Team: 021

ELSA MOOT COURT COMPETITION ON WTO LAW
2016-2017

The CHIMEHA FTA between Chilo, Meco and Haito

Chilo
(Complainant)

vs

Haito
(Respondent)

SUBMISSION OF THE RESPONDENT

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LIST OF ABBREVIATIONS

AB	Appellate Body
ABR	Appellate Body Report
ACT	African Caribbean and Pacific group of states
ADA	Anti-Dumping Agreement
AD	Anti-Dumping
Art./Arts.	Article/Articles
BOP	Balance of Payment
CH.	Chapter
CTD	Committee on Trade and Development
DSB	Dispute Settlement Body
DSM	Dispute Settlement mechanism
DSU	Dispute Settlement Understanding
EC	European Communities
FTA	Free trade Agreement
FCFS	First-Come-First-Served
GA	Green Accredited
GATT	General Agreement on Tariffs and Trade 1994
GATS	General Agreement on Tariffs and Services 1994
MAS	Mutually Agreed Solution
MFN	Most Favored Nation
LDC	Least Developed Country
ORRC	Other Restrictive Regulations of Commerce
Para(s).	Paragraph(s)
PR	Panel Report
QR(s)	Quantitative Restriction(s)
RTA	Regional Trade Agreement
SA	Agreement on Safeguards
SAT	Substantially all trade
S&DT	Special and Differential Treatment
TM	Transparency Mechanism
TRQ(s)	Tariff Rate Quotas
US	United States
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization

SUMMARY OF ARGUMENTS

Preliminary Objections:

The WTO Panel shall examine whether it has jurisdiction to assess the present dispute

- CHIMEHA parties have relinquished their right to address WTO Panel for BOP disputes
    - The FTA forum clause of Art.808:3 CHIMEHA is considered a MAS in the sense of Art.3.6-3.7 DSU
    - The CHIMEHA parties have unequivocally agreed of the relinquishment of their WTO dispute settlement right
    - In any event, Art.28 DSU and the GATT Enabling Clause need to be interpreted by virtue of the principle of effective interpretation taking into account Art.808 CHIMEHA
- Chilo is estopped from challenging WTO-consistency of the CHIMEHA

Claim I:

The BOP QRs imposed by Haito are consistent with Arts.XI, XII, XVIII, XXIV:8(b) GATT

- Haito conformed with all the procedures under Art.XVIII and XI of the GATT
- Haito is not required to exempt Chilo from the application of the BOP QRs
    - *first*, BOP QRs shall be applied pursuant to the rule of parallelism
    - *second*, the elimination of BOP QRs is not provided in the Enabling Clause, under which the notification of the CHIMEHA was issued
    - in any case, Art.XXIV GATT does not constitute a right and, thus, it is not subject to violation
- In any event, the BOP QRs introduced by Haito are consistent with Art.XXIV GATT
    - *first*, the list in the parenthesis of Art.XXIV:8(b) is ilustrative
    - *second*, the application of BOP within the CHIMEHA is considered *necessary*

Claim II:

The reduction of TRQs on coffee is consistent with Art.XIII GATT

- Art.XIII GATT is not applicable in the present case
- In any event, the reduction of TRQs on coffee conforms with Art.XIII GATT
    - *first*, the coffe TRQ similarly restricts all the states pursuant to Art.XII:1
    - *second*, substantially interested countries are not excluded
    - *third*, the TRQ shares are allocated in FCFS basis, in conformity with the chapeau of Art.XIII:2

<u>Claim III:</u>

The S&DT provided to Haito is consistent with both Art.I GATT and the Enabling Clause

- The Enabling Clause prevails over Art.I GATT
- The S&DT is in full conformity with the provisions of the Enabling Clause
    - *first*, the S&DT falls under para.2(c), in order to promote the economic development of developing countries
    - *second*, the S&DT refers to the special needs of Haito
    - *third*, the S&DT is in conformity with para.2(c) of the Enabling Clause, as applied within an FTA
- In any event, the S&DT is justified under Art.XXIV GATT

<u>Claim IV</u>

The provision for the tariff elimiation on green goods from the CHIMEHA parties and a few WTO Members is consistent with Art.I:1 of the GATT, since the advantage is accorded in a non-discriminatory way

- The tariff elimination on green goods is consistent with Art.I:1 GATT
    - A finding of likeness is precluded due to regulatory differences between green goods originating from GA and non-GA countries
    - In any event, the zero import tariff is granted immediately and unconditionally
- In any event, the tariff elimination among the CHIMEHA parties is justified under the Enabling Clause and Art.XXIV GATT

<u>Claim V</u>

The provision of the CHIMEHA on AD is consistent with Art.9.2 ADA

- The removal of anti-dumping duties are in full conformity with Art.9.2 ADA
    - *first,* it does not fall within the scope of Art.9.2 ADA
    - *second*, anti-dumping investigations could be imposed in a non-discriminatory manner
- In any event, the abolition of AD within the CHIMEHA is justified under Art.XXIV
    - *first*, Art.XXIV constitutes an exception to ADA
    - *second*, AD constitute ORRCs and thus, they shall be eliminated within the CHIMEHA, according to Art.XXIV:8(b)

STATEMENT OF FACTS

1. Chilo, Meco and Haito are WTO Member states. Chilo and Meco are developing countries, featuring a vast agricultural production of bovine meat, wheat, soya, coffee and bananas, most of which is exported. In addition, they produce finished and semi-finished industrial goods, such as underwear, cosmetics and electronic products, most of which is exported as well. On the contrary, Haito is classified as a least developed country, as it only produces coffee and bananas, exporting about 50% of its production. All three countries rely on imports, in order to cover the needs of their population in basic goods.

