and transporting light loads.⁸⁸ Under the ILO Conventions, such work does not meet the definition of ‘hazardous work’.⁸⁹ It does not jeopardise health, safety, or morals.⁹⁰ Additionally, it complies with the minimum-age condition.⁹¹ Hence, the activity cannot be considered child labour. Engeli’s ‘known concern’ is therefore not substantiated, and the measure is unnecessarily trade-restrictive.

69. A less trade-restrictive alternative is reasonably available: a certification and verification system with procedural safeguards. Currently, exporters who face a ‘high risk’ label have no recourse to challenge the decision. By contrast, the EU’s Forced Labour Regulation offers a risk-based assessment with clear rights of defence for operators.⁹² A similar system would eliminate the arbitrary elements but still achieve the same level of protection.
70. Another less trade-restrictive alternative would be to improve the certification system by introducing objective criteria (such as a defined minimum working age). Importers would have a clear understanding of what is required for certification and could rely on market access if they meet the standard. This alternative would maintain the same level of protection while removing the need for a trade-restrictive verification system. Consequently, Engeli’s Customs risk management system is not necessary.

6.2. The Customs risk management does not meet the conditions of GATT Art. XX(d)

71. For a measure to be provisionally justified under GATT Art. XX(d), it must be designed to secure compliance with laws or regulations not inconsistent with the GATT [A], and necessary to secure such compliance [B].⁹³ The Customs risk management satisfies neither.

A. It is not designed to secure compliance with laws or regulations

72. Regarding the term ‘laws or regulations’, the AB has held that this includes rules deriving from international agreements that have been incorporated into the domestic legal system.⁹⁴ This is

⁸⁷ Clarification Question, [14], Section I.

⁸⁸ Clarification Question 7, Section II; Case, [30].

⁸⁹ ILO Convention No. 182 Art. 3(d).

⁹⁰ ILO Convention No. 138 Art. 3.

⁹¹ ILO Convention No. 138 Art. 2(3)

⁹² Regulation (EU) 2024/3015 of the European

Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937 [2024] OJ L 3015, Art 21.

⁹³ ABR, Korea – Various Measures on Beef, [157].

⁹⁴ ABR, Mexico – Taxes on Soft Drinks, [79].

only the case when they constitute a rule of conduct or course of action, which must be derived from their specificity and normativity.⁹⁵ Additionally, a mere listing of legal instruments falls short of the identification standard of ‘laws or regulations’.⁹⁶

73. Engeli invoked the OECD Due Diligence Guidance, the IFDA, the ILO Minimum Age Convention, and the ILO Worst Forms of Child Labour Convention.⁹⁷ Engeli ratified the mentioned ILO Conventions through Labour Act No. 1 of 2007.⁹⁸
74. First, the OECD Due Diligence Guidance is not incorporated into Engeli’s domestic legal system. It is a non-binding set of recommendations intended to help enterprises to understand and implement the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.⁹⁹ These Guidelines themselves mention that observance is voluntary and not legally enforceable.¹⁰⁰ Hence, no rule of conduct or course of action can be derived from the document.
75. Second, the IFDA is also not incorporated and does not address the prevention of child labour specifically, meaning no specific rule of conduct or course of action can be derived from it.
76. Third, Engeli has failed to identify the specific obligations contained in the ILO Conventions on Child Labour it is aiming to secure compliance with. Even if the Panel were to consider that Engeli is not required to identify specific obligations, the two ILO Conventions formulate broad programmatic commitments and leave Members significant discretion as to the means of implementation. Therefore, the two ILO Conventions do not reach the required level of specificity and normativity and fall outside the category of ‘laws and regulations’.
77. In any event, the AB has ruled that the ‘laws and regulations’ a Member invokes under Art. XX(d) do not include obligations of another Member under an international agreement.¹⁰¹ The measure is directed at alleged child labour in other Members’ territory, and therefore does not fall under ‘laws and regulations’. Hence, the Customs risk management is not designed to secure compliance with ‘laws and regulations’.

B. It is not necessary to secure compliance with laws or regulations

78. The AB has stated that assessing ‘necessity’ under GATT Art. XX(d) requires a weighing and balancing of a series of factors, including possible alternative measures.¹⁰² The Customs risk management imposes substantial administrative burdens and delays, while not contributing to

⁹⁵ ABR, India – Solar Cells, [5.141].

⁹⁶ PR, Indonesia – Import Licensing Regimes, [7.581].

⁹⁷ Case, [40].

⁹⁸ Clarification Question, [71], Section I.

⁹⁹ OECD Due Diligence Guidance, p 9.

¹⁰⁰ OECD Guidelines for Multinational Enterprises

on Responsible Business Conduct, p 12.

¹⁰¹ ABR, Mexico – Taxes on Soft Drinks, [69].

¹⁰² ABR, Brazil - Retreaded Tyres, [178]; ABR, China — Publications and Audiovisual Products, [242]; ABR, EC – Seal Products, [5.169]; ABR, Korea – Various Measures on Beef, [162]-[164].

the enforcement of any domestic rule. The reasonably available less trade-restrictive alternatives discussed in [§69-70] also apply here. Hence, the Customs risk management cannot be considered necessary.

6.3. The Customs risk management fails to satisfy the chapeau of GATT Art. XX

79. The chapeau sets out a two-tier test to assess whether the measure constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail [A] or a disguised restriction on international trade [B].¹⁰³ Directive 3 constitutes both.

A. The Customs risk management constitutes arbitrary and unjustifiable discrimination between countries where the same conditions prevail

80. The AB has held that arbitrary or unjustifiable discrimination requires three elements: (i) the measure's application must result in discrimination, which (ii) must be arbitrary or unjustifiable, and (iii) must occur between countries where the same conditions prevail.¹⁰⁴

81. Engeli consistently classifies Astha's consignments of 'thinner and lighter' cooling paint as 'high risk', triggering additional burdens. This occurs despite evidence that the Saparua practice involves no child labour, as established in [§68]. By contrast, consignments from other Members with the same certification are routinely labelled 'low risk', and face none of these burdens. Therefore, this differential application of the measure is discriminatory.

82. Arbitrary and unjustifiable discrimination occurs when the measure's application lacks transparency, predictability, and procedural fairness, and when a measure is applied in a rigid and inflexible manner without taking into account different circumstances in the territories of other Members.¹⁰⁵ Engelian Customs authorities exercise broad discretion without clear criteria. Astha's consignments are classified as 'high risk' with no further explanation, citing only so-called 'known child-labour concerns' and offering no opportunity to challenge the classification. Moreover, Astha's MITI informed Engeli that adolescents' involvement in artisanal mining in Saparua reflects a longstanding local tradition that does not prevent children from attending school. It highlighted *Parisa's* community development programme and warned against abruptly terminating sourcing.¹⁰⁶ Engeli offers no inquiry into whether its regulatory expectations are appropriate for Astha's circumstances, including its status as a developing country. Despite being informed of these context-specific factors, Engeli applied Directive 3 inflexibly. Consequently, this results in arbitrary and unjustifiable discrimination.

¹⁰³ ABR, US – Gasoline, p. 23; ABR, US – Shrimp, [160].

¹⁰⁴ ABR, US – Shrimp, [150].

¹⁰⁵ Ibid, [164], [177], [181]-[183].

¹⁰⁶ Case, [34].

83. The discrimination must arise between countries where the same conditions prevail. The determination of relevant conditions must be guided by the policy objectives pursued under the applicable subparagraphs, namely the protection of public morals under Art. XX(a) and securing compliance with laws and regulations prohibiting child labour under Art. XX(d).¹⁰⁷ The relevant conditions here concern the existence of substantiated child-labour risks, and the evidence furnished by exporters to demonstrate compliance. As established in [§68], the Saparua artisanal practice does not involve child labour. Moreover, Astha has provided credible information concerning continued school attendance, community safeguards, and due-diligence measures. By contrast, consignments from other Members are classified as ‘low risk’ where exporters present comparable compliance information. Astha and those Members therefore operate under the same relevant conditions, yet Engeli applies its risk-management system to Astha in a materially different and more onerous manner.
84. In conclusion, Directive 3 is applied in a manner that constitutes arbitrary and unjustifiable discrimination between countries where the same conditions prevail.

B. The Customs risk management is a disguised restriction on international trade

85. The AB has held that a ‘disguised restriction on international trade’ refers to a measure that, in fact, conceals the pursuit of a trade restrictive objective.¹⁰⁸ Members have expressly recognised that labour standards must not be used for protectionist purposes.¹⁰⁹ Engeli aims to secure preferential access to critical minerals and reduce reliance on foreign suppliers through the CMPA, which treats foreign barite as of Engelian origin under certain conditions, thereby circumventing the risk management. Furthermore, by focusing exclusively on child labour while disregarding other labour rights concerns, it distorts the balance of a so-called responsible supply chain.¹¹⁰ Directive 3 therefore operates as a disguised restriction on international trade.
86. In conclusion, the Customs risk management does not meet the requirements of subparagraph a) or subparagraph d), and in any event does not meet the requirements of the chapeau. Hence, Engeli cannot rely upon Art. XX to justify its breach of Art. XI:1.

