

Team: 012

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

**Viridium – Measures Affecting the
Agricultural Sector**

Ruberia
(Complainant)

VS

Viridium
(Respondent)

SUBMISSION OF THE COMPLAINANT

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WTO Panel Reports	
Short Title	Full Title and Citation
<i>China – Raw Materials</i>	Panel Reports, <i>China – Measures Related to the Exportation of Various Raw Materials</i> , WT/DS394/R / WT/DS395/R / WT/DS398/R / Add.1 and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R, DSR 2012:VII, p. 3501.
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<i>Japan – Alcoholic Beverages II</i>	Appellate Body Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, p. 97.
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<i>US – Tuna II (Mexico)</i>	Appellate Body Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , WT/DS381/AB/R, adopted 13 June 2012, DSR 2012:IV, p. 1837.

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5. WTO, The Draft definition of the WTO Secretariat based on discussions in the SPS Committee, G/SPS/W/265/Rev.1.
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2. VAN DEN BOSSCHE, P. and ZDOUC, W., *The law and policy of the World Trade Organization*, Cambridge, Cambridge University Press, 2013, lvi + 1045 p.

List of Abbreviations

Abbreviation	Full Form
AB	Appellate Body
Animal products	Products derived from cattle, hogs, and poultry
ARRA	Agricultural Reconstruction and Reform Act
Association	Association of Viridium's largest food retailers
CC	Condition of competition
CoGP	Code of Good Practice; Code of Good Practice for the Preparation, Adoption and Application of Standards contained in Annex 3 to the TBT Agreement
GATT 1994	General Agreement on Tariffs and Trade 1994
LFT	Less favourable treatment
LDC	Less-developed country
MFN treatment	Most-favoured-nation treatment
PC	Product characteristic
Ruberian Farm Act	Ruberia's regulations regarding the transport and slaughter of farm animals
PPM	Production and process method
SAC	Small arable country, a country with less than 0.15 hectares of arable land per capita
TBT Agreement	Technical Barriers to Trade Agreement
WAWC	World Animal Welfare Council
WTO	World Trade Organization
0.15-condition	Condition of having less than 0.15 hectares of arable land per capita

Summary of Arguments**1. The ARRA is inconsistent with Article I:1 of the GATT 1994**

- The ARRA is covered by Article I:1 GATT 1994 as it grants an advantage with respect to laws affecting internal sale and transportation of any product. It grants an advantage to animal products from countries with less than 0.15 hectares of arable land (SACs), since they are exempted from Article 2 ARRA. Animal products originating in SACs and Ruberia are like, as the difference in treatment between imported products is origin-based. Moreover, both groups of products have the same physical characteristics, end-uses, tariff classification, and Viridian consumers consider them as substitutable. Furthermore, the advantage accorded to animal products from SACs is not granted immediately and unconditionally to those originating in Ruberia without discrimination as to origin.

2. The ARRA is inconsistent with Article III:4 of the GATT 1994

- The ARRA is covered by Article III:4 GATT 1994 because it is a law affecting the internal sale and transportation of any product. Domestic and Ruberian animal products are like as they have the same product characteristics, end-uses, tariff classification, and Viridian consumers consider both groups of products to be substitutable. Furthermore, the ARRA accords less favourable treatment to Ruberian animal products because it modifies the conditions of competition to their detriment. In addition, a genuine relationship between the ARRA and that detrimental impact exists.

3. The ARRA is not justifiable under Article XX(a) or (b) of the GATT 1994

- The ARRA cannot be justified under subparagraph (a), because there is no evidence of a public moral concern regarding the humane treatment of animals in Viridium, and the ARRA is not necessary to fulfil this objective. The ARRA cannot be justified under subparagraph (b) either, as it was not adopted to protect the life or health of animals and it is not necessary to fulfil this objective. Moreover, the ARRA does not meet the requirements of the chapeau, as it constitutes discrimination between SACs and all other WTO Members, where the same relevant conditions prevail. Its inflexible character and the fact that Viridium did not engage in serious negotiations, render the discrimination arbitrary and unjustifiable. The ARRA also constitutes a disguised restriction on trade as compliance with Article XX(a) and/or (b) GATT 1994 is only a disguise to conceal its protective and discriminatory objectives as established under the first step of the chapeau.

4. The ARRA is a technical regulation in the light of Annex 1.1 of the TBT Agreement

- The ARRA is a technical regulation as it is a document implemented by the government that concerns an identifiable group of products, lays down process and production methods relating to product characteristics, and with which compliance is mandatory.

5. The ARRA is inconsistent with Article 2.1 of the TBT Agreement

- The ARRA is inconsistent with Article 2.1 TBT Agreement, which contains a national treatment obligation and a most-favoured-nation (MFN) treatment obligation. The national treatment obligation concerns domestic and imported animal products. The MFN treatment obligation concerns imported products from SACs and all other WTO Members. The groups of products are like under both obligations, since they have the same product characteristics, end-uses, tariff classification, and Viridian consumers consider the groups of products to be substitutable. Furthermore, the ARRA modifies the conditions of competition to the detriment of, under the MFN treatment obligation, the imported products and, as to the national treatment obligation, to the detriment of like products of all other WTO Members. Moreover, a genuine relationship between the ARRA and that detrimental impact exists, and this detrimental impact does not exclusively stem from a legitimate regulatory distinction.

6. The ARRA is inconsistent with Article 2.4 of the TBT Agreement

- The World Animal Welfare Council (WAWC) guidelines constitute relevant international standards as they are a document that provides guidelines regarding minimum space allowances for common and repeated use. The WAWC is an international organization and standardizing body, and the guidelines were made available to the public. Moreover, the guidelines are relevant as they apply to the same products and regulate the same subject matter as the ARRA. However, the ARRA was not based on these guidelines as it explicitly departs from the lower requirements in the guidelines. Nevertheless, the WAWC guidelines would be effective and appropriate to fulfil the objectives of the ARRA.

7. The ARRA is inconsistent with Article 4.1 of the TBT Agreement

- The ARRA falls under Article 4 TBT Agreement for two reasons. First, the association of Viridian food retailers (Association) is a non-governmental body. Second, the standards of the Association constitute standards in the meaning of Annex 1.2 TBT Agreement.
- Moreover, by adopting the ARRA, which is inconsistent with Article 2.4 TBT Agreement, Viridium did not take any reasonable measures available to prevent, and even encouraged, private retailers to act inconsistently with Article 4.1 TBT Agreement.