2. In 2015, the import tariffs applied by Chilo, Meco and Haito were 20% below the MFN bound rates. Chilo maintained an MFN bound TRQ for coffee, imposing a 30% *ad valorem* duty for the first 70 tonnes of imports, while a 90% duty was applied to out-of quota coffee imports.

3. In 2015, the three states concluded a trilateral agreement in order to foster their developmental needs and enhance their internal trade. The CHIMEHA FTA covers substantially all trade between the parties and provides for the reduction of import tariffs on agricultural and industrial products; the reduction of the TRQs on agricultural goods; the reciprocal abolition of anti-dumping duties; an environmental scheme awarding a zero percent import tariff to 51 green goods; assistance to the LDC of Haito in the form of special tariff treatment; and, the imposition of BOP restrictions *mutatis mutandis* with Art.XVIII GATT. Furthermore, an alternative forum for dispute resolution is created, the FTA DSM, with exclusive jurisdiction over BOP and environmental disputes.

4. On 1 January 2016 Chilo, unilaterally, prompted to a notification under Art.XXIV GATT and Art.V GATS. Haito and Meco were surprised by Chilo's actions. On 1 March 2016, the two states, bearing in mind the status of their economies as developing and LDCs, jointly proceeded to a second notification under para. 4(a) of the Enabling Clause.

5. Simultaneously, the LDC of Haito, which was facing a severe BOP problem, imposed BOP restrictions on an MFN basis by limiting imports to the amounts imported by March 2015 in accordance with Art.XVIII:B GATT. Chilo reacted to these non-discriminatory emergency measures, and demanded to be exempted from their MFN application.

IDENTIFICATION OF THE MEASURES AT ISSUE

Measure 1: The BOP QRs imposed by Haito in face of its severe BOP problem

Measure 2: The Reduction of the TRQ's on agricultural products provided in CH.1 CHIMEHA

Measure 3: The S&DT in favor of Haito, as an LDC, provided in Art.606 CHIMEHA

Measure 4: The Zero Tariff Treatment on 51 green goods originating from CHIMEHA and GA countries provided in CH.V CHIMEHA

Measure 5: The Reciprocal Exemption from the application of AD duties provided in CH.IV CHIMEHA

LEGAL PLEADINGS

I. PRELIMINARY OBJECTIONS

1. Contrary to what Chilo, the Complainant, implies,[1] WTO panels do have the "inherent power" to examine whether they have jurisdiction over any given dispute brought before them.[2] In the dispute at hand, this Panel should decline jurisdiction since, *first*, the CHIMEHA parties, Chilo included, have relinquished their right to initiate disputes concerning BOP measures implemented within CHIMEHA, by virtue of its Chapter VIII; and, *second*, legal impediments preclude this Panel's jurisdiction over the whole dispute.

A. Chilo has relinquished its right to WTO dispute settlement proceedings for BOP measures implemented within CHIMEHA

2. The AB has clarified since *EC-Bananas III (21.5 II Ecuador)*[3], and more recently reiterated in *Peru-Agricultural Products*[4], that WTO Members may relinquish their rights to WTO dispute settlement pursuant to a MAS under Arts. 3.6-3.7 DSU. Indeed, FTA forum selection clauses, such as Art.808 CHIMEHA, squarely qualify as a MA under Arts. 3.6-3.7 DSU,[5] expressing CHIMEHA parties' intention to prioritize the CHIMEHA DSM over WTO adjudication,[6] CHIMEHA being a FTA dully notified under the GATT Enabling Clause.[7] Hence, this Panel should decline to exercise jurisdiction *in casu*.

3. The crux for such a finding is the clarity of the Member's relevant intention,[8] which in the case of Chilo is more than evident. Indeed, the CHIMEHA parties explicitly agreed that in

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[1] EMC[2] Case, [22].
[2] ABR, *Mexico- Soft Drinks,* [45]; ABR, *US- Act 1916,* [54], ABR, *US- Offset Act,* [208]; ABR, *US- Carbon Steel,* [123].
[3] ABR, *EC-Bananas III (21.5 II Ecuador),* [220].
[4] ABR, *Peru-Agricultural Products*, [5.19].
[5] Stoll (2006), 308; Amerasinghe (2009), 510.
[6] Alschner (2014), 94-96; Pauwelyn (2003), 44, 456-472.
[7] EMC[2] Case, [18].
[8] ABR, *Peru-Agricultural Products*, [5.19]; ABR, EC-*Bananas III (21.5 II Ecuador)*, [225].

cases where disagreement arises on the choice of forum between parties, the CHIMEHA DSM shall prevail.[9] Therefore, Chilo's claims are inadmissible, since Haito has expressed its disagreement to the initiation of WTO dispute settlement proceedings.[10] Additionally, Art.808:3 CHIMEHA *expressis verbis* stipulates regarding BOP disputes in particular that: "*the complaining Party must, in respect of that matter, have recourse to dispute settlement procedures solely under this FTA*".[11] Therefore, Respondent submits that Chilo has recognized the compulsory jurisdiction of the CHIMEHA DSM in an unequivocal fashion, and *thus* has not initiated the present proceedings in accordance with Art.3.7 DSU and the general principle of good faith in its specific manifestation in Art.3.10 DSU.