¹⁰⁷ ABR, EC – Seal Products, [5.299-5.300].

¹⁰⁸ ABR, US – Gasoline, p. 25; PR, EC – Asbestos, [8.236].

¹⁰⁹ Ministerial Conference, Singapore Ministerial Declaration WT/MIN(96)/DEC [4].

¹¹⁰ Case, [37].

Request for Findings

For the above-mentioned reasons, Engeli respectfully requests the Panel to find that:

1. The price preference for domestic content in the procurement of paint for the Sunshine City project, together with Decree 1 of 2023, Directive 2 of 2023 and Contract 5/2024-PWH, is inconsistent with GATT Art. III:4.
2. The inconsistency of the measures referred to in paragraph 1 cannot be exempted by GATT Art. III:8(a).
3. Engeli's preferential treatment of critical minerals extracted and processed in Rubina under the CMPA and Executive Order 1 of 2022 is inconsistent with GATT Art. I:1.
4. The inconsistency of the measures referred to in paragraph 3 cannot be justified under GATT Art. XXIV.
5. Engeli's Customs risk management regime established under Directive 3 of 2025, designating Astha's 'thinner and lighter' cooling paint as 'high risk' and subjecting it to additional administrative procedures beyond standard Customs processes, constitutes a quantitative restriction inconsistent with GATT Art. XI:1.
6. The inconsistency of the measures referred to in paragraph 5 cannot be justified under GATT Art. XX(a) or Art. XX(d).

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John H. Jackson Moot Court Competition
24th edition

**Engeli – Measures related to
Critical Minerals**

Astha
(Complainant)

VS

Engeli
(Respondent)

SUBMISSION OF THE RESPONDENT

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GATT	General Agreement on Tariffs and Trade 1994, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 UNTS 187, 33 ILM 1153 (1994).
ILO Convention No. 138	Minimum Age Convention, 1973 (No. 138), Convention concerning Minimum Age for Admission to Employment, 1015 UNTS 297, adopted on 26 June 1973.
ILO Convention No. 182	Worst Forms of Child Labour Convention, 1999 (No. 182), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 2133 UNTS 161, adopted on 17 June

	1999.
IFDA	Agreement on Investment Facilitation for Development, made public on 25 February 2024.
TRIMS	Agreement on Trade-Related Investment Measures, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 UNTS 186 (1994).
Understanding on Article XXIV	Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 UNTS 187, 33 ILM 1153 (1994).
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Case	Measures related to Critical Minerals, The John H. Jackson Moot Court Competition, 24th Edition (2025-2026).
Clarification Questions	Clarification Questions and Answers, The John H. Jackson Moot Court Competition, 24th Edition (2025-2026).
Decision No 1/95 (EC–Turkey Association Council)	Decision No 1/95 of the EC–Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union [1996] OJ L 35/1.
Factual presentation on Israel – Colombia FTA	WTO Secretariat, Free Trade Agreement between Israel and Colombia (Goods and Services): Factual Presentation by the Secretariat, WT/REG468/1, 6 February 2024.
Factual presentation on Korea – Turkey FTA	WTO Secretariat, Free Trade Agreement between the Republic of Korea and Turkey (Goods): Factual Presentation by the Secretariat, WT/REG339/1/Rev.1, 22 April 2014.
Factual presentation on Turkey – Serbia	WTO Secretariat, Free Trade Agreement between Turkey and Serbia (Goods): Factual Presentation by the Secretariat, WT/REG288/1, 29 June 2011.

FTA	
OECD Due Diligence Guidance	OECD (2016), OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition, OECD Publishing, Paris.
OECD Guidelines for MNEs	OECD (2023), OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, OECD Publishing, Paris.
OECD Practical Actions on Child Labour	OECD, Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains (2017).
WTO Secretariat – RTA Provisions Glossary	WTO Secretariat, RTA Provisions Glossary, World Trade Organization (Geneva), available at the WTO RTA Database.

V. Online Resources

Short Title	Full Title and Citation
Ratifications of ILO Convention No. 138	ILO, Ratifications of C138, www.normlex.ilo.org/dyn/nrmlx_en/f?p=1000%3A11300%3A0%3A%3ANO%3A11300%3AP11300_INSTRUMENT_ID%3A312283&utm_ accessed 19 December 2025.
Ratifications of ILO Convention No. 182	ILO, Ratifications of C182, www.normlex.ilo.org/dyn/nrmlx_en/f?p=1000%3A11300%3A0%3A%3ANO%3A11300%3AP11300_INSTRUMENT_ID%3A312327&utm_ accessed 19 December 2025.

List of Abbreviations

Abbreviation	Full form
AB	Appellate Body
ABR	Appellate Body Report
Art.	Article

Arts.	Articles
CMPA	Critical Minerals Partnership Agreement
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EFTA	European Free Trade Association
ELSA	Environmental, Labor, and Sustainability Alliance
ESG	Environmental, social, governance
FTA	Free Trade Area
GATT	The General Agreement on Tariffs and Trade 1994
GPA	Government Procurement Agreement
HS	Harmonized System
IFDA	Investment Facilitation for Development Agreement
ILO	International Labour Organization
LAFTA	Latin American Free Trade Association
MITI	Ministry of Trade and Industry
MOC	Ministry of Commerce
OECD	Organisation for Economic Co-operation and Development
PPM	Process and Production Method
PR	Panel Report
PWH	Public Works and Housing
RTA	Regional Trade Agreement
TRIM	Trade-Related Investment Measure
VCLT	Vienna Convention on the Law of Treaties 1969
WTO	World Trade Organization

Statement of Facts

1. Astha, Engeli and Rubina, located in a region called the Tropics, are Members of the WTO and the ILO. Engeli is a developed country and a Member of the OECD. Astha is a developing country, while Rubina is a least-developed country. Engeli and Astha are founding Members of the WTO and parties to the IFDA, but not to the GPA. Engeli and Rubina share historic ties, as Rubina was a constituent territory of Engeli until 2001.
2. Following the discovery of the Tropics' largest reserve of barite in Rubina in June 2011, barite was designated a 'critical mineral' by Astha, Engeli, and Rubina given its essential role in key industrial ecosystems. In 2017, Engeli and Rubina established a joint facility to secure a sustainable supply of critical minerals, thereby enabling Rubina to move up the value chain and to create employment opportunities. Engeli supports Rubina's industrial development through technology transfer and workforce training. Under the facility's allocation scheme, 65% of production is reserved for Rubina, ensuring local benefit. The remaining share ensures Engeli's stable access to critical minerals, supporting long-term industrial cooperation within the Tropics.
3. In July 2022, to build upon their existing collaboration in the joint facility, Engeli and Rubina concluded a CMPA, which was codified into Engelian domestic law through Executive Order 1 of 2022. The CMPA eliminates import duties and restrictive measures on up to 80% of the trade between Engeli and Rubina. It further includes the simplification of customs procedures, a rule of origin, and cooperation on high standards of ESG practices. The agreement builds on the MOC's 2021 Action Plan to engage in multiple partnerships with third countries. The same year the first CMPA was concluded, Engeli already started expanding its network of CMPAs through negotiations with other countries, including Astha.
4. The growing strategic importance of barite is further evidenced by technological advances in downstream industries. The barite compound barium sulphate can be utilised to develop cooling paint, which can help to reduce carbon emissions and fight climate change. *Luminex*, an Engeli-based private chemical company, was the first to develop a barium sulphate-based cooling paint, specifically used for buildings. *Parisa*, an Astha-based private paint manufacturer with a manufacturing facility in Saparua, developed a 'thinner and lighter' cooling paint in 2024, ideal for use on cars, buses, trains, and airplanes.
5. In January 2023, Decree 1 mandated the relocation of Engeli's national capital by 2028 to Sunshine City, a new, sustainable smart city. Decree 1 and the PWH Ministry's Directive 2 require the use of green construction goods and materials, and encourage the use of domestic

goods and services for the construction of public buildings and utilities.