Statement of Facts

1. Ruberia and Viridium are both Members of the World Trade Organization (WTO) and the World Animal Welfare Council (WAWC). The WAWC is an international organization devoted to the promotion of animal welfare. Recently, it adopted guidelines for minimum space allowances for cattle, hogs, and poultry. Both Viridium and Ruberia voted in favour of these guidelines.
2. Viridium decided to rebuild its agricultural sector by implementing the Agricultural Reconstruction and Reform Act (ARRA). Articles 2 and 3 ARRA lay down requirements for the detention, transportation and slaughter of cattle, hogs, and poultry. Regarding the detention requirements, Article 2 ARRA introduces standards that are significantly higher than the pre-existing WAWC guidelines.
3. Pursuant to Article 4 ARRA, all products derived from cattle, hogs, and poultry that do not meet the ARRA's requirements cannot be imported or sold in the Viridian market. This article also provides for different transitional periods depending on the development of the country concerned. Developing countries are given a period of three years, whereas developed countries, such as Ruberia, are only given one year to adapt their agricultural industry. Moreover, an exemption from the requirements of Article 2 ARRA is granted to least-developed countries (LDCs) and countries with less than 0.15 hectares of arable land per capita (SACs).
4. Additionally, Article 5 ARRA provides that private retailers that sell animal products may implement more stringent standards than provided for in the ARRA. The association of Viridium's largest food retailers, controlling 80 per cent of the market for the products at issue, has already announced its own standards. Pursuant to these standards they will, as of now, only source animal products that fulfil the requirements of Articles 2 and 3 ARRA, irrespective of whether they originate in a developing country, a LDC or a SAC.
5. The effect of the ARRA on Ruberia is substantial in comparison to other exporting countries due to Ruberia's extensive market share in Viridium. Exports from Ruberia provide for respectively 80 and 70 per cent of the Viridian demand of beef and eggs. Although Ruberia complies with the WAWC guidelines and has in place regulations that are substantially equivalent to Annex 2 ARRA, this does not suffice to comply with the requirements of Articles 2 and 3 ARRA.

Identification of the Measure at Issue

The measure at issue is the Agricultural Reconstruction and Reform Act (ARRA), enacted by Viridium. It lays down discriminatory requirements for detention, transportation and slaughter of cattle, hogs, and poultry. These requirements must be met in order for meat and other products derived from cattle, hogs, and poultry to be imported or sold in Viridium.

Legal Pleadings**Preliminary part on likeness**

1. The determination of likeness relates to the nature and extent of the competitive relationship between and among the products at issue.¹ As the notion of likeness can be found in several provisions relevant to this case, Ruberia will discuss it preliminary. Although the Appellate Body (AB) ruled that this concept must be compared to an accordion, with a different scope or width in every different provision and context², the AB and panels consistently use four traditional criteria in analysing “likeness” under all provisions³ relevant to this case.⁴ First, the products’ physical characteristics encompass an analysis of their properties, nature and quality. Second, end-uses describe the capacity of performing the same, or similar, functions.⁵ Third, consumers’ tastes and habits reflect the extent to which consumers are - or would be - willing to choose one product instead of another to perform those end-uses.⁶ The fourth element is the products’ tariff classification. These four criteria provide a framework for analysing the likeness of particular products on a case-by-case basis⁷, and will be used in Articles I:1 and III:4 General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 2.1 Technical Barriers to Trade Agreement (TBT Agreement), while taking their specific object and purpose into account each time.

1. The ARRA is inconsistent with Article I:1 of the GATT 1994

2. Article I:1 GATT 1994 contains the most-favoured-nation (MFN) treatment obligation. The purpose is to eliminate discriminatory treatment between products originating in or destined for certain countries and like products from all other World Trade Organization (WTO) Members.⁸ A measure is inconsistent with this article when: (i) it falls within the scope of application; (ii) the imported products at issue are like products; (iii) it confers an advantage, favour, privilege, or immunity on a product originating in the territory of any country; (iv) the advantage accorded is

¹ ABR, US – Clove Cigarettes, [120]; ABR, EC – Seal Products, [5.87].

² ABR, Japan – Alcoholic Beverages II, [114].

³ ABR, EC – Asbestos, [101]; ABR, US – Clove Cigarettes, [121]; PR, Spain – Unroasted Coffee, [4.6]

⁴ Report of the Working Party, [18]; ABR, EC – Asbestos, footnote to [101].

⁵ ABR, EC – Asbestos, [117].

⁶ *Ibid.*

⁷ ABR, EC – Asbestos, [102].

⁸ ABR, EC – Seal Products, [5.87]

not extended immediately and unconditionally to like products from all other WTO Members.⁹

1.1 The ARRA is a measure covered by Article I:1 of the GATT 1994

3. Article I:1 GATT 1994 covers any advantage, favour, privilege or immunity granted by any Member to any product originating in any other country with respect to, *inter alia*, laws, regulations and requirements affecting internal sale, offering for sale, purchase, transportation, distribution or use of any product. These are the matters listed in Article III:4 GATT 1994. Since it will be established furtheron that the Agricultural Reconstruction and Reform Act (ARRA) is a law that falls within the scope of Article III:4 GATT 1994, the ARRA also falls within the scope of Article I:1 GATT 1994.¹⁰

1.2 The ARRA is a measure granting an advantage

4. The AB in *EC – Seal Products* stated that Article I:1 GATT 1994 refers to *any* advantage to *any* product originating in the territory of *any* other country.¹¹ The ARRA is a measure granting an advantage in the light of this article. First, it accords an exemption from the requirements of Article 2 ARRA. Given that this exemption facilitates the access to the Viridian market for the countries concerned, it is an advantage. Second, this advantage is granted to a product, namely products derived from cattle, hogs, and poultry (animal products). Third, the ARRA grants this advantage to countries with less than 0.15 hectares of arable land per capita (SACs).

1.3 The products concerned are like products

5. Where a difference in treatment between imported products is based exclusively on the products' origin, the complaining party does not necessarily need to identify specific domestic and imported products and establish their likeness in terms of the traditional criteria in order to make a *prima facie* case of likeness.¹² The ARRA grants an exemption from its requirements under Article 2 ARRA, based on the condition of having less than 0.15 hectares of arable land per capita (0.15-condition). However, this 0.15-condition is origin-based, as it solely regards the characteristics of the country where the animal products come from. And, while this condition does not point to specific countries by name, its effect is, *de facto*, the same. This is demonstrated by the list of countries that fall under the 0.15-condition, in which no perceivable change can be found over the years.¹³ Hence, given the origin-based character of the condition, it is sufficient to state that Ruberian animal products are like animal products from SACs.