4. In any event, the AB in *Peru-Agricultural Products* also reiterated that the relinquishment of a Member's rights under the DSU may appear "*in a form other than a waiver embodied in a MAS*".[12] Specifically, the AB stated that Article XXIV of the GATT 1994 specifically permits departures from certain WTO rules in FTAs.[13] *In casu*, an *effet utile* interpretation of Art.23 DSU under Article 31 VCLT,[14] advocates that Art.808 CHIMEHA should be taken into account when assessing this Panel's jurisdiction, so that the exception provided by the GATT Enabling Clause for developing countries entering into FTAs covering trade in goods with other developing countries is not rendered a dead letter: the effective operation of this exception requires that jurisdictional provisions of CHIMEHA should also be respected. Moreover, WTO jurisprudence has turned to other treaties, FTAs included, so as to interpret determine WTO Members' intentions, rights and obligations.[15] Notably, in *US-FSC (21.5)*, the AB examined a range of FTAs when interpreting the term "foreign-source income" in the context of subsidies;[16] *mutatis mutandis*, this Panel should consider the exclusive forum choice provisions in numerous FTAs,[17] and hence interpret Art.23 DSU in favour of CHIMEHA's exclusive jurisdiction.

B. The state of Chilo is estopped from challenging the WTO-consistency of CHIMEHA

5. The AB in *Mexico-Soft Drinks* noted that the existence of *legal impediments* can preclude a panel's jurisdiction.[18] Estoppel, as a general principle of international law, may have a

[9] EMC² Case, [17].
[10] EMC² Case, [21].
[11] EMC² Case, [17].
[12] ABR, *Peru-Agricultural Products*, [5.25].
[13] ABR, *Peru-Agricultural Products*, [5.112].
[14] ABR, *US-Gasoline,* 21–22; ABR, *US-Offset Act,* [271]; ABR, *EC-Chicken Cuts* [214].
[15] ABR, *US-Shrimp* [130-132]; ABR, *EC-Poultry* [83]; PR, *Chile-Price Band* [7.81].
[16] ABR, *US-FSC (21.5)* [141-145].
[17] Art.2005(6) NAFTA; -DR Ch.20, Art.20.3.
[18] ABR, *Mexico- Soft Drinks*, [54].

bearing in WTO dispute settlement within the parameters of Arts.3.7, 3.10.[19] In particular, the WTO Panel acknowledged in *Argentina-Poultry*, that FTAs do serve as a factual basis for establishing the elements of estoppel.[20] In the present case, Chilo in 2015, one year before the commencement of consultations over the present dispute, concluded, ratified and incorporated into its domestic law the CHIMEHA FTA. Complainant's *clear and unambiguous* steps towards the realization of the CHIMEHA free trade area created Haito's *good faith reliance* that the FTA provisions are now shaping their internal trade.[21] Yet, Chilo comes before this Panel challenging the WTO-consistency of this FTA under its claims two to five. Accordingly, Complainant should be *estopped* from hemming and hawing around the validity of the CHIMEHA to Respondent's *detriment*.[22]

I. THE BOP QRS APPLICABLE TO ALL IMPORTED PRODUCTS ARE IN CONFORMITY WITH ARTS.XI, XII, XVIII, XXIV:8(B) OF THE GATT

6. Pursuant to Art. XI GATT, "*prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures*", are widely prohibited.[23] However, when a developing WTO Member faces BOP problems, Art.XVIII:B offers a carve-out from the general prohibition of quantitative restrictions,[24] in view of "*the progressive development of their economies*".[25]

2. In the case at hand, the LDC of Haito confronted a severe BOP situation. On the 1st of March 2016, Respondent implemented BOP quota restrictions by virtue of Art.XVIII:B by limiting the importation of all products on an MFN basis.[26] This import regime is in full compliance with Art.XI GATT, *since;* the conditions of Art. XVIII:B are fulfilled **(A)** and Haito is not obliged to exempt the CHIMEHA parties from the import restriction scheme. (**B**)

A. The MFN application of the BOP QRs conforms with ART. XI and XVIII:B GATT

7. Developing countries are empowered to adopt quantitative restrictions on imports in order to safeguard their financial status under the threat of BOP problems, in light of procedures set in Art.XVIII:B GATT.[27] In full conformity with the procedural obligations of the latter,