6. *Raya Developer*, an Engelian company contracted by the PWH Ministry, was tasked with constructing a substantial number of government office buildings as well as public housing complexes in Sunshine City. In 2024, it conducted open tenders for various materials, including paints, based on the criteria of Decree 1 and Directive 2. The criteria for paints included environmental and safety standards, performance requirements, use of local inputs, price range, and supplier experience. *Raya Developer* selected *Luminex*'s innovative and environmentally beneficial cooling paint over *Parisa*'s conventional paint without cooling capabilities, based on the transparent public procurement criteria.
7. In November 2024, civil society organisation ELSA reported concerns to Engelian authorities regarding *Parisa*'s sourcing of barite for its 'thinner and lighter' cooling paint. The sourcing occurs in a local community in Saparua, Astha, where ELSA flagged a potential risk of child labour. Notably, children and adolescents make up 45% of this community, a significant share of whom are expected to work in the barite mines. Barite mining releases heavy metals and toxic chemicals, leading to water pollution in the community. Out of concern, Engeli's MOC sent an official letter to Astha's MITI reminding them of their responsibilities as a state regarding responsible business conduct and sustainability, which led to a dismissive response.
8. In February 2025, an ELSA documentary portraying children in the Saparuan mines led to public outcry. In March 2025, the Engelian Government adopted Directive 3 mandating that products containing barium sulphate imported into Engeli must be accompanied by a responsible supply chain certification ensuring the absence of child labour. As part of that same Directive, Engelian Customs classify consignments as 'high risk' or 'low risk', subjecting high-risk consignments to further verification to create an airtight system.
9. On 10 July 2025, Astha requested consultations with Engeli pursuant to DSU Art. 4 and GATT Art. XXIII:1. After 60 days, Astha submitted a request for the establishment of a Panel to the DSB on 15 September 2025.

Summary of Arguments

I. Decree 1, Directive 2, and the relevant procurement measures are consistent with GATT Art. III:4

- The presumption of likeness does not apply since the selection criteria were not solely origin-based but included environmental, safety and performance standards. *Luminex*'s cooling and *Parisa*'s conventional paint are not like products as they lack a competitive relationship: they differ fundamentally in physical properties, serve distinct end uses, and are not perceived as interchangeable by consumers.
- The Panel lacks jurisdiction over any reliance on TRIMs Agreement, as Astha failed to specify the TRIMs Agreement as a legal basis in its panel request.

II. In any event, the measures are exempted under GATT Art. III:8(a)

- The challenged measures constitute laws, regulations or requirements governing the procurement of products purchased: an articulated connection exists within the binding framework of Decree 1, Directive 2 and Contract No. 5/2024-PWH. To the extent that the products are considered like within the meaning of GATT Art. III:4, the foreign products are in a competitive relationship with those procured.
- *Raya Developer* qualifies as a governmental agency because it was entrusted to implement a state-led public project on behalf of the government, utilising public resources under the PWH Ministry's structured oversight and control.
- The procurement is for governmental purposes and not with a view to commercial resale, as the materials are incorporated into public buildings intended for the use of government offices and public housing.

III. The CMPA and Executive Order 1 of 2022 are consistent with GATT Art. I:1

- No general presumption of likeness arises under GATT Art. I:1, as the distinction is not origin-based but contingent on objective, replicable factors, legal transparency and integrated production relationships.
- Critical minerals lack a competitive relationship because both industrial and downstream consumers distinguish products based on extraction conditions; verified child-labour risks in Astha trigger prohibitive reputational costs and public outcry, rendering them non-interchangeable. Accordingly, they are not like products under GATT Art. I:1.
- Advantages are accorded immediately and unconditionally because the CMPA is a replicable model preserving equal competitive opportunities for any Member meeting equivalent objective standards rather than discriminating by origin.

IV. The CMPA and Executive Order 1 of 2022 are justified under GATT Art. XXIV

- The CMPA eliminates duties and restrictive regulations on ‘substantially all trade’ by covering 80% of the bilateral trade; the exclusion of the agricultural sector does not detract from this status, as there is no qualitative requirement to cover every sector.
- Engeli has introduced no new external trade barriers, as its 5% applied tariff remains unchanged.
- A necessity analysis is redundant; nevertheless, the CMPA’s rules of origin, ESG cooperation and customs simplifications are indispensable constitutive elements necessary for the agreement's formation.
- In any event, the CMPA constitutes an interim agreement as it forms part of a progressive integration process.
- Procedural delays in notification and Rubina’s prior non-Member status are not constitutive defects.

V. Directive 3 is consistent with GATT Art. XI:1

- Directive 3 sets no quotas or volume limits and does not, by its design, have a limiting effect on the quantity of imports. Any denial of entry follows from non-compliance with regulatory conditions, not from a quantitative restriction on importation.

VI. Directive 3 is justified under GATT Art. XX(a) and XX(d)

- The measure meets the requirements of GATT Art. XX(a), as it protects public morals by addressing verified child-labour risks in barite supply chains and is necessary given the high importance of preventing child labour, its targeted contribution through risk-based verification, its limited trade-restrictive effects, and the absence of reasonably available, less trade-restrictive alternatives capable of achieving Engeli’s desired level of protection.
- Directive 3 meets the requirements of GATT Art. XX(d), as it secures compliance with Engeli’s Labour Act No. 1 of 2007 implementing ILO Conventions No. 138 and 182, as further operationalised through the OECD Guidance and the IFDA, and is necessary to ensure effective enforcement at the point of importation in the absence of any reasonably available alternative capable of ensuring comparable compliance with less trade disruption.
- Directive 3 meets the requirements of the chapeau of GATT Art. XX, as it applies equally to all importers on the basis of objective, risk-based criteria reflecting the presence of child labour rather than origin, and does not constitute a disguised restriction on international trade given its transparent design, time-limited procedures, and good-faith operation.

Measures at Issue

Measure 1: Decree 1, Directive 2 and contract No. 5/2024-PWH, provisions that apply within the context of government procurement contracts.

Measure 2: The CMPA and Executive Order 1 of 2022, conferring preferential treatment on critical minerals extracted and processed in Rubina as part of a FTA.

Measure 3: Directive 3 of 2025 and the Customs risk management system, applying to imports of products containing barium sulphate, including the certification and verification requirements for child-labour-free supply chains.

Legal Pleadings

I. DECREE 1, DIRECTIVE 2 AND THE RELEVANT PROCUREMENT MEASURES ARE CONSISTENT WITH GATT ART. III:4

1. GATT Art. III:4 prohibits measures that accord imported products less favourable treatment than like domestic products. Additionally, a GATT Art. III:4 violation is confirmed if a measure constitutes a TRIM within the meaning of TRIMs Agreement Art. 1 and falls within the Illustrative List Paragraph 1(a).
2. *Luminex's* cooling paint and *Parisa's* conventional paint are not like products under GATT Art. III:4 [1.1.] In any event, any reliance on the TRIMs Agreement is procedurally excluded, as no provision under that Agreement falls within the Panel's terms of reference [1.2]. Therefore, the contested measures are consistent with GATT Art. III:4.

1.1. *Luminex's* cooling paint and *Parisa's* conventional paint are not like products

3. GATT Art. III:4 applies only where the imported and domestic products are like, meaning that they are in a competitive relationship.¹ The presumption of likeness for origin-based distinction does not apply [A]; and *Luminex's* cooling paint and *Parisa's* conventional paint are not like [B].

A. *Luminex's* cooling paint and *Parisa's* conventional paint are not presumed to be like products

4. The GATT contains no general presumption of likeness where differential treatment is based solely on origin, and the AB has never endorsed such a presumption.² In any event, origin was

¹ ABR, EC – Asbestos, [99].

² VAN DEN BOSSCHE AND ZDOUC (2023), 427-428.

not the sole basis for selection. Multiple cumulative criteria were considered, including environmental and safety standards, performance requirements, experience, price range, and the use of local inputs. The procurement criteria expressly allow exceptions to the price range for products offering exceptional innovative or environmental benefits, a condition met by *Luminex*'s cooling paint. The broader policy framework reinforces this point. Decree 1 and Directive 2 attach equal importance to environmental considerations.³ Accordingly, the distinction cannot be characterised as resting solely on origin and thus presumption of likeness arises.

B. *Luminex*'s cooling paint and *Parisa*'s conventional paint are not like products

5. Likeness is determined by assessing competitiveness on a case-by-case basis using four criteria: (i) the properties, nature, and quality of the products; (ii) their end uses; (iii) consumers' tastes and habits; and (iv) tariff classification.⁴
6. The properties, nature, and quality of the paints differ significantly. *Luminex*'s product incorporates barium-sulphate nanoparticles that reflect approximately 98% of sunlight, resulting in a measurable cooling effect of between 2.5°C and 6°C.⁵ *Parisa*'s paint contains no barium-sulphate nanostructure capable of producing a reflective or cooling effect. The presence or absence of this reflective nanostructure is not a marginal variation in formulation, but a distinct physical characteristic that fundamentally alters the products' properties, nature, and quality.
7. As regards end uses, *Luminex*'s cooling paint provides thermal-regulation and energy-efficiency benefits whereas *Parisa*'s conventional paint serves merely decorative and protective functions. The products therefore do not share identical end uses.
8. As regards consumers' tastes and habits, the fact that the products were assessed within the same tender does not, in itself, establish that they were perceived as interchangeable. *Raya Developer*'s selection of *Luminex*'s cooling paint, notwithstanding its higher price even after application of the price-preference mechanism, reflects a preference for products offering energy-efficiency and climate-mitigation benefits, rather than for conventional decorative purposes. This purchasing behaviour indicates that, from the consumer's perspective, the products were not perceived as interchangeable.
9. In *Japan – Alcoholic Beverages II*, the AB stated that tariff classification can be a helpful sign of similarity only if it is sufficiently detailed.⁶ The paints at issue may fall under HS headings

³ Case, [11]-[12].