6. Should it be decided that the differential treatment is not origin-based, both groups of products

⁹ ABR, *EC – Seal Products*, [5.86].

¹⁰ Legal Pleadings, [10].

¹¹ ABR, *EC – Seal Products*, [5.86]; ABR, *Canada – Autos*, [79]. Emphasis taken from the original text.

¹² PR, *US – Poultry (China)*, [7.427]; PR, *China – Publications and Audiovisual Products*, [7.1446].

¹³ World Bank Group (2014), *World Development Indicators (Arable Land)*, <http://data.worldbank.org/indicator/AG.LND.ARBL.HA.PC>.

are still like. To this end, the likeness analysis is based on the criteria set out in the preliminary part. First, there is no evidence that animal products from SACs would have different physical characteristics as compared to those from Ruberia. Second, there are no specific end-uses that could be performed differently by both animal groups. Third, there is no indication that Viridian consumers differentiate between the two groups of animal products to perform certain end-uses. Fourth, both groups of animal products fall under the same tariff classification, namely HS-code 02, 04 and 05. Therefore, both groups of products are like under Article I:1 GATT 1994.

1.4 The advantage is not accorded immediately and unconditionally

7. The advantage is not accorded immediately and unconditionally. First, following the reasoning of the Panel in *Colombia – Ports of Entry*,¹⁴ “unconditionally” means that the advantage granted to animal products from SACs must be accorded to like products of all other WTO Members without discrimination as to origin. Since Article 4 ARRA grants the advantage only to SACs, based on an origin-based condition,¹⁵ it violates this requirement. Second, “immediately” means at once or instantly.¹⁶ Since like products from other WTO Members are not granted this advantage, this requirement is not fulfilled.

8. To conclude, the ARRA is inconsistent with Article I:1 GATT 1994.

2. The ARRA is inconsistent with Article III:4 of the GATT 1994

9. Article III:4 GATT 1994 contains the national treatment obligation.¹⁷ The purpose is to prohibit discriminatory treatment of imported products *vis-à-vis* like domestic products.¹⁸ A measure is inconsistent with this article if: (i) the imported and domestic products are like products; (ii) it is a law, regulation, or requirement affecting the internal sale, purchase, transportation, distribution, or use of the products at issue; and (iii) the treatment accorded to imported products from all WTO Members is less favourable than that accorded to like domestic products.¹⁹

2.1 The ARRA is a law covered by Article III:4 of the GATT 1994

10. The presumption in paragraph 3 of this submission that the ARRA is a law covered by Article III:4 GATT 1994, will be demonstrated here. Article III:4 GATT 1994 concerns all laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products. Following the Panel in *Mexico – Soft Drinks*, the selection of the word “affecting” implies that the drafters intended to cover not only laws which directly govern

¹⁴ PR, Colombia – Ports of Entry, [7.361].

¹⁵ Legal Pleadings, [5].

¹⁶ Official Oxford Dictionary, www.oxforddictionaries.com/definition/english/immediately.

¹⁷ ABR, EC – Seal Products, [5.79].

¹⁸ *Ibid.*

¹⁹ ABR, EC – Seal Products, [5.99].

the conditions of sale or purchase but also laws which might adversely modify the conditions of competition (CC) between domestic and imported products.²⁰ As the ARRA imposes various requirements on the importation and sale of animal products in the Viridian market, it might adversely modify the CC. Thus, it is a law covered by Article III:4 GATT 1994.

2.2 The products concerned are like products

11. The likeness analysis under Article III:4 GATT 1994 encompasses the four elements set forth in the preliminary part.²¹ Before going into detail on these elements, the groups of products to be compared must be determined. These groups are, on the one hand, the group of domestic animal products, and, on the other hand, the group of imported products from all WTO Members, including Ruberian animal products. First, there is no evidence that suggests any difference regarding the physical characteristics of both groups of products. Second, there is no indication that there are specific end-uses that could only be performed by domestic or Ruberian animal products. Third, there is no indication that Viridian consumers would prefer one group of products to perform certain end-uses over the other. Fourth, both groups of products fall under the same tariff classification (HS-code 02, 04 and 05). Consequently, domestic and imported products from all WTO Members, including Ruberian animal products, are in a strong competitive relationship, and therefore, like.

2.3 The ARRA accords less favourable treatment to the imported products

12. The analysis of less favourable treatment (LFT) contains three elements: (i) a modification of the CC; (ii) a detrimental impact; and (iii) a genuine relationship.²²

13. The CC are the framework of governmental measures that impact the internal sale, offering for sale, purchase, transportation, distribution or use of goods or services. Article 4 ARRA modifies the CC by obliging all animal products to comply with the requirements laid down in Articles 2 and 3 ARRA. More specifically, Ruberia will have one year to rebuild its infrastructure used for export to Viridium. As Ruberia provides for 70 to 80 per cent of the Viridian demand, a large part of its agricultural infrastructure will have to be adapted. On the other hand, Viridium will only need to build an infrastructure that provides for domestic consumption in the same amount of time. Moreover, domestic production only provides for less than 20 to 30 per cent of the Viridian demand. In addition, even without the adoption of the ARRA, Viridium would need to rebuild its infrastructure, due to the destruction caused by the natural disaster. Hence, the modification of the CC is to the detriment of imported Ruberian animal products. For a measure

²⁰ PR, Mexico – Soft Drinks, [8.108].

²¹ Legal Pleadings, [1].

²² ABR, EC – Seal Products, [5.101].

to accord LFT to imported products, there must also be a genuine relationship between this measure and the detrimental impact.²³ As the ARRA imposes the restrictions to imports and sales, and lays down transitional periods, there is a genuine relationship between the ARRA and the detrimental impact.