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[19] ABR, *EC- Sugar,* [310, 312]; Mitchell (2008), 93; Pauwelyn (2003), 207-212.
[20] PR, *Argentina-Poultry,* [7.38-9].
[21] Dorr (2012), 185; Mitchell (2008), 117; PR, *Guatemala-Cement II,* [8.23]; PR, *EC-Asbestos*, [8.60]; Mavroidis (2008), 20.
[22] Gourgourinis (2015), 129-133.
[23] PR, *India- QRs*, [5.142]; PR, *Colombia-Ports Of Entry*, [7.226]; PR, *India- Autos*, [7.257].
[24] ABR, *Argentina-Textiles*, [73]; Bown (2009), 34; Martin (2015), 59-60; Horlick (2011), 301.
[25] Thomas (2000), 1256; Horlick (2011), 301; Ristroph (2004), 67
[26] EMC[2] Case, [19].
[27] PR, *India-QRs*, [5.1556]; Thomas (2000), 1257; Jessen (2011), 425-428.

Haito, being a LDC, confronted its serious BOP problems.[28] Therefore, Haito has acted in consistency with Art.XI GATT.

B. Haito is not required to exempt Chilo from the BOP QRs

8. The AB in *EC-Bananas III* stated that quantitative restrictions should be imposed on a non-discriminatory way.[29] Haito is not required to deviate from the MFN application of the measure pursuant to the existence of the CHIMEHA FTA, as it would run against the principle of parallelism **(1)**. In addition, the provisions of Art.XXIV GATT are neither of obligatory nature to Haito **(2)** nor, *in any event*, are violated by the inclusion of FTA parties in the QRs **(3)**.

1. The rule of parallelism averts the exemption of the Chilo from the BOP QRs

9. The principle of parallelism, as it was elaborated by the AB in *Argentina-Footwear*, provides for horizontal application of import restrictions to all sources with a harmful effect on a domestic sector.[30] In the case of FTAs, the principle requires that an FTA member, which has investigated imports of any source, cannot simply exclude FTA parties from the application of the safeguard measures.[31] Since, this would lead non-FTA parties to suffer a disproportionate burden, as the sum of injury found would be attributed solely to their imports.[32]

10. The rule of parallelism is likewise applicable in cases of BOP restrictions; *i.e.* in instances where a BOP crisis is caused from the totality of the state's international transactions, regardless the source of the imports.[33] Besides, it follows that the exclusion of FTA members would even more encumber third parties, as the state would be obliged either to impose more severe or more extended restrictions, so as to be effective.[34] Therefore, Respondent is required to impose the BOP restrictions of an MFN basis.

2. In any event, Art.XXIV GATT does not constitute a right or obligation.

11. As a prefatory remark the Respondent submits that both systemically and substantially the notification under the Enabling Clause is the most appropriate in the present dispute. On 1 January 2016, Chilo unilaterally proceeded into notifying the CHIMEHA FTA under Article XXIV:7(a) GATT and Article V:7(a) GATS. Meco and Haito were taken by surprise, since

[28] EMC² Case, [19].
[29] ABR, *EC-Bananas III*, [160].
[30] Hoekman (2009), 414; ABR, *US- Steel Safeguards*, [439,441]; ABR, *EC- Fasteners*, [344].ABR, *US- Wheat Gluten*, [96]; ABR, *Argentina- Footwear*, [114]; ABR, *US- Line Pipe*, [197];
[31] Prost & Berthelot (2008), 281.
[32] Hudec & Southwick (1999), 68
[33] Stewart & Drake (2010), 1; Taylor (2004), 8.
[34] Voon (2009), 36.

Chilo acted with blatant disregard to the need to deliberate on the systemic issue of notification, as prescribed by the TM.[35] Complainant also scorned the suggestion of other two contracting Parties, to properly notify the FTA under the Enabling Clause, as well as the prayer of the Secretariat to notify the agreement jointly.[36]

12. Furthermore, Chilo's notification was not only typically inappropriate, but even more substantially. The contracting parties are developing WTO Member States that decided to liberalize their internal trade in view of harboring the development of their economies. In detail, they have agreed within the Chapters of the FTA on reducing tariff duties, thus not reaching the inflexible threshold of elimination required by Art.XXIV GATT.[37] In this vein, Meco and Haito submitted a notification to the CTD under the Enabling Clause. Respondent suggests that since the Enabling Clause, a *lex specialis* to Art.XXIV GATT,[38] seeks to promote the fuller participation of the developing countries in the world trade system, it is indeed the most appropriate basis for the notification of the CHIMEHA.[39]

13. Even in the case that the notification under Art.XXIV GATT prevails, the AB has specifically recognized that Art. XXIV constitutes an *exception* that provides a justification for measures otherwise WTO-inconsistent.[40] Hence, Respondent would like to aptly clarify that Art.XXIV GATT constitutes a right at the disposal of a WTO member, not a positive obligation subject to violation.[41] Thus, Haito *could not* and *has not* violated Art. XXIV:8 GATT.