⁴ ABR, EC – Asbestos, [99],[101].

⁵ Case, [6].

⁶ ABR, Japan – Alcoholic Beverages II, p. 21; ABR,

3208 or 3209, which cover ‘paints and varnishes based on synthetic polymers or chemically modified natural polymers’, dispersed respectively in a non-aqueous or aqueous medium. These headings encompass products with widely differing characteristics and functions that are not necessarily in a competitive relationship. At this level of generality, the tariff classification provides little assistance in assessing likeness.

10. In conclusion, the paints are not in a competitive relationship and therefore cannot be regarded as like products. As a result, GATT Art. III:4 is not breached.

1.2. The Panel lacks jurisdiction over any TRIMs claim

11. In the event that Astha relies on the TRIMs Agreement to prove a GATT Art. III:4 violation, the Panel lacks jurisdiction to consider such a claim. Under DSU Art. 6.2 and Art. 7.1, a panel’s terms of reference are limited to the specific measures and legal bases identified in the request for the establishment of a panel. In *Guatemala – Cement I*, the AB established that a complainant must specify the particular treaty provision alleged to be violated, which alone forms the legal basis for the Panel’s findings.⁷
12. Astha’s request for the establishment of a panel cites GATT Art. III:4 but does not invoke any provision of the TRIMs Agreement as a legal basis. If Astha wished to rely on the TRIMs Agreement to establish or supplement a finding of inconsistency with GATT Art. III:4, it was required to identify the relevant provisions in its panel request. Allowing the Complainant to litigate a claim it failed to identify would be inconsistent with the DSU. Even if framed as an interpretative aid, reliance on the Illustrative List of the TRIMs Agreement to make a finding of a violation of GATT Art. III:4 would *de facto* require the Panel to make an implicit finding of inconsistency under the TRIMs Agreement. This would go against the spirit of the DSU and undermine legal certainty since no such legal basis is in the Panel’s terms of reference.
13. In any event, the AB explicitly confirmed that if a measure is exempted under GATT Art. III:8(a), it cannot be found inconsistent with the TRIMs Agreement.⁸

II. DECREE 1, DIRECTIVE 2 AND THE RELEVANT PROCUREMENT MEASURES FALL OUTSIDE THE SCOPE OF GATT ART. III:4 BY VIRTUE OF GATT ART. III:8(A)

14. Should the Panel find that the paints are like products within the meaning of GATT Art. III:4, the challenged measures nonetheless fall outside the scope of that provision by virtue of the

Philippines – Distilled Spirits, [161].
⁷ ABR, *Guatemala – Cement I*, [72].

⁸ ABR, *Canada – Renewable Energy/Feed-In Tariff Program*, [5.33].

government-procurement derogation in GATT Art. III:8(a). The provision sets out three conditions: the challenged measure must qualify as a law, regulation or requirement governing the procurement of products purchased [2.1]; it must involve procurement by governmental agencies [2.2]; and the procurement must be for governmental purposes and not with a view to commercial resale or to use in the production of goods for commercial sale [2.3].⁹

2.1. The challenged measures are laws, regulations or requirements governing procurement of products purchased

15. A measure is a law, regulation or requirement governing the procurement of products purchased if two conditions are fulfilled. First, an articulated connection between the procurement and the measure must exist, meaning that the procurement must be conducted within a binding legal framework established by laws, regulations, or requirements. The term procurement refers to the process, rather than the acquisition itself.¹⁰ Decree 1, Directive 2, and Contract No. 5/2024-PWH establish the legal and procedural framework for selecting suppliers in the Sunshine City project. They prescribe the process of how procurement must be conducted and define the policy objectives for goods used in construction. Hence, there is an articulated connection between the measure and the procurement.
16. Second, the products of foreign origin must be in a competitive relationship with the products procured.¹¹ Proceeding on the basis that the paints are like products within the meaning of Art. III:4, as would follow from a rejection of the argument in [10], the products of foreign origin are in a competitive relationship with the products procured.
17. Hence, the challenged measures qualify as laws, regulations or requirements governing the procurement of products purchased.

2.2. The challenged measures involve procurement by a governmental agency

18. The purchasing entity must qualify as a ‘governmental agency’. This is determined by the competences conferred on it, and by whether that entity acts for or on behalf of the government.¹² The AB has clarified that this requires an assessment of the relationship between the entity and the government, rather than merely its formal status.¹³
19. In assessing the relationship between *Raya Developer* and the PWH Ministry, Contract No. 5/2024-PWH must be considered.¹⁴ Under the contract, *Raya Developer* was entrusted to

⁹ ABR, Canada – Renewable Energy/Feed-In Tariff Program, [5.39], [5.59], [5.60] and [5.64].

¹⁰ Ibid, [5.58].

¹¹ Ibid, [5.63].

¹² Ibid, [5.60].

¹³ Ibid.

¹⁴ Case, Annex 2.

implement a state-led public project, giving effect to Engeli's capital-relocation programme established by Decree 1 and Directive 2. The PWH Ministry confers on *Raya Developer* the competence to build government office buildings and public housing complexes and to purchase materials, funded by public resources.¹⁵ The procured materials will be incorporated into government-owned immovable property. *Raya Developer* must align all procurement with the national priorities set out by Decree 1 and Directive 2 (Clause 4.2), prioritise domestic materials and justify any deviation (Clause 4.3), and submit monthly reports detailing procurement decisions and progress reports (Clause 4.4) allowing the PWH Ministry to retain structured ministerial oversight. These obligations ensure effective governmental control over the procurement process. Hence, in this transaction, *Raya Developer* procured paints on behalf of the PWH Ministry. In substance, *Raya Developer* acted for and on behalf of the government and thus qualifies as a governmental agency.

2.3. The procurement is for governmental purposes and not with a view to commercial resale or to use in the production of goods for commercial sale

20. The procurement must be (i) for governmental purposes and (ii) not with a view to commercial resale or to use in the production of goods for commercial sale.¹⁶
21. First, governmental purposes refer to goods 'purchased for the use of government, consumed by government, or provided by government to recipients in the discharge of its public functions'.¹⁷ Decree 1 and Directive 2 establish a government procurement policy for the construction of the new capital. Contract No. 5/2024-PWH awarded by the Ministry of Public Works and Housing serves the delivery of public infrastructure, including government offices and public housing. The paints and construction materials for government offices are purchased for the use of the government, as these offices are necessary for the public administration, while those for public housing are provided by the government to recipients in the discharge of its public service and social infrastructure functions to provide affordable accommodation for its people.¹⁸ The procurement therefore serves governmental purposes.
22. Second, the procured materials are not purchased with a view to commercial resale but are incorporated into public buildings. They are also not procured with a view to use in the production of goods for commercial sale, because the public buildings are intended for use by the government or its recipients in the discharge of its public service. This is consistent with

¹⁵ Case, [13].

¹⁶ ABR, Canada – Renewable Energy/Feed-In Tariff Program, [5.69].

¹⁷ Ibid, [5.74].

¹⁸ Clarification Question 52, Section I.

Raya Developer's established role in the construction of public facilities, such as schools and hospitals.¹⁹ The procured materials are therefore not procured with a view to commercial resale or to use in the production of goods for commercial sale.

23. In conclusion, the public procurement derogation of GATT Art. III:8(a) applies, and there can be no violation of GATT Art. III:4.

III. THE CMPA AND EXECUTIVE ORDER 1 OF 2022 ARE CONSISTENT WITH GATT ART. I:1

24. GATT Art. I:1 prohibits Members from according advantages to products originating in one country that are not extended immediately and unconditionally to like products originating in other Members. The CMPA, as codified in Executive Order 1 of 2022, does not violate GATT Art. I:1 because critical minerals from Astha and Rubina are not like products [3.1]. In any event, the preferences are accorded immediately and unconditionally [3.2].

3.1. Critical minerals from Astha and Rubina are not like products

25. The GATT contains no general presumption of likeness where differential treatment is based solely on origin, and the AB has never endorsed such a presumption.²⁰ In any event, the distinction is not based solely on origin, but rather on the contribution of natural resources, land, labour, and a transparent legal environment. It is based on the existence of prior investments, and the outcome of five years of negotiations and an integrated production relationship, which ultimately crystallised into the CMPA framework.²¹ As reflected in Engeli's Action Plan, the CMPA was conceived as a replicable framework for engaging with third countries.²² The preferential treatment is therefore not solely origin-based and likeness is not presumed.
26. Instead, likeness must be assessed using the criteria established in [§5].²³ Although these criteria were established under GATT Art. III:4, the AB in *EC – Seal Products* clarified that both Art. I:1 and Art. III:4 share the same objective.²⁴ Hence, the same analytical framework can be applied to Art. I:1.²⁵ Moreover, the AB in *EC – Asbestos* requires panels to examine all pertinent evidence and to assess that evidence as a whole, recognising the fact that moral considerations influence consumer choice and can alter the competitive relationship between products.²⁶ In *US – Clove Cigarettes*, the AB further confirmed that regulatory concerns and

¹⁹ Case, [13].