14. In conclusion, the ARRA is inconsistent with Article III:4 GATT 1994.

3. The ARRA is unjustifiable under Article XX(a) or (b) of the GATT 1994

15. Article XX GATT 1994 contains a two-tiered test to determine whether an otherwise GATT-inconsistent measure can be justified, thereby balancing trade liberalization and the Members' right to pursue societal values and interests.²⁴ Under this test, a measure is not justifiable if: (i) it is not provisionally justified under one of the subparagraphs of Article XX GATT 1994; or (ii) it fails to comply with the requirements of the chapeau.²⁵ The responding party bears the burden of proof to establish that the measure can be provisionally justified under subparagraph (a) or (b).²⁶

3.1 The ARRA does not fall under Article XX(a) or (b) of the GATT 1994

(i) The ARRA is not justifiable under Article XX(a) of the GATT 1994

16. A measure is not justifiable under Article XX(a) GATT 1994 when: (i) it is not adopted or enforced to protect public morals; or (ii) it is not necessary to protect such morals.²⁷

a. The ARRA is not adopted or enforced to protect public morals

17. A measure is adopted to protect public morals if: (i) its objective is to address public concerns; (ii) such concerns exist; and (iii) these concerns are of a moral nature in that Member.²⁸ Following the AB, "public morals" denotes standards of right and wrong conduct maintained by or on behalf of a community or a nation.²⁹ The Preamble of the ARRA addresses public concerns, as it refers to the imposition of a humane animal treatment as an *ethical* responsibility. The latter objective is presented as part of the Viridian policy to build a more sustainable agricultural sector. However, there is no proof that such public concern for the humane treatment of animals exists in Viridium. Moreover, even if such concern exists, its moral nature must be established.³⁰ In this regard, a general reference to an ethical responsibility in Recital 3 Preamble of the ARRA does not suffice. Furthermore, Recital 4 states that the humane treatment of animals improves the taste and quality of animal products. This confirms that the concern for the humane

²³ ABR, EC – Seal Products, [5.101].

²⁴ ABR, EC – Seal Products, [5.169]; PR, EC – Seal Products, [7.611]; VAN DEN BOSSCHE and ZDOUC (2013), 547.

²⁵ ABR, EC – Seal Products, [5.169].

²⁶ *Ibid.*; ABR, Brazil – Retreaded Tyres, [156].

²⁷ *Ibid.*

²⁸ ABR, EC – Seal Products, [5.135-5.138]. Quoting the Panel in PR, EC – Seal Products, [7.384].

²⁹ ABR, US – Gambling, [296]; PR, China – Audiovisual Products, [7.759].

³⁰ PR, EC – Seal Products, [7.384].

treatment of animals is not moral, but rather pragmatic – or even commercial – in nature.

b. The ARRA is not necessary to protect the public morals at issue

18. The necessity analysis involves a holistic exercise of weighing and balancing a series of factors: (i) the importance of the objective; (ii) the contribution of the measure to that objective; and (iii) the trade-restrictiveness of the measure.³¹ It is acknowledged that the protection of public moral concerns on the humane treatment of animals is an important value.³² Regarding the second step, the AB ruled that a measure contributes to the achievement of its objective when there is a genuine relationship of ends and means between the objective pursued and this measure.³³ The Preamble of the ARRA indicates that the concerns of the Viridian public encompass the humane treatment of *all* kinds of animals, and not just that of cattle, hogs, and poultry. However, the scope of the ARRA is limited to this category of animals. Therefore, the ARRA's contribution to the objective of preventing Viridian consumers from being exposed to animal products from inhumanely treated animals *in general*, is significantly diminished. Moreover, the ARRA exempts animal products from SACs from its requirements under Article 2 ARRA, and allows export and transit of animal products regardless of the treatment of these animals. This further diminishes its contribution to the objective. Furthermore, the ARRA constitutes an import ban. This is, by design, as trade-restrictive as can be.³⁴ Following the AB, it would be difficult, if a measure produces restrictive effects as severe as those resulting from an import ban, to find that measure necessary unless it is *apt to make a material contribution* to the achievement of its objective.³⁵ Overall, it is clear that the importance of the ARRA's objective is outweighed by the limited contribution of the ARRA to this objective and its trade-restrictiveness. Finally, the necessity analysis requires a comparison of the measure with its possible alternatives.³⁶ These alternatives must be "reasonably available": they cannot be theoretical in nature or impose an undue burden on a Member and must provide an equivalent contribution to the objective pursued.³⁷ Viridium could have allowed its trading partners to use existing and substantially equivalent regulations, such as Ruberia's regulations regarding the transport and slaughter of farm animals (Ruberian Farm Act) or the World Animal Welfare Council (WAWC) guidelines. As the measures must be equivalent to the ARRA, an equal contribution to the level of protection sought by Viridium is ensured. Viridium already

³¹ ABR, EC – Seal Products, [5.214].

³² ABR, EC – Seal Products, [5.179], quoting the Panel in EC – Seal Products, [7.632].

³³ ABR, Brazil – Retreaded Tyres, [145].

³⁴ ABR, Brazil – Retreaded Tyres, [150], quoting the Panel in Brazil – Retreaded Tyres, [7.211].

³⁵ ABR, EC – Seal Products, [5.213], quoting the AB in Brazil – Retreaded Tyres, [150].

³⁶ ABR, US – Gambling, [307].

³⁷ ABR, EC – Seal Products, [5.276 and 5.261]; ABR, Brazil – Retreaded Tyres, [156].

found this to be true for the guidelines, as it voted in favour of those and never retracted its vote.³⁸ Also, exporting countries will not have to change their existing regulatory framework. Thus, the alternative has a less-intrusive effect on trade. Moreover, the monitoring of compliance will be limited to a review of the relevant legislation in the exporting country. In any case, given Viridium's approval of the WAWC guidelines, no check would be necessary if a country uses these guidelines. Hence, the practical implementation is not unduly cumbersome. Thus, the alternative is reasonably available and less trade-restrictive.