3. In any event, the BOP QRs are consistent with Art.XXIV:8(b)

14. Pursuant to Art.XXIV:8(b), FTA parties are obliged to eliminate duties and ORRCs *"on substantially all the trade"*.[42] Restrictive regulations, however, may be extended to the FTA parties in instances of the parenthesis of Art.XXIV:8(b). In the case at hand, measures pursuant to Art. XXIV:8 are justified as the list is illustrative and provides for such measures (**a**) and the import restrictions pass the necessity test.(**b**)

<u>(a) The list is illustrative</u>

15. The fact that Art.XVIII:B GATT, which was invoked by Respondent, is not *expressis verbis* included in the list of Art.XXIV:8(b) GATT, does not set any impediment, as the list is

[35] WT/COMTD/W/175, 33; WT/COMTD/M/82, 3.
[36] EMC² Case, [3.1].
[37] Kim (2012), 649; Matsushita (2010), 11; Islam & Alam (2009), 22; Marceau & Reimann(2001), 328.
[38] WT/COMTD/W/114, [2].
[39] WT/COMTD/W/114, [5]; WT/COMTD/M/82, [55].
[40] ABR, *Turkey-Textiles,* [46]; ABR, *Korea-Dairy,* [77]; Lockhart& Mitchell (2005), 219; Marceau & Reiman (2001), 313.
[41] ABR, *Turkey-Textiles,* [42,43]; Marceau & Reiman (2001), 313; Lissel (2014), 94.
[42] ABR, *Turkey-Textiles* [48]; PR, *US-Line Pipe,* [7.139]; Pauwelyn (2004), 126.

illustrative and, by no means, exhaustive.[43] A possible exhaustive interpretation would be contrary to Art.32 VCLT,[44] as it would lead to absurd results such as the justification of BOP measures pursuant to Art. XII and not under XVIII:B which is suited for developing states, or that states would be deprived from the wider and most crucial exception in the GATT, the security exception of Art.XXI.[45] Therefore, developing WTO members are allowed to impose BOP measures inside an FTA.

(b) The application of the BOP QRs is necessary in the sense of Art.XXIV:8(b)

16. A measure is necessary pursuant to Art. XXIV:8(b) GATT if the internal restriction is required in order to conform with the terms and principles of the relevant provisions.[46] In the case of BOP restrictions, a WTO member is to "*avoid unnecessary damage to the commercial or economic interests of any other*" WTO member.[47] Thus, an exclusion of FTA members from the application of the quota would hinder the interests of third parties.[48] Therefore, the MFN application of the BOP restrictions is necessary pursuant to Art.XXIV:8(b) GATT.

II. THE REDUCTION OF THE TRQs ON AGRICULTURAL PRODUCTS PROVIDED FOR IN CHAPTER I OF THE CHIMEHA FTA IS CONSISTENT WITH ART.XIII GATT

17. TRQs, unlike QRs, are permitted under the GATT, as long as, they are administered by virtue of Art.XIII GATT.[49] Inconsistencies with the said provision may emerge only when the imposing "*Member fails to give access to or allocate tariff quota shares on a non-discriminatory basis among supplier countries*".[50] Any issue relating to the *TRQ tariff duty rates* is to be solely examined under Art.I:1 GATT 1994.[51] In our case, Complainant asserts that the reductions of the tariff duties comprising the coffee TRQ by virtue of CH.I CHIMEHA violate Art.XIII GATT. However, it fails to discharge its burden of proving *first*, that Art.XIII applies to present dispute **(A)**; and *second*, that, *in any event*, the TRQ for coffee is inconsistent with Art.XIII GATT **(B).**

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[43] Ahn (2008),120; Mitchell (2009), 98; Talanov (2011), 13; Volker (1993), 26-27.

[44] Art.3.2 DSU; ABR, *EC – Chicken Cuts*, [283], ABR, *EC - Bananas III (21.5 II – Ecuador)* [216], Van Damme (2009),321.

[45] Pauwelyn (2004), 126; Hudec & Southwick (1999), 66,77.

[46] Trachtman (2011), 131; Huang (2012), 213.

[47] Stewart & Drake (2009), 2; Van Den Bosshe & Zdouc (2013), 639.

[48] Voon (2009), 36; Bown (2003), 327, 343-347.

[49] ABR, *EC-Bananas III (21.5 II Ecuador II)*, [350]; ABR, *EC-Poultry*, [222]; ABR, *EC-Bananas III*, [160]; GATT PR, *EEC-Dessert Apples*, [12.21].

[50] ABR, *EC-Bananas III (21.5 II Ecuador)*, [337-8]; ABR, *EC-Bananas III*, [160-1]; ABR, *EC-Poultry*, [106]; ABR, *US-Line Pipe*, [79]; GATT PR, *US-Sugar Nicaragua*, [4.3]; GATT PR, *Norway-Textiles*, [16].

[51] ABR, *EC-Bananas III (21.5 II Ecuador)*, [343] Hestermeyer & Weiss (2011), footnote 130.