²⁰ VAN DEN BOSSCHE and ZDOUC (2023), 351.

²¹ Case, [19]-[21].

²² Case, [21].

²³ ABR, *EC – Asbestos*, [101].

²⁴ ABR, *EC – Seal Products*, [5.82].

²⁵ PR, *US – Poultry (China)*, [7.424]-[7.425].

²⁶ ABR, *EC – Asbestos*, [102]-[103], [120]-[123].

considerations play a role in applying the likeness criteria.²⁷ Therefore, a product's process and production methods (PPMs) can be a relevant factor insofar as they shape consumers' preferences.

27. Critical minerals from Astha and critical minerals from Rubina differ significantly in consumer's tastes and habits. The relevant consumers are manufacturers who incorporate barite into another product, such as paints. These consumers face significant due diligence requirements, as both Parties' have commitments under the IFDA to internationally recognised standards for responsible business conduct, as well as expectations that companies operating in Engeli take into account the OECD Due Diligence Guidance.²⁸ Pursuant to the OECD Guidelines, Engeli has a National Contact Point (NCP) for Responsible Business Conduct under its MOC that handles complaints alleging non-compliance by companies. Outcomes include facing reputational damage and stakeholder pressure through a method of 'naming and shaming' by making results of proceedings publicly available. Hence, in critical-mineral markets, PPMs are a relevant parameter of competition affecting consumer's tastes and habits.
28. The record indicates that external audits of *Parisa's* operations identified concerns regarding the sourcing of barite from the local community in Saparua, suggesting child-labour risks in Asthan supply chains. This raises doubts among industrial consumers as to Astha's adherence to its obligations under the ILO as further elaborated on in [§83].²⁹ Such risks are commercially salient for industrial consumers operating in ESG-sensitive global markets. By contrast, critical minerals supplied under the Engeli-Rubina framework offer greater transparency and predictability regarding production conditions, reflecting the Parties' commitment to cooperate on high ESG standards affecting workers safety. As a result, industrial consumers do not perceive critical minerals originating in Rubina and sourced from Astha as like products.
29. Since 2024, even downstream consumers have become increasingly aware of the labour conditions associated with barite extraction in Saparua following a widely viewed documentary depicting the involvement of children in local mining practices, which triggered significant public outcry in Engeli and rendered these production practices visible to downstream purchasers. In this context, it is reasonable to infer that the origin and production conditions of barite have acquired salience for downstream consumers, reinforcing the differentiation between critical minerals sourced from Astha and from Rubina.
30. Hence, the critical minerals concerned are not in a competitive relationship and GATT Art. I:1

²⁷ ABR, US – Clove Cigarettes, [117].

²⁸ IFDA Art. 37.

²⁹ Case, [31].

is not engaged.

3.2. The CMPA accords advantages immediately and unconditionally

31. In any event, GATT Art. I.1 requires that any advantage must be accorded ‘immediately and unconditionally’ to all like products. The AB has clarified that this does not exclude all conditional advantages. What matters is that the condition preserves equal competitive opportunities for like products of all Members.³⁰ Similarly, the Panel in *Canada – Autos* interpreted the term ‘unconditionally’ as requiring that advantages be extended without discrimination as to origin.³¹
32. Engeli expressly conceived the CMPA as a replicable model open to other Members, consistent with its Action Plan.³² In April 2023, Engeli announced that it was expanding its CMP network through negotiations with other countries, and by January 2024 had already initiated discussions with Astha.³³ The advantage is thus not reserved exclusively for one origin; it is contingent on the conclusion of negotiations with partners able to offer comparable contributions in terms of resources, labour, and a transparent legal environment, and hence preserves equal competitive opportunities. Therefore, the advantages are accorded ‘immediately and unconditionally’ to all other Members.
33. In conclusion, the critical minerals from Engeli and Astha are not like products. In any event, the advantages are accorded ‘immediately and unconditionally’. Therefore, the CMPA, as codified through Executive Order 1 of 2022 is consistent with GATT Art. I.1.

IV. THE CMPA AND EXECUTIVE ORDER 1 OF 2022 ARE JUSTIFIED UNDER GATT ART. XXIV

34. A GATT Art. 1:1 inconsistency may be justified by GATT Art. XXIV, which permits Members to form FTAs. For a measure to be justified under GATT Art. XXIV, it must be (i) introduced upon the formation of an FTA that fully meets the requirements of subparagraphs 8(b) and 5(b) and (ii) necessary for the formation of the FTA.³⁴ Art. XXIV further allows the adoption of interim measures forming part of a plan and schedule for the formation of such an FTA. Additionally, Art. XXIV:7 formally requires an FTA to be duly notified.
35. The CMPA satisfies these conditions, as it consists of measures introduced upon the formation of an FTA that removes internal restrictions on substantially all trade between Engeli and Rubina in line with Art. XXIV:8(b) [4.1], it introduces no external measures that increase

³⁰ ABR, EC – Seal Products, [5.88].

³¹ PR, Canada – Autos, [10.22]-[10.25]

³² Case, [21].

³³ Case, [25]-[26].

³⁴ ABR, Turkey – Textiles, [58].

barriers for other Members in accordance with Art. XXIV:5(b) [4.2], and its measures are necessary for the formation of that FTA [4.3]. In any event, the CMPA can be characterised as an interim agreement [4.4]. Finally, other requirements, such as notification [4.5] and WTO membership [4.6] are not substantive.

4.1. The CMPA eliminates duties and other restrictive regulations of commerce on substantially all trade between Engeli and Rubina in line with GATT Art. XXIV:8(b)

36. GATT Art. XXIV:8(b) defines an FTA as one ‘in which the duties and other restrictive regulations of commerce are eliminated on substantially all the trade’ between the parties. DSU Art. 3.2 states that treaty provisions must be interpreted in accordance with the customary rules of interpretation of public international law, which can be found in VCLT Arts. 31 and 32.³⁵ VCLT Art. 31.1 clarifies that terms must be given their ordinary meaning in their context. Dictionaries may assist in identifying the ordinary meaning.³⁶ ‘Substantially’ is defined as ‘to a large degree’.
37. In *Turkey – Textiles*, the AB noted that the Members never reached a consensus on the meaning of ‘substantially all’ and asserted that the term means ‘considerably more than some of the trade’, leaving Members with a degree of flexibility depending on their economic structure and trade patterns.³⁷ Hence, no formal benchmark exists. Moreover, Art. XXIV:8(b) does not impose a qualitative requirement that an FTA must cover multiple sectors. The use of the term ‘substantially all’, rather than ‘all’ necessarily permits the exclusion of certain products from liberalisation. For example, the EU – Türkiye Customs Union excludes agriculture.³⁸
38. The CMPA removes all duties and other restrictive measures on trade regarding critical minerals, which have consistently constituted the core of bilateral trade between Engeli and Rubina, accounting for approximately 70% of trade in 2021–2022 and increasing steadily thereafter. Today, it represents 80% of bilateral trade. The CMPA therefore liberalises bilateral trade ‘to a large degree’ and covers ‘considerably more than some of the trade’. The fact that the agricultural sector is not yet included does not detract from this conclusion.
39. In any event, even if the panel were to consider that the CMPA does not yet cover ‘substantially all the trade’, it must take account of subsequent practice that reflects a common understanding of how a provision operates, pursuant to VCLT Art. 31(3)(b). Members routinely notify FTAs

³⁵ ABR, US – Gasoline, 16-17; ABR, Japan – Alcoholic Beverages II, 10; ABR, India – Patents, [46]; ABR, Korea – Dairy, [80].

³⁶ ABR, US – Offset Act (Byrd Amendment), [248]; ABR, US – Softwood Lumber IV, [58]-[59].

³⁷ ABR, Turkey – Textiles, [48].

³⁸ Decision No 1/95 of the EC–Turkey Association Council of 22 December 1995 on implementing the final phase of the Customs Union [1996] OJ L 35/1, Art 2.

subject to an implementation period, during which preferential treatment is permissible where the agreement is set to reach the liberalisation of substantially all trade within a reasonable length of time.³⁹ It is therefore accepted practice that FTAs may reach that level of liberalisation progressively rather than at the moment of entry into force. The CMPA forms part of an ongoing process of bilateral economic integration and already fully liberalises the dominant sector of trade. That trajectory is further reflected in the Parties' ongoing discussions aimed at broadening trade cooperation in the agricultural sector.⁴⁰ These elements confirm that the CMPA is oriented towards the liberalisation of substantially all trade between Engeli and Rubina.