(ii) The ARRA is not justifiable under Article XX(b) of the GATT 1994

19. A measure cannot be justified under subparagraph (b) if: (i) it is not adopted to protect the life or health of humans, animals or plants³⁹; or (ii) it is not necessary to fulfil that policy objective.⁴⁰

a. The ARRA is not adopted to protect the life or health of humans, animals or plants

20. Although the ARRA is adopted to protect animal life or health, it is not necessary to fulfill these goals and there are less trade-restrictive and reasonably available alternatives.

c. The ARRA is not necessary to protect animal life or health

21. The AB and panels use the same factors for a necessity assessment under Article XX(a) and (b) GATT 1994.⁴¹ First, animal life or health constitute an important value or interest.⁴² However, this factor alone is not sufficient to prove that the ARRA is necessary. Second, the ARRA is not apt to make a significant contribution to the achievement of its objective.⁴³ According to its Preamble, Viridium aims to protect animals *in general*. However, the scope of the ARRA is limited to cattle, hogs, and poultry. It also exempts animal products from SACs from its requirements under Article 2 ARRA, and allows export and transit of animal products regardless of their compliance with the ARRA. This diminishes the ARRA's contribution to its objective significantly. Third, the ARRA constitutes an import ban, which is, as already stated above, as trade-restrictive as can be.⁴⁴ Putting all the variables of the equation together, it is clear that the importance of the objective is outweighed by the ARRA's limited contribution to this objective and its trade-restrictiveness. The last step of the necessity analysis requires a comparison of the measure with its possible alternatives.⁴⁵ First, Viridium could have limited the application of the ARRA to animals living on its *own* territory. As already stated above, the

³⁸ Clarification, n° 166.

³⁹ PR, China – Raw Materials, [7.479-7.480].

⁴⁰ ABR, Brazil – Retreaded Tyres, [178].

⁴¹ ABR, Brazil – Retreaded Tyres, [144]; ABR, EC – Seal Products, [5.169] and footnotes 1180-1181.

⁴² PR, Brazil – Retreaded Tyres, [7.112]. Not reversed by the AB, see ABR, Brazil – Retreaded Tyres, [179].

⁴³ ABR, Brazil – Retreaded Tyres, [150].

⁴⁴ Legal Pleadings, [18].

⁴⁵ ABR, US – Gambling, [307].

objective of the ARRA is the protection of the life or health of animals as an element of the latter's strategy to build a more sustainable agricultural sector in Viridium. This objective is not affected by the treatment of Ruberian animals. Indeed, as the ARRA only applies to meat and other animal products, the animals are already slaughtered before crossing the border. Moreover, it only concerns farm animals. These animals do not naturally cross borders. Therefore, this alternative would avoid the restrictive effect on trade without affecting the level of protection sought by Viridium. Furthermore, it only entails a small textual change of the ARRA. Hence, it is also reasonably available. Regarding a second option, reference is made to the alternative set out in paragraph 18 of this submission: the acceptance of substantially equivalent regulations.

22. Hence, the ARRA cannot be provisionally justified under Article XX(a) or (b) GATT 1994.

3.2 The ARRA does not meet the requirements of the chapeau

23. The purpose of the chapeau is to avoid abuse or illegitimate use of the exceptions in Article XX GATT 1994.⁴⁶ A measure cannot be justified under the chapeau if: (i) its application constitutes a means of arbitrary or unjustifiable discrimination between countries where the same *relevant* conditions prevail⁴⁷; or (ii) it constitutes a disguised restriction on international trade. The burden of proof rests with the invoking Member.⁴⁸

(i) The application of the ARRA constitutes a means of arbitrary or unjustifiable discrimination

24. A measure constitutes a means of arbitrary or unjustifiable discrimination if: (i) it amounts to discrimination; (ii) the discrimination results from the differential treatment between countries where the same relevant conditions prevail; and (iii) the discrimination is arbitrary or unjustifiable in character.⁴⁹

a. The application of the ARRA amounts to discrimination that results from the differential treatment between countries where the same relevant conditions prevail

25. The discrimination under Article I:1 GATT 1994 arises from the different regulatory treatment accorded to animal products from SACs and those from Ruberia.⁵⁰ To determine the relevant conditions prevailing in these countries, the subparagraph under which a measure has been provisionally justified, as well as the provision of the GATT with which it has been found to be inconsistent, provide important context.⁵¹ Under Article XX(a) and (b) GATT 1994, the relevant conditions are the concerns for the humane treatment and the life or health of animals.

⁴⁶ ABR, EC – Seal Products, [5.792].

⁴⁷ ABR, EC – Seal Products, [5.299]. Emphasis taken from the original text.

⁴⁸ ABR, US – Gasoline, [22-23].

⁴⁹ ABR, US – Shrimp, [150 and 165].

⁵⁰ Legal Pleadings, [8].

⁵¹ ABR, EC – Seal Products, [5.316].

Since the only difference between SACs and Ruberia is the amount of arable land, there is no difference between these relevant concerns in both countries. Hence, the application of the ARRA amounts to discrimination between countries where like conditions prevail.

b. The discrimination is arbitrary or unjustifiable in character

26. The AB ruled that one of the most important factors in the assessment to determine whether the discrimination is arbitrary or unjustifiable is the question of whether the discrimination can be reconciled with, or is rationally related to, its provisionally justified policy objective.⁵² In this case, the exemption for SACs, based on the amount of arable land per capita, is not related to the ARRA's objectives, namely the protection of the public's concern for the humane treatment of animals and the protection of animal life or health. On the contrary, it goes against these objectives. Moreover, other relevant factors should be taken into account in this assessment. First, the application of the ARRA requires other WTO Members to adopt a regulatory program that is not merely comparable, but essentially the same. This creates a rigid and unbending standard. Consequently, no other measures with the same objectives, adopted by trading partners of Viridium, are taken into account. The Ruberian Farm Act is an example of such an excluded measure. Second, there is no evidence that Viridium engaged in serious negotiations with the affected countries before enforcing the ARRA.⁵³ In conclusion, the application of the ARRA results in an arbitrary or unjustifiable discrimination.

(ii) The application of the ARRA constitutes a disguised restriction on international trade

27. A disguised restriction embraces those amounting to arbitrary or unjustifiable discrimination taken under the guise of a measure formally within the terms of an exception listed in Article XX GATT 1994.⁵⁴ The fact that the ARRA amounts to an arbitrary or unjustifiable discrimination has been established under paragraph 25 of this submission. Thus, its compliance with Article XX(a) or (b) GATT 1994 would be a disguise to conceal its protective and discriminative objectives.

28. In conclusion, the ARRA cannot be justified under Article XX GATT 1994.

4. The ARRA is a technical regulation in the light of Annex 1.1 of the TBT Agreement

29. A measure constitutes a technical regulation when: (i) it is a document; (ii) it applies to an identifiable product or group of products; (iii) it lays down product characteristics (PCs) or their related processes and production methods (PPMs); and (iv) compliance with the PCs or PPMs is mandatory.⁵⁵ First, a document is something written which furnishes evidence or information upon any subject.⁵⁶ The ARRA is a written legislative act of the Viridian government that

⁵² ABR, US – Shrimp, [165]; ABR, Brazil – Retreaded Tyres, [227, 228, and 232].