A. Art.XIII GATT 1994 does not apply to instances of *differential in-quota duties*

18. The AB in *EC-Bananas III* crystallized that both Art.I and XIII GATT apply to a TRQ regime.[52] In particular, the AB applied the interpretative principle of *effet utile*[53] and gave separate meaning and effect to its provision.[54] Accordingly, *on the one hand*, Art.I GATT 1994 applies to instances where a Member imposes differential in-quota duties on like product imports originating from different countries. *On the other hand*, issues of access to the TRQ and allocation of TRQ shares among supplier countries are governed by Art.XIII GATT 1994.[55] Thus, contrary to Complainant's tenuous allegations, the reductions of the TRQ in-and-out- of-quota tariff duties fall under the scope of Art.I GATT 1994. Notably, given the factual background of the case, any *prima facie* inconsistency arising therefrom is fully justified by virtue of the Enabling clause,[56] as well as, in any case, by Art. XXIV. [57]

B. In any event, theTRQ for coffee is in full conformity with Art.XIII

1. The importation of coffee of all third countries is *similarly restricted* in accordance with Art. XIII:1 GATT 1994

19. The non-discrimination principle encapsulated in Art.XIII:1 GATT requires that like product imports from all countries must have *access* and *participation* in the TRQ. The AB in *EC-Bananas III (21.5 II-Ecuador)* opined that this *principle of access* is satisfied when the TRQ operates on a product-wide basis granting access to all like product imports.[58] Particularly, the AB found that the duty-free tariff quota imposed by the EC Bananas Import Regime in favor of the traditional ACP countries violated Art.XIII:1 GATT, since it plainly excluded non-ACP countries from access.[59] In stark contrast, in the case at hand, all coffee imports have access and participation in the TRQ.[60] This aptly establishes that the Chilean coffee TRQ fully conforms to the principle of access in Art.XIII:1.

2. The coffee TRQ aims at *the least trade-distorting distribution* of TRQ shares in accordance with Art. XIII:2 GATT 1994

20. Art.XIII:2 GATT aims at securing supplier Members' comparative advantages in the TRQ restricted market and provides that the allocation of shares must be made in a way that

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[52] ABR, *EC-Bananas III (21.5 II Ecuador)*, [343].
[53] ABR, *US-Gasoline*, [23]; ABR, *EC-Asbestos*, [115]; PR, *US-Line Pipe* [7.15].
[54] PR, *EC-Bananas (21.5 US)*, [7.653-7.654]; PR, *US-Line Pipe*, [7.45].
[55] ABR, *EC-Bananas III (21.5 II Ecuador)*, [343-345]; Hestermeyer & Weiss (2011), 338.
[56] ABR, *EC-Tariff Preferences,*[83, 90, 99,103]; PR, *EC-Bananas (21.5 US)*, [4.190, 5.115]; Ochieng (2007), 375; Davey (2012), 270,284; Gathii (2011), 120.
[57] ABR, *Turkey-Textiles,* [46]; ABR, *Korea-Dairy,* [77]; ABR, *Peru- Agricultural*, [5.113]; Lissel (2014), 94; Lockhart & Mitchell (2005), 230; Marceau & Reiman (2001), 313.
[58] ABR, *EC-Bananas III (21.5 II Ecuador)* [337, 160]; Van Den Bossche (2008), 455.
[59] ABR, *EC-Bananas III (21.5 II Ecuador)* [339].
[60] EMC^2 Case, [5, 9].

mimics historic trade flows. In particular, Art.XIII:2(d) prescribes two rules for the allocation of TRQ shares: either by agreement with all supplier countries having a substantial interest or unilaterally pursuant to a previous representative period.[61] In the present case, Chilo has not sought agreement with any supplier country; rather the Complainant has unilaterally chosen to allocate shares to all suppliers through the FCFS method.[62] Accordingly, we will establish *first*, that the allocation cannot be conducted on the basis of a previous representative period by virtue of Art.XIII:2(d) GATT second sentence **(a)** and, *second*, that the FCFS allocation is in full conformity with the chapeau of Art.XIII:2 GATT **(b)**

(a) The coffee TRQ shares cannot be allocated by virtue of Art.XIII:2(d) second sentence

21. Allocation by virtue of the second method envisaged in Art.XIII:2(d) GATT requires a Member to allot shares on the basis of the total import proportions supplied by Members during a previous representative period.[63] Presently, there is no such period objectively reflecting traditional trade patterns (*i*), while, *in any event*, the change in circumstances marked by the conclusion of the CHIMEHA FTA disqualifies any representative period (*ii*).

i. There is no "previous representative period"

22. In order for a reference period to qualify as a "previous representative period" in the sense of Art.XIII:1 GATT, it should be a fair guide to the market's free and competitive operation.[64] Notably, special factors affecting the trade of the like product brought about by means not permitted under the Agreement render the reference period unrepresentative.[65] In the present case, the Chilean market has always revolved around Chilo's MFN bound TRQ for coffee. However, trade flows before the conclusion of the CHIMEHA have been severely distorted by Complainant's confidential agreement with Meco. This "*skeleton in the closet*" agreement that awarded an undue comparative advantage to Meco is *prima facie* WTO inconsistent, as it infringes upon the basic non-discrimination principle enshrined in Art.I GATT.[66] Thus, the image of the market preceding the year 2015 cannot serve as a fair representation of what would the supplier Members expect to obtain.