4.2.Engeli's measures under the CMPA do not raise barriers to trade with third countries in line with GATT Art. XXIV:5(b)

40. GATT Art. XXIV:5(b) provides that when forming an FTA, Members must ensure that duties and other regulations of commerce applied to trade with non-parties to the FTA are not higher or more restrictive than those in place prior to the agreement. The CMPA eliminates import duties exclusively between Engeli and Rubina, while maintaining an applied tariff of 5% on critical minerals for all other Members. Hence, no new trade barriers were introduced.

41. While Astha may invoke the reported 25 % decline in barite imports from Rubina,⁴¹ such an argument misconstrues GATT Art. XXIV:5(b), which disciplines only increases in external barriers. Engeli introduced no such increase. The fact that Engeli liberalised trade internally with Rubina cannot be recast as an increase in external trade barriers. The CMPA entered into force in July 2022, whereas the cited decline concerns January-August 2025, during which Engeli's external regime remained entirely unchanged. Attempting to infer causation from a two-and-a-half-year-old measure, without any evidence of a regulatory change affecting non-parties, cannot sustain this claim. Therefore, the CMPA does not modify external trade barriers and Engeli has thus acted consistently with GATT Art. XXIV:5(b).

4.3.The necessity requirement under GATT Art. XXIV:5 does not apply to the CMPA, and in any event, the measures are necessary

42. In *Turkey – Textiles*, the AB held that any GATT-inconsistent measure must be necessary for the formation of a customs union.⁴² This case involved a customs union that introduced external

³⁹ WTO Secretariat, Factual presentation on Turkey – Serbia FTA (29 June 2011) 8-10; WTO Secretariat, Factual presentation on Korea – Turkey FTA (22 April 2014) 6-7; WTO Secretariat, Factual presentation on Israel – Colombia FTA (6 February

2024) 11-15.

⁴⁰ Clarification Question 15, Section II.

⁴¹ Case, [27].

⁴² ABR, *Turkey – Textiles*, [46].

trade restrictions against imports from a third country. Such an analysis is not required here, as the CMPA's measures concern the elimination of internal restrictions, which is the very *raison d'être* of an FTA. Therefore, a necessity analysis is therefore redundant. This reasoning has been confirmed by the Panel in *US – Line Pipe*.⁴³ Hence, the necessity requirement from the *Turkey – Textiles* ABR is not applicable in this case.

43. In any event, the measures of the CMPA, namely (i) the elimination of customs duties, (ii) the removal of restrictive measures, (iii) the simplification of customs formalities, (iv) a rule of origin, and (v) commitments on ESG cooperation, meet the necessity requirement.
44. First, the elimination of customs duties, the removal of restrictive measures, and the customs simplification are necessary for the formation of the FTA because they inherently fall within 'duties and other restrictive regulations of commerce' under GATT Art. XXIV:8(b). These measures are constitutive elements required to meet the definitional threshold of an FTA and therefore necessary.
45. Second, rules of origin are indispensable for the operation of any FTA, evidenced by the fact that rules of origin are contained in the vast majority of RTAs.⁴⁴ Moreover, no harmonisation of preferential rules of origin has been agreed upon. Members therefore retain considerable discretion in deciding their rules of origin. Under the CMPA, a share of critical minerals extracted in Rubina and/or processed in the Joint Facility is deemed to originate in Engeli. That attribution is based on Engeli's substantial investments in both the extraction and processing stages, which establish a significant link between the minerals concerned and Engeli. Hence, the rule of origin in the CMPA is necessary, and its substance falls within Engeli's discretion.
46. Third, regarding the CMPA's ESG cooperation, Engeli's OECD commitments impose constraints on its ability to deepen trade relations where labour and supply-chain risks are insufficiently addressed. ESG cooperation is therefore necessary to remove these constraints by ensuring that trade liberalisation with Rubina can proceed in a manner consistent with Engeli's international obligations, thereby facilitating, rather than restricting, bilateral trade. Therefore, the CMPA's measures are necessary.

4.4. In any event, the CMPA constitutes an interim agreement

47. In any event, the CMPA may be characterised as an interim agreement. GATT Art. XXIV:5(c) provides that an interim agreement leading to the formation of an FTA must include a plan and

⁴³ PR, *US – Line Pipe*, [7.148].

⁴⁴ WTO, 'RTA Provisions Glossary' (*WTO Regional Trade Agreements Database*)

<https://rtais.wto.org/USERGUIDE/Glossary_MT_Eng.pdf> accessed 17 December 2025.

schedule for its completion within a reasonable length of time. This period should not normally exceed ten years.⁴⁵ Where an interim agreement does not initially include a plan and schedule, the applicable framework provides for their subsequent recommendation and review, rather than invalidation of the agreement.⁴⁶

48. The CMPA is not presented as a *fait accompli*. It was concluded in accordance with an Action Plan published by Engeli's MOC a year earlier, which expressly set out a forward-looking framework for progressively expanding cooperation through partnerships with third countries. That Action Plan provides the requisite plan and schedule for the gradual formation of a broader arrangement. In any event, the inclusion of a plan and schedule is addressed in the notification and review process rather than constituting a precondition for characterisation as an interim agreement. Moreover, the CMPA was concluded in July 2022 and therefore remains well within the ten-year period. Accordingly, the CMPA may properly be regarded as an interim agreement within the meaning of GATT Art. XXIV:5(c).

49. In conclusion, the CMPA constitutes an FTA, and in any event, an interim agreement.

4.5. Notification is not a constitutive requirement, and, in any event, the CMPA notification is being prepared pursuant to GATT Art. XXIV:7

50. Astha may argue that the CMPA has not yet been formally notified pursuant to GATT Art. XXIV:7. However, this does not affect its legal validity as an RTA. The AB listed all the constitutive requirements for a customs union in *Turkey – Textiles*, and did not include the notification requirement, hence it cannot be considered constitutive.⁴⁷ As GATT Art. XXIV:7 applies equally to customs unions and FTAs, it is therefore reasonable to infer that a delay of notification is also not dispositive in the case of an FTA. Moreover, Engeli has confirmed that it is in the process of preparing its notification.⁴⁸ Any delay in notification does not preclude reliance on GATT Art. XXIV.

4.6. Rubina's Member status is irrelevant

51. Astha may argue that the CMPA falls outside GATT Art. XXIV because Rubina only became a Member in April 2025, while the CMPA was concluded in 2022. Although GATT Art. XXIV:5 refers to RTAs formed 'between the territories of contracting parties', other paragraphs, such as GATT Art. XXIV:4 and Art. XXIV:8, refer to the broader concept of 'constituent territories'. Members have consistently accepted RTAs involving non-Members,

⁴⁵ Understanding on the interpretation of Article XXIV of the GATT 1994, [3].

⁴⁶ *Ibid*, [10].

⁴⁷ ABR, *Turkey – Textiles*, [58].

⁴⁸ Clarification Question 13, Section I.

such as the EFTA, the LAFTA, and the Arab Common Market.⁴⁹ In *EC – Citrus Products*, the Panel rejected the argument that RTAs with non-Members must be examined under GATT Art. XXIV:10, recognising instead the longstanding acceptance of RTAs involving non-Members,⁵⁰ which can be considered subsequent practice under VCLT Art. 31(3)(b).

52. Rubina's observer status at the time of the conclusion of the CMPA does not undermine its compatibility with GATT Art. XXIV. Engeli acted in line with the well-established practice of accepting RTAs with non-Members, particularly where accession is underway. Therefore, Rubina's participation does not taint the CMPA.

53. In any case, Rubina's accession process, launched in November 2016, was well advanced when the CMPA was signed in July 2022, and concluded shortly thereafter. Rubina is now a full Member, and the CMPA currently operates as an RTA 'between the territories of constituent Members'. Any concern tied to Rubina's earlier status does not affect the assessment of the CMPA. Engeli was entitled to conclude the CMPA while Rubina was acceding, and Rubina's present membership removes any residual basis for Astha's claim.

V. DIRECTIVE 3 OF 2025 IS CONSISTENT WITH GATT ART. XI:1

54. For a measure to violate GATT Art. XI:1, it must constitute a quantitative restriction on imports. Such a restriction exists when the measure has limiting effects on importation.⁵¹ The AB has confirmed that this limiting effect must be on the 'quantity or amount' of goods imported.⁵² The AB has further clarified that not every burden placed on importation will be inconsistent with Art. XI:1.⁵³ Any limiting effect on the quantity of imports must be demonstrated through the design of the measure, as opposed to its resulting trade effects.⁵⁴

55. Directive 3 does not, by its design, limit the quantity of goods that may be imported and sets no quota. Any denial of entry following additional verification of high-risk consignments results from non-compliance with regulatory conditions, not from a mechanism rationing market access. The Customs risk-management is structured around clearly delineated and time-limited procedures: low-risk consignments are released through expedited procedures within less than a week; high-risk consignments are subject to verification for a clearly defined period of no longer than one month; denied consignments receive a clearly defined re-export period of three months. Where entry is denied, Engeli cannot be expected to retain non-compliant

⁴⁹ PR, *EC – Citrus Products*, [4.9].

⁵⁰ Ibid.