⁵³ Clarification, n° 13.

⁵⁴ ABR, US – Gasoline, 25.

⁵⁵ ABR, EC – Asbestos, [66-70]; ABR, EC – Sardines, [176].

⁵⁶ ABR, US – Tuna II (Mexico), [185].

provides information upon the importation and sale of animal products in the Viridian market. Second, the ARRA prohibits the importation of animal products which do not meet the requirements of Articles 2 and 3 ARRA. Consequently, the group of products is identifiable by its components, namely, cattle, hogs, and poultry. Third, the ARRA lays down PPMs. These PPMs are the requirements for detention, transportation and slaughter of cattle, hogs, and poultry in a humane way. Additionally, these PPMs must be related to the PCs,⁵⁷ which requires a sufficient nexus between both.⁵⁸ In this case, the PPMs influence the taste and quality, or PCs, of animal products.⁵⁹ Fourth, compliance with these PPMs is mandatory, since no animal products will be granted access to the Viridian market if they are inconsistent with the imposed PPMs.

30. Therefore, the ARRA is a technical regulation in the light of Annex 1.1 TBT Agreement.

5. The ARRA is inconsistent with Article 2.1 of the TBT Agreement

31. Article 2.1 TBT Agreement contains a national treatment and an MFN treatment obligation, which provides that technical regulation within the meaning of Annex 1.1 TBT Agreement is inconsistent with this Article if: (i) it is a technical regulation in the light of Annex 1.1 TBT Agreement; (ii) the imported products are like the domestic products and those of other origins; and (iii) the treatment accorded to imported products is less favourable than to like domestic products and those from other countries.⁶⁰

5.1 The products concerned are like products

32. The AB has held that the TBT Agreement expands on pre-existing GATT disciplines and has pointed out that both agreements should be interpreted in a coherent and consistent manner. More specifically, the very similar formulation and overlap in scope of application of Article III:4 GATT 1994 and Article 2.1 TBT Agreement confirm that the first article is part of the relevant context for the interpretation of likeness under the national treatment obligation in Article 2.1 TBT Agreement.⁶¹ The same reasoning must be applied regarding Article I:1 GATT 1994 and the likeness analysis under the MFN treatment obligation in Article 2.1 TBT Agreement. Therefore, for both the MFN and national treatment obligation, reference is made to the corresponding paragraphs on likeness of this submission.⁶² First, as to the MFN treatment obligation, bearing in mind the specific context of the TBT Agreement, reference can be made to the likeness analysis under Article I:1 GATT 1994. It has been concluded in that section that animal products from SACs and animal products from Ruberia are like. Second, as to the national

⁵⁷ TBT Agreement, Annex 1.1.

⁵⁸ ABR, EC – Seal Products, [5.12].

⁵⁹ Preamble of the ARRA, Recital 4.

⁶⁰ ABR, US – Tuna II (Mexico), [202].

⁶¹ ABR, US – Clove Cigarettes, [100 and 180].

⁶² Legal Pleadings, [2 and 9-11].

treatment obligation, bearing in mind that the ARRA is a technical regulation, reference must be made to the likeness analysis under Article III:4 GATT 1994. Under the latter article, it was found that domestic and imported animal products are like. Thus, these product groups are in a strong competitive relationship under Article 2.1 TBT Agreement as well, and therefore like.

5.2 The ARRA accords less favourable treatment

(i) The ARRA accords LFT under the national treatment obligation

33. As stated above, the AB found that Article III:4 GATT 1994 is relevant context for the interpretation of the national treatment obligation under Article 2.1 TBT Agreement.⁶³ Therefore, it suffices to refer to paragraphs 12 to 14 to establish a modification of competitive conditions to the detriment of Ruberian animal products vis-à-vis domestic like products.

34. However, the existence of such detrimental impact on competitive opportunities is not sufficient to establish LFT in the context of Article 2.1 TBT Agreement. The AB stated that where a technical regulation does not *de iure* discriminate against imports, the specific circumstances of the case and, in particular, its even-handedness, must be carefully scrutinized in order to determine whether the impact on imports stems exclusively from a legitimate regulatory distinction.⁶⁴ First, the relevant regulatory distinction in Article 4 ARRA is made between products complying with Articles 2 and 3 ARRA and those products that do not comply. Access to the Viridian market is granted to the first group and refused to the second group. Second, this regulatory distinction should neither be applied in a manner that constitutes a means of arbitrary and unjustifiable discrimination, nor in a manner that constitutes a disguised restriction on trade.⁶⁵ Here, reference must be made to the outcome of the analysis under the chapeau of Article XX GATT 1994 in paragraphs 26 and 27 of this submission, where it was already established that the application of the ARRA amounts to such a discrimination and a disguised restriction on trade. To conclude, it is established that the detrimental impact does not stem from a legitimate regulatory distinction, and therefore, the ARRA accords LFT to Ruberian animal products.

(ii) The ARRA accords LFT under the MFN treatment obligation

35. The analysis of LFT contains three elements: (i) a modification of the CC; (ii) a detrimental impact; and (iii) a genuine relationship.⁶⁶

36. First, the CC are the framework of governmental measures that impact the internal sale, offering for sale, purchase, transportation, distribution, or use of goods or services. The ARRA modifies this framework by obliging all domestic and imported animal products to comply with

⁶³ ABR, US – Clove Cigarettes, [100].

⁶⁴ ABR, US – Clove Cigarettes, [215].

⁶⁵ TBT Agreement, Recital 6.

⁶⁶ ABR, EC – Seal Products, [5.101].

the requirements of Articles 2 and 3 ARRA. However, Article 4 ARRA grants an exemption from these requirements to animal products from SACs. Second, this modification is to the detriment of Ruberian animal products, because the exemption is not extended to them. Therefore, it is more difficult for Ruberian animal products to be imported and sold on the Viridian market than it is for animal products from SACs. Third, LFT involves a genuine relationship between the measure and the detrimental impact. Since the ARRA itself imposes the restrictions and grants the exemption to SACs, there is a genuine relationship between the ARRA and the detrimental impact. Normally, the LFT- analysis under Article 2.1 TBT Agreement demands an additional analysis whether the detrimental impact stems exclusively from a legitimate regulatory distinction.⁶⁷ However, following the AB in *US – Clove Cigarettes*, the existence of such impact is dispositive of LFT under Article 2.1 TBT Agreement in case of a *de iure* discrimination.⁶⁸ Although this case concerns the LFT analysis under the national treatment obligation, reference can be made to this interpretation. This can be deduced from the exact same formulation and purpose of both obligations under Article 2.1 TBT Agreement.