[61] Hestermeyer & Weiss (2011), 332; Van Den Bossche (2008), 453.
[62] PR, *EC-Bananas III* [7.74].
[63] Hestermeyer & Weiss (2011), 332; Schropp & Palmeter (2010), 42; Skully (2001), 12.
[64] PR, *EC_Bananas III (21.5-Ecuador)* [6,50]; GATT PR, *US/EEC-Poultry* [10]; GATT PR, *EEC-Dessert Apples (* [4.18].
[65] GATT PR, *EEC-Dessert Apples* [12.22]; GATT PR, *Japan- Agricultural Products* [5.1.3.7]; Hestermeyer & Weiss, 332.
[66] ABR, *EC-Tariff Preferences,* [101]; ABR, *EC-Bananas III,* [190]; ABR, *Canada-Autos,* [84].

ii. The conclusion of the CHIMEHA changed the circumstances of the Chilean coffee market

23. What is more, even if a "previous representative period" could be designated, it could not serve as a factual basis for determining the allocation of TRQ shares. The WTO Panel in *US-Line Pipe* noted that where evidence is presented indicating that supplier Member's expectations have altered due to change in circumstances, historic trade patterns cannot serve as a factual basis.[67] In the case at hand, Chilo decided to conclude in 2015 the CHIMEHA FTA, thus liberalizing internal trade with Meco and Haito.[68] It follows, that the competitive dynamics of the market were to alter, so that supplier countries could not reasonably expect their market presence not to adapt.

(b) The coffee TRQ shares are allocated on an FCFS basis in accordance with the chapeau of Art. XIII:2 GATT 1994

24. According to the AB in *EC-Bananas III (21.5 II-Ecuador)* for a Member's allocation of TRQ shares to be in line with the *chapeau* of Art.XIII:2 GATT, it must always be in the *least-trade distorting* manner.[69] The FCFS method followed by the State of Chilo offers supplier countries the opportunity to import at competitive conditions until the in-quota is filled, thus not posing a risk of biased trade.[70] As the Panel noted in *EC-Bananas III*, when an open category of "*others*" is created for supplier Members in order for them to have equal competitive opportunities of winning shares, the import market evolves with the minimum amount of distortion.[71] In the case at hand, Chilo chose to allocate shares to all suppliers and it did so through the FCFS method, thus completely respecting traditional comparative advantages.[72]

III. THE S&DT PROVIDED TO HAITO IS CONSISTENT WITH ART.I:1 OF THE GATT 1994 AND THE ENABLING CLAUSE

25. Pursuant to Art.I:1, "*any advantage [...] shall be accorded immediately and unconditionally to all like products of all other Members.*" However, the Enabling Clause provides the breathing space for development frameworks to deviate from the MFN principle.[73] The CHIMEHA parties, mindful of the special developmental and financial needs of LDCs, stipulated in Art.606 CHIMEHA a duty free tariff treatment for products

[67] PR, *US-Line Pipe* [7.54]; Hestermeyer & Weiss (2011), 329.
[68] EMC^2 Case, [2.1,2.2].
[69] ABR, *EC — Bananas III (21.5 II Ecuador)*, [338]; PR, *EC-Poultry*, [229].
[70] Abbot (2001), 16; Skully (2001), 8.
[71] PR, *EC — Bananas III (21.5 II Ecuador)*, [7.287].
[72] Pearce & Sharma (2000), [5.3]; Monnich (2003), 10.
[73] ABR, *EC-Tariff Preferences* [90]; Bartels (2003), 519; Sacerdoti & Castren (2011), 75.

originating in Haito, their LDC FTA counterpart.[74] Strikingly, Complainant challenges this provision as inconsistent with Art.I:1 GATT and the Enabling Clause. As a prefatory remark, the Respondent would like to stress that Chilo did not address all the necessary parameters to meet its burden of proof, since it merely refers to the Enabling Clause without clarifying the paragraph of the alleged violation.[75] Accordingly, we submit that Complainant fails to prove that Art.606 CHIMEHA is in violation of Art.I:1 GATT and inconsistent with the Enabling Clause **(A)**; while, in any event, any alleged violation is justified under Art.XXIV GATT.

A. The S&DT is conformity with the Enabling Clause and, thus, WTO-consistent

26. The S&DT encapsulated in Art.606 CHIMEHA is exempted from compliance with the MFN obligation under Art.I:1 GATT,[76] since, *first*, the Enabling Clause prevails over Art.I:1 GATT **(1)** and, *second*, the S&DT conforms with the requirements of the Enabling Clause **(2)**.

1. The Enabling Clause prevails over Art.I:1 GATT

27.The Enabling Clause constitutes an integral part of the GATT 1994, according to par.1(b)(iv) of its text,[77] which *encourages* WTO Members to deviate from Art.I and provide special and differential treatment to developing countries.[78] Para.1 of the Enabling Clause includes the phrase "notwithstanding the provisions of Art.I" of the GATT, the ordinary meaning of which under Art.31.1 of the VCLT and 3.2 of the DSU, is "in spite of, without regard to or prevention by" Art.I GATT.[79] Moreover, pursuant to the AB in *EC-Tariff Preferences*, the provisions of the Enabling Clause operate as *lex specialis* to Art.I GATT.[80] Therefore, since a measure undertaken under the Enabling Clause will always be in *prima facie* inconsistency with Art.I GATT, a Complainant bears the burden of proving that the requirements set by the former are not met. In the present case, this burden of proof has not been discharged.