⁵¹ PR, *EU and Certain Member States – Palm Oil (Malaysia)*, [7.971].

⁵² ABR, *China – Raw Materials*, [319]-[320].

⁵³ ABR, *Argentina – Import Measures*, [5.217].

⁵⁴ Ibid; PR, *Colombia – Ports of Entry*, [7.241].

consignments indefinitely. Therefore, Directive 3 does not have a limiting effect on importation and is consistent with GATT Art. XI:1.

VI. DIRECTIVE 3 OF 2025 IS JUSTIFIED UNDER GATT ART. XX(A) AND XX(D)

56. Alternatively, GATT Art. XX provides justification for departures from GATT obligations, provided that two cumulative conditions are met.⁵⁵ Directive 3 satisfies both: it is provisionally justified under GATT Art. XX(a) [6.1] and Art. XX(d) [6.2], and it meets the requirements of the chapeau [6.3].

6.1. The measure meets the requirements of GATT Art. XX(a)

57. For a measure to be provisionally justified under GATT Art. XX(a), the AB has held that two cumulative conditions must be met.⁵⁶ Directive 3 satisfies both, since it is designed to protect public morals [A], and it is necessary to protect public morals [B].

A. Directive 3 is designed to protect public morals in Engeli

58. First, there must be a ‘public moral’ within the meaning of GATT Art. XX(a). The AB has held that each Member may define its own public morals, which can ‘vary from country to country’ depending on societal values, and that Members may set different levels of protection even when addressing similar concerns.⁵⁷ Combatting child labour is a core concern as reflected in Engeli’s ratification of ILO Conventions No. 182 and No. 138 and the OECD. Additionally, combatting child labour is a recognised ethical priority in Engelian society, especially since a documentary on child labour in barite mines led to public outcry amongst Engelian citizens. Hence, Engeli’s objective of protecting the child labour concerns of its citizens qualifies as public morals.

59. The AB in *EC – Seal Products* accepted a measure of which the principal objective was to address the moral concerns of the public, even where the relevant conduct occurred outside the Member’s territory.⁵⁸ Directive 3 seeks to address public morals concerns of Engelian citizens regarding child labour in mineral supply chains and thus falls within the scope of GATT Art. XX(a).

60. Second, the AB has clarified that, for a measure to be ‘designed to protect public morals’, it must not be incapable of protecting those morals.⁵⁹ Directive 3 conditions market access on certification and risk-based verification to ensure the absence of child labour. By creating meaningful incentives for companies to maintain child-labour-free supply chains, Directive 3

⁵⁵ ABR, US – Gasoline, p. 22.

⁵⁶ ABR, EC – Seal Products, [5.192]-[5.193].

⁵⁷ ABR, US – Gambling, [296-304]; ABR, EC – Seal

Products, [5.200-5.201].

⁵⁸ ABR, EC – Seal Products, [5.139], [5.167].

⁵⁹ ABR, Colombia – Textiles, [5.68].

is not incapable of combatting child labour, and is thus designed to protect public morals.

B. Directive 3 is necessary to protect public morals

61. The AB interprets ‘necessity’ as a process of weighing and balancing several factors.⁶⁰ The first factor is the importance of the societal interest pursued.⁶¹ In *Colombia – Textiles*, the AB noted that objectives relating to morality, human rights, and the prevention of exploitation protect ‘values and interests of the highest order’.⁶² Directive 3’s aim of preventing child and exploitative labour practices addresses such values and thus reflects a high moral priority. The near-universal ratification of the ILO Conventions on Child Labour, including by Engeli and Astha, further underscores the high importance of this objective.⁶³ Accordingly, the goal pursued is of the utmost importance.
62. The second factor is the measure’s contribution to its objective, which requires a genuine relationship of ends and means between the measure and its objective, and does not require a measure to be indispensable.⁶⁴ By conditioning market access on certification and using risk-based verification, Directive 3 creates meaningful incentives for companies to maintain child-labour-free supply chains, thereby establishing a genuine relationship to the objective of combating child labour. Accordingly, Directive 3 contributes to the objective it pursues.
63. The third factor is the measure’s trade-restrictiveness, which must be weighed against its contribution to the objective.⁶⁵ The AB has held that measures applied in a non-discriminatory, transparent and objective manner are less likely to be considered excessively restrictive.⁶⁶ Directive 3 applies uniformly to all trading partners, regardless of origin. To limit trade-restrictiveness, enhanced scrutiny is triggered only by known child-labour risks, as well as by factors such as participation in and implementation of international labour conventions and the position of operators within the supply chain.⁶⁷ These criteria are directed exclusively at managing verified risks, rather than at disadvantaging particular trading partners. Its trade-restrictive effects are therefore limited and proportionate to the objective pursued. Accordingly, the measure is not excessively trade-restrictive.
64. Finally, a measure will not be considered ‘necessary’ if a reasonably available alternative exists that is less trade-restrictive and still achieves the desired level of protection. However,

⁶⁰ ABR, Brazil – Retreaded Tyres, [156]; ABR, Korea – Various Measures on Beef, [164].

⁶¹ ABR, Korea – Various Measures on Beef, [164].

⁶² ABR, Colombia – Textiles, [5.105].

⁶³ ILO, Ratifications of ILO Convention No. 138 (19 December 2025); ILO, Ratifications of ILO

Convention No. 182 (19 December 2025).

⁶⁴ ABR, Brazil – Retreaded Tyres, [210].

⁶⁵ Ibid.

⁶⁶ ABR, Colombia – Textiles, [5.104].

⁶⁷ Clarification Question 14, Section I.

alternatives that would impose an undue burden on the responding Member are not ‘reasonably available’.⁶⁸

65. First, voluntary codes of conduct or post-import inspections would not prevent the entry of goods produced under exploitative conditions. Such alternatives would fail to secure the high level of protection Engeli seeks, since they rely on *ex-post* compliance rather than *ex-ante* prevention. Second, an appeal procedure would increase the operational burden without enhancing the level of protection achieved and would only prolong clearance procedures that Astha itself has characterised as unduly lengthy. Third, a regime based solely on certification would not achieve Engeli’s desired level of protection, as the verification system eliminates errors in the certification process, thereby ensuring an airtight approach. The dual structure therefore constitutes the minimum institutional framework required to ensure reliable exclusion of products linked to child labour. Requiring Engeli either to accredit and continuously supervise all private certifiers or to assume certification functions itself would amount to an undue burden. Accordingly, no reasonably available, less trade-restrictive alternative would allow Engeli to achieve its chosen level of protection.

66. As a result, given the high importance of the objective, Directive 3’s contribution to that objective, its limited trade-restrictiveness, and the absence of reasonably available alternatives, the measure is necessary to protect public morals. In conclusion, Directive 3 satisfies both elements of GATT Art. XX(a) and is therefore provisionally justified.

6.2.The measure meets the requirements of GATT Art. XX(d)

67. For a measure to be provisionally justified under GATT Art. XX(d), the AB has held that two cumulative conditions must be met. Directive 3 satisfies both, since it is designed to secure compliance with laws or regulations not inconsistent with the GATT [A], and it is necessary to secure such compliance [B].⁶⁹

A. Directive 3 is designed to secure compliance with laws or regulations

68. First, there must be ‘laws or regulations’ within the meaning of GATT Art. XX(d). The AB has confirmed that this includes rules of conduct or courses of action that form part of a Member’s domestic legal system.⁷⁰ Whether such ‘laws or regulations’ exist must be assessed on a case-by-case basis, having regard to the characteristics and interaction of the relevant instruments within that system. Accordingly, a rule of conduct may emerge from the combined operation of multiple instruments that, taken together, prescribe a course of action and secure

⁶⁸ ABR, US – Gambling, [308].

⁶⁹ ABR, Korea – Various Measures on Beef, [157].

⁷⁰ ABR, India – Solar Cells, [5.109].

compliance.⁷¹ The scope is not limited to instruments that are legally enforceable or accompanied by penalties or sanctions in situations of non-compliance.⁷²

69. Engeli's Labour Act No. 1 of 2007, which ratifies the ILO Fundamental Conventions on Child Labour, forms part of Engeli's domestic legal system and establishes binding obligations regarding the prohibition of child labour.⁷³ ILO Conventions No. 182 and No. 138 possess a high degree of normativity and legal authority. They impose binding obligations to take immediate and effective measures to eliminate the worst forms of child labour and to prohibit hazardous work for minors.⁷⁴ That legal framework is further specified and operationalised through the OECD Due Diligence Guidance and the IFDA, which inform the content of the obligations imposed on economic operators. Taken together, these instruments articulate a clear and normative rule of conduct aimed at preventing child labour in supply chains, compliance with which Directive 3 is designed to secure.