37. As the exemption in Article 4 ARRA is origin-based, as established in paragraph 6 of this submission, the ARRA constitutes such a *de iure* discrimination. Therefore, the modification of the CC to the detriment of Ruberian animal products suffices to show that the ARRA accords LFT to that group of products vis-à-vis animal products from SACs.

38. In conclusion, the ARRA is inconsistent with Article 2.1 TBT Agreement.

6. The ARRA is inconsistent with Article 2.4 of the TBT Agreement

39. The purpose of Article 2.4 TBT Agreement is the harmonization of relevant international standards and national technical regulations.⁶⁹ In this case, this article is violated since: (i) the WAWC guidelines are a relevant international standard; (ii) the ARRA did not use these guidelines as a basis; and (iii) the WAWC guidelines are effective and appropriate to fulfil the legitimate objectives of the ARRA.

6.1 The WAWC guidelines are a relevant international standard

(i) The WAWC guidelines are an international standard

40. The AB in *US – Tuna II (Mexico)*, quoting the Panel, held that the term “international standard” is not defined in Annex 1.1 TBT Agreement. However, the ISO/IEC Guide 2 defines the term as a standard that is adopted by an international standardizing organization

⁶⁷ ABR, *US – Clove Cigarettes*, [169-175].

⁶⁸ ABR, *US – Clove Cigarettes*, [182 and 215].

⁶⁹ MIDDLETON (1980), 206.

and made available to the public.⁷⁰

a. The WAWC guidelines are a standard

41. Since the term standard is derived from the definition of an international standard in the ISO/IEC Guide 2, it must be read in that context.⁷¹ This guide defines a standard as a document, established by consensus and approved by a recognized body that provides, for common and repeated use, rules or characteristics for activities or their results.⁷² However, the AB does not require a consensus for a standard in the context of the TBT Agreement.⁷³ The WAWC guidelines constitute a document providing guidelines regarding minimum space allowances that need to be used for every detention of cattle, hogs, and poultry. Hence, these guidelines are created for common and repeated use.

b. The WAWC is an international standardizing or standards organization

42. An international standardizing or standards organization is: (i) an organization; (ii) a standardizing body; and (iii) international. First, an organization is a body that is based on the membership of other bodies or individuals, with an established constitution and its own administration. A body is more precisely a legal or administrative entity that has specific tasks and a specific composition.⁷⁴ The WAWC is an international organization with 35 member states, a secretariat⁷⁵, and a mission to provide technical assistance to developing countries to improve animal welfare in their farming sectors. Second, a standardizing body is a body that has recognized activities in standardization.⁷⁶ When parties to an agreement participate in the standard's development, this is evidence of their recognition of that standard.⁷⁷ Since Viridium participated in drafting the WAWC guidelines, and even voted in favour of those guidelines, it must be concluded that Viridium recognizes them. Third, an *international* standardizing organization is a standardizing organization whose membership is open, on a non-discriminatory basis, to the relevant bodies of at least all WTO Members and the relevant national body from every country, at every stage of the standards development.⁷⁸ The WAWC is open for accession to any state or customs territory, which is supported by the fact that the WAWC has never denied a request for membership.⁷⁹

⁷⁰ ISO/IEC Guide 2:2004, 3.2.1.1; ABR, US – Tuna II (Mexico), [344]; PR, US – Tuna II (Mexico), [72].

⁷¹ PR, US – Tuna II (Mexico), [7.671].

⁷² ISO/IEC Guide 2:2004, 3.2.

⁷³ TBT Agreement, Explanatory Note to Annex 1.2; ABR, EC – Sardines, [227].

⁷⁴ ABR, US – Tuna II (Mexico), [355].

⁷⁵ Clarification, n° 11.

⁷⁶ ABR, US – Tuna II (Mexico), [357].

⁷⁷ PR, US – Tuna II (Mexico), [7.686].

⁷⁸ TBT Committee Decision (2011), [6]; ABR, US – Tuna II (Mexico), [358, 373 and 374].

⁷⁹ Clarification, n° 60.

c. The WAWC guidelines are made available to the public

43. The Panel in *US – Tuna II (Mexico)* stated that the principle of transparency contained in Section B of the TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations informs the readings of the term made available to the public.⁸⁰ This principle determines that all essential information regarding current work programmes, as well as on proposals for standards, guides and recommendations under consideration and on the final results should be made easily accessible to at least all interested parties in the territories of at least all WTO Members.⁸¹ The WAWC guidelines were made available to the public, because as soon as the idea of developing the guidelines crystalized, the public was given the opportunity to comment on the draft.⁸²

(ii) The WAWC guidelines are a relevant international standard

44. In *US – Tuna II (Mexico)*, the measure was relevant because both measures applied to the same product and regulated the same subject matter.⁸³ Since the WAWC guidelines and the ARRA both apply to cattle, hogs, and poultry and both prescribe minimum space allowances for these animals, the WAWC guidelines are relevant for the ARRA.

6.2 The ARRA is not based on the WAWC guidelines

45. There must be a very strong and very close relationship between two measures in order to be able to say that one is the basis for the other.⁸⁴ However, a technical regulation may be built on the foundation of the relevant international standard without using this standard as a basis. Furthermore, in *US – Tuna II (Mexico)*, the departure from the international standard was seen as an explicit refusal to adopt this standard.⁸⁵ The ARRA explicitly departs from the WAWC guidelines by setting higher space allowances for cattle, hogs, and poultry. Therefore, although the ARRA may use the WAWC guidelines as its foundation, there is not a strong or close enough relationship between both measures for the ARRA to be *based* on these guidelines.

6.3 The WAWC guidelines are effective and appropriate to fulfil the legitimate objectives

46. The Preamble of the ARRA sets out three objectives, namely: the development of a sustainable agricultural sector in Viridium, the humane treatment of animals as a matter of ethical responsibility, and treating animals in a humane manner so that animal products taste better and are of a better quality. The WAWC guidelines are effective and appropriate to fulfil these objectives. In *EC – Sardines* the AB held that a standard is effective if it has the capacity to

⁸⁰ PR, *US – Tuna II (Mexico)*, [7.696].