70. Second, the law or regulations must not themselves be GATT-inconsistent. Laws or regulations are presumed to be GATT-consistent until proven otherwise.⁷⁵ Astha has not demonstrated any *prima facie* inconsistency with the GATT. In any event, Engeli's Labour Act No. 1 of 2007 implements universally recognised ILO standards on child labour, while the IFDA and OECD Due Diligence Guidance operate as non-trade-regulating due diligence frameworks commonly used by Members, and therefore do not give rise to any inconsistency with the GATT. Therefore, the laws or regulations at issue are not GATT-inconsistent.

71. Third, the measure must be designed to secure compliance with these laws or regulations. It is sufficient that the measure is not incapable of contributing to the enforcement of those rules.⁷⁶ Directive 3 is designed to secure compliance with Engeli's child labour-related obligations as set out above, since it requires importers to demonstrate compliance by providing certification and it enables competent authorities to verify that compliance where warranted. In conclusion, Directive 3 is designed to secure compliance with laws and regulations which are not GATT-inconsistent.

B. Directive 3 is necessary to secure compliance with laws or regulations

72. The AB has stated that assessing 'necessity' under GATT Art. XX(d) requires a sequential process of weighing and balancing a series of factors: the relative importance of the common

⁷¹ Ibid, [5.111], [5.114].

⁷² ABR, India – Solar Cells, [5.109].

⁷³ Clarification Question 71, Section I.

⁷⁴ ILO Convention No. 182 Art 1, 5, 6 and 7; ILO

Convention No. 138 Art 1, 3, 9.

⁷⁵ PR, Colombia – Textiles, [7.511].

⁷⁶ ABR, India – Solar Cells, [5.58].

interests or values that the law or regulation to be enforced is intended to protect, the contribution of the measure to those interests, and the trade-restrictiveness of the measure, followed by a comparison with possible alternative measures.⁷⁷

73. First, the laws and regulations with which Directive 3 seeks to secure compliance prohibit child labour and require economic operators to exercise due diligence in their supply chains. These obligations protect internationally recognised common values and interests of high importance, reflecting Engeli's fundamental commitment to preventing child labour.
74. Second, Directive 3 makes a significant contribution to securing compliance with the relevant laws and regulations. It conditions access to the Engelian market on proof of compliance and enables verification where consignments originate from areas with known concerns. By translating Engeli's domestic and internationally anchored obligations into enforceable requirements, Directive 3 ensures that economic operators cannot access the Engelian market while remaining non-compliant in practice.
75. Third, Directive 3's targeted, risk-based design limits trade-restrictive effects to cases of demonstrated concern. Moreover, the measure leaves importers with meaningful autonomy as to how compliance is achieved, thereby mitigating its impact on trade.
76. Finally, no reasonably available alternative would achieve comparable compliance with less trade disruption. Measures based solely on voluntary guidelines, *post-hoc* enforcement, international cooperation, or certification without binding verification would not ensure equivalent level of compliance with Engeli's child labour rules at the point where non-compliant supply chains can be effectively excluded, particularly in light of the structural challenges associated with monitoring child labour in global supply chains. The measure is therefore necessary to secure compliance with laws or regulations.

6.3. Directive 3 meets the requirements of the chapeau of GATT Art. XX

77. Directive 3 is consistent with the chapeau of GATT Art. XX, since it constitutes neither 'arbitrary or unjustifiable discrimination between countries where the same conditions prevail' [A] nor a 'disguised restriction on international trade' [B].⁷⁸

A. Directive 3 does not constitute arbitrary and unjustifiable discrimination

78. For a measure to be consistent with the chapeau, it must not be applied in a manner constituting 'arbitrary or unjustifiable discrimination between countries where the same conditions prevail'

⁷⁷ ABR, Brazil – Retreaded Tyres, [178]; ABR, China – Publications and Audiovisual Products, [242]; ABR, EC – Seal Products, [5.169]; ABR,

Korea – Various Measures on Beef, [162]-[164].

⁷⁸ ABR, US – Shrimp, [150].

The AB has identified three elements: (i) the application of the measure must not result in discrimination; (ii) the discrimination must not be arbitrary or unjustifiable; and (iii) it must not occur between countries where the same conditions prevail.⁷⁹

79. Concerning the first element, all importers are subject to the same certification requirements, regardless of origin. The distinction between ‘high’ and ‘low’ risk consignments is based on neutral and publicly known risk indicators relating to child-labour exposure in supply chains, not nationality.⁸⁰ Hence, Directive 3’s application does not discriminate against Astha.
80. Alternatively, concerning the second element, the AB has held that discrimination is arbitrary or unjustifiable when that discrimination is explained by a rationale that bears no relation to the objective of the measure or that even goes against that objective.⁸¹ Directive 3 aims to combat child labour, and any differential treatment is related to that objective. Where additional verification occurs, it is limited in scope and duration and based on objective risk-assessment criteria. Therefore, Directive 3 does not constitute arbitrary or unjustifiable discrimination.
81. Additionally, good-faith efforts to negotiate before resorting to unilateral measures are an indication of the absence of arbitrary and unjustifiable discrimination.⁸² In January 2025, Engeli engaged with Astha prior to adopting Directive 3, reminding Astha of its responsibilities regarding responsible business conduct, thereby demonstrating good-faith efforts. However, Astha responded dismissively.⁸³ Therefore, the measure does not constitute arbitrary or unjustifiable discrimination under the chapeau of GATT Art. XX.
82. Finally, concerning the third element, the AB clarified that the determination of relevant ‘conditions’ must be guided by the policy objectives pursued under the applicable subparagraphs of GATT Art. XX, namely the protection of public morals under Art. XX(a) and the securing compliance with laws and regulations prohibiting child labour under Art. XX(d).⁸⁴ In that context, the relevant condition concerns whether production takes place under circumstances involving child labour.
83. In Saparua, children as young as 15 years old are directly employed in barite mines for extraction, the removal of barite from deposits and the collecting, sorting, cleaning, and transport of the mineral.⁸⁵ This work is carried out in a mining environment associated with exposure to heavy metals and toxic substances.⁸⁶ ILO Convention No. 182 and No. 138

⁷⁹ ABR, US – Shrimp, [150].

⁸⁰ Clarification Question 7, 14, Section I.

⁸¹ ABR, Brazil – Retreaded Tyres, [227].

⁸² ABR, EC – Seal Products, [5.305].

⁸³ Case, [34].

⁸⁴ ABR, EC – Seal Products, [5.299-5.300].

⁸⁵ Clarification Question 7, Section II.

⁸⁶ Case, [5].

expressly prohibit children under the age of 18 from engaging in work that is likely to endanger their health or safety.⁸⁷ Barite mining falls within this category of hazardous work, as it exposes workers to serious risks, including the use of heavy tools, dangerous and confined working environments, open pits, and exposure to toxic substances.⁸⁸ Consequently, the involvement of children in the mines of Saparua constitutes a prohibited worst form of child labour. Therefore, the situation in Saparua is fundamentally different from that in countries where barite mining is restricted to adults.

B. Directive 3 is not a disguised restriction on international trade

84. In *EC – Asbestos*, the Panel held that a ‘disguised restriction on international trade’ refers to a measure that formally satisfies the requirements of a GATT Art. XX subparagraph but in fact conceals a trade restrictive purpose.⁸⁹ Directive 3 is the expression of a concrete regulatory response to the well-documented risk of child labour in mineral supply chains, a concern addressed by internationally recognised labour standards and Engeli’s obligations thereunder. The measure applies to inputs of rare critical minerals on which Engeli itself relies, confirming that it is designed to ensure ethical sourcing even in strategically important sectors. In light of the significant public outcry and Engeli’s deeply held societal commitment to preventing child labour, the measure reflects a good-faith exercise of regulatory authority. Therefore, Directive 3 cannot be regarded as a disguised restriction on international trade.
85. In conclusion, Directive 3 protects public morals within the meaning of GATT Art. XX(a) and secures compliance with Engeli’s domestic laws or regulations on responsible business conduct under GATT Art. XX(d). Directive 3 does not give rise to arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Therefore, Directive 3 is justified under GATT Art. XX(a) and GATT Art. XX(d).

⁸⁷ ILO Convention No. 138 Art 3; ILO Convention No. 182 Art. 3(d).

⁸⁸ OECD, *Practical Actions for Companies to*

Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains (OECD 2017) 12.
⁸⁹ PR, *EC – Asbestos*, [8.236].

Request for Findings

For the above-mentioned reasons, Engeli respectfully requests the Panel to reject Astha's claims and find that:

1. The relevant procurement measures for the Sunshine City project, together with Decree 1 of 2023, Directive 2 of 2023, are consistent with GATT Art. III:4; or, in the alternative, are exempted under GATT Art. III:8(a).
2. The preferential treatment accorded to critical minerals extracted and processed in Rubina under the CMPA and Executive Order 1 of 2022 is consistent with GATT Art. I:1; or, in the alternative, is justified under GATT Art. XXIV.
3. Engeli's customs risk management under Directive 3 of 2025 does not constitute a quantitative restriction inconsistent with GATT Art. XI:1; or, in the alternative, is justified under GATT Art. XX(a) and XX(d).