⁸¹ TBT Committee Decision (2011), [3].

⁸² Case, *Viridium – Measures Affecting the Agricultural Sector*, [11].

⁸³ PR, *US – Tuna II (Mexico)*, [7.701].

⁸⁴ ABR, *EC – Sardines*, [245].

⁸⁵ PR, *US – Tuna II (Mexico)*, [7.715].

accomplish the legitimate objectives pursued and it is appropriate if it is suitable for the fulfilment of these objectives.⁸⁶ The core of the WAWC's mission is the improvement of animal welfare in developing countries' farming sectors.⁸⁷ This is in line with the ARRA's objectives. However, despite its vote in favour of these guidelines, Viridium imposes higher minimum space allowances. Nevertheless, it did not retract its vote since then.⁸⁸ From this behaviour, it can be concluded that Viridium found the guidelines effective and appropriate to fulfil the objectives.

7. The ARRA is inconsistent with Article 4.1 of the TBT Agreement

47. Article 3 TBT Agreement prescribes the application of technical regulations, while Article 4 TBT Agreement prescribes the same for standards. A measure cannot be a technical regulation and a standard at the same time, because technical regulations are mandatory while standards are not.⁸⁹ Therefore, it is impossible for Articles 3 and 4 TBT Agreement to apply simultaneously. Ruberia will make no claim under Article 3 TBT Agreement, as the standards laid down by the *private retailers* do not constitute technical regulations in the light of Annex 1.1 TBT Agreement.

48. The ARRA is inconsistent with Article 4.1 TBT Agreement if: (i) the association of Viridium's largest food retailers (Association) is a non-governmental body; (ii) it prescribes technical regulations or standards; and (iii) Viridium did not take all reasonable measures available to prevent, and in fact even encouraged, the Association to act inconsistently with paragraph F Code of Good Practice for the Preparation, Adoption and Application of Standards contained in Annex 3 to the TBT Agreement (Code of Good Practice; CoGP).

7.1 The ARRA falls under Article 4 of the TBT Agreement

(i) The definition of non-governmental bodies covers the Association

49. Article 4 TBT Agreement applies to non-governmental standardizing bodies. Non-governmental bodies are bodies other than a central government or a local government body, including a non-governmental body that has legal power to enforce a technical regulation.⁹⁰ A body is a legal or administrative entity that has specific tasks and a specific composition.⁹¹ Article 5 ARRA provides that *private retailers* that sell animal products may implement more stringent standards than the ARRA. Here, only the Association and its standards will be examined, as there is no evidence that another group of retailers could constitute a body. The Association constitutes a body as it does not merely serve the standard functions of associations, but also serves a

⁸⁶ ABR, EC – Sardines, [288].

⁸⁷ Case, Viridium – Measures Affecting the Agricultural Sector, [10].

⁸⁸ Clarification, n° 166.

⁸⁹ TBT Agreement, Explanatory Note to Annex 1.2.

⁹⁰ TBT Agreement, Annex 1.8.

⁹¹ ISO/IEC Guide 2:2004, 4.3 and 4.4.

coordinating and standardizing function.⁹² Moreover, Article 5 ARRA accords legal power to the Association to implement more stringent standards than the ARRA.

(ii) The standards laid down by the Association constitute standards

50. A measure constitutes a standard in the light of Annex 1.2 TBT Agreement if: (i) it is a document; (ii) approved by a recognized body; (iii) that provides rules, guidelines or PCs or related PPMs; and (iv) with which compliance is not mandatory. First, there is no evidence that the Association's standards are not a document. Second, a recognized body is a body with acknowledged authority for publishing standards.⁹³ As Article 5 ARRA recognizes that the Association is a body that sets standards regularly, the latter is a recognized body.⁹⁴ Third, Associations' standards lay down the same PPMs as the ARRA.⁹⁵ Therefore, these are standards in light of Annex 1.2 TBT Agreement.

7.2 The ARRA does not comply with Article 4.1 of the TBT Agreement

51. Article 4.1 TBT Agreement requires WTO Members to ensure that their non-governmental bodies comply with the purpose of harmonization between relevant international standards and standards under Paragraph F CoGP. The exact same purpose and very similar wording of the latter provision and Article 2.4 TBT Agreement entail that the analysis under both is the same.

52. As already established above, the ARRA is inconsistent with Article 2.4 TBT Agreement as it is not based on the WAWC guidelines. Article 5 ARRA allows private retailers of animal products are allowed to implement *more stringent* standards, and thus to go even further than the ARRA. Since it has been established that the ARRA itself was not based on the WAWC guidelines, these standards adopted by the private retailers will certainly not be in a strong or close enough relationship with the WAWC guidelines in order to be "based" on them. As a consequence, these private standards will be inconsistent with Paragraph F CoGP. Moreover, since compliance with the ARRA is mandatory, Viridium obliges and encourages its private retailers to act inconsistently with Paragraph F CoGP. Furthermore, Viridium could have left out Article 5 ARRA. By not doing so, Viridium failed to take a reasonable measure, which was available, to ensure compliance with Paragraph F CoGP.

53. Therefore, the ARRA is inconsistent with Article 4.1 TBT Agreement.

⁹² Clarification, n° 10.

⁹³ ISO 17000:2004, 7.5 and ISO/IEC Guide 2: 2004, 4.3 and 4.4.

⁹⁴ Clarification, n° 96.

⁹⁵ Legal Pleadings, [28].

Request for Findings

For the above stated reasons, Ruberia respectfully requests the Panel to:

- i. find that the ARRA is inconsistent with Article I:1 of the GATT 1994;
- ii. find that the ARRA is inconsistent with Article III:4 of the GATT 1994;
- iii. find that the ARRA is unjustifiable under Article XX of the GATT 1994;
- iv. find that the ARRA is a technical regulation within the meaning of Annex 1.1 of the TBT Agreement;
- v. find that the ARRA is inconsistent with Article 2.1 of the TBT Agreement;
- vi. find that the ARRA is inconsistent with Article 2.4 of the TBT Agreement;
- vii. find that the ARRA is inconsistent with Article 4.1 of the TBT Agreement.