2. The S&DT is consistent with the Enabling Clause

28. Under par.2(c) of the Enabling Clause, WTO Members are allowed to provide differential treatment to developing countries, through regional arrangements amongst less-developed contracting parties for the mutual reduction or elimination of tariffs. The term "developing

[74] EMC^2 Case [1,7,9,14].
[75] ABR, *EC-Tariff Preferences* [113-114].
[76] ABR, *EC-Tariff Preferences,*[83, 90, 99,103]; ABR, *Turkey-Textiles,* [46]; ABR, *Korea-Dairy,* [77]; Ochieng (2007), 375; Davey (2012), 270,284; Lissel (2014), 94.
[77] ABR, *EC-Tariff Preferences* [108]; Bartels (2004), 515-516; Sacerdoti & Castren (2011), 70.
[78] Bartles (2003), 516; Sacerdoti & Castren (2011), 69.
[79] ABR, *EC-Tariff Preferences* [90]; PR, *US- Cotton* [7.279]; Shorter Oxford English Dictionary (2002), 253.
[80] ABR, *EC-Tariff Preferences* [101].

countries" includes also the least developed countries,[81] in light of the object and purpose of the WTO Agreement, which is a "positive effort" to promote the economic development of developing, and especially least developed countries, as stated in rec.2 of the preamble.[82]

29. Moreover, the term "differential" is to be interpreted in the light of WTO's purpose, under Art.31 of the VCLT and 3.2 of the DSU, as stated in rec.2 of the WTO Agreement, which refers to "the needs" of the economic development of the developing countries.[83] In *EC-Tariff Preferences*, the AB confirmed the interpretation of the Enabling Clause as allowing WTO Members to grant differential treatment among developing countries, in line with their needs and specific circumstances.[84] Accordingly, the term "mutual" should not be read as comprising the strict notion of reciprocity.[85]

30. In the present case, Chilo, Meco, two developing countries and Haito, an LDC concluded in 2015 the CHIMEHA, a trilateral FTA, which includes provisions for the reduction of tariffs among them. In particular, the elimination of tariffs provided to Haito in Art.606 CHIMEHA was agreed with special concern to the needs of Haito, given its LDC status.[86] The mere fact that one specific provision was not reciprocal does not alter the nature of the FTA as a whole, as a mutually advantageous agreement that includes mutual reduction of the tariffs, taking into account the special economic needs of each member. Therefore, the S&DT provided in Art.606 CHIMEHA falls under the scope of application of para.2 of the Enabling Clause.

31. *A fortiori*, this conclusion is further supporter by para.2(d) of the Enabling Clause. This paragraph authorizes WTO members to provide special treatment to LDCs, as long as, they do so in the context of general or specific measures in favor of developing countries.[87] The reference to specific or general measures is to be read as referring to GSP or GSTP schemes and south-south RTAs.[88] Accordingly, in the context of the CHIMEHA, an FTA concluded for the promotion of trade between 3 least developed countries, the S&DT constitutes a provision that provides special treatment to the least developed country among them.[89]

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[81] Kleen & Page (2005), 45; Conconi & Perroni (2015), 67; Sacerdoti & Castren (2011), 71,72.
[82] ABR, *EC-Computer Equipment*, [82]; PR, *EC-Chicken Cuts*, [7.315-7.318]; ABR, *EC-Tariff Preferences*, [91,92]; Ochieng (2007), 377.
[83] Hestermeyer & Grotto (2011), 50.
[84] ABR, *EC-Tariff Preferences* [161-162].
[85] Sacerdoti & Castren (2011), 73; Kim (2012), 656.
[86] EMC^2 Case, [14].
[87] ABR, *EC-Tariff Preferences*,[172]; PR, *EC-Tariff Preferences* [7.151].
[88] Ongulo & Ito, (2003), 22.
[89] EMC^2 Case, [14].

B. In any event, the S&DT is justified under Art. XXIV

32. In any event, the S&DT was concluded under an FTA consistently with Art.XXIV GATT, which allows Members to derogate from the MFN obligation of Art.I:1 GATT.[90] The fact that the CHIMEHA is examined under the requirements of the Enabling Clause does not preclude the invocation of Art.XXIV GATT, since an agreement can be examined under the requirements of both provisions.[91]

IV. THE PROVISIONS OF CHAPTER V OF THE CHIMEHA FTA PROVIDING ZERO IMPORT TARIFFS TO LISTED GREEN GOODS FROM PARTIES OF THE CHIMEHA FTA AND A FEW WTO MEMBERS ARE CONSISTENT WITH ART.I:1 OF THE GATT 1994

33. Art.I:1 GATT embodies the MFN principle, which prohibits the discrimination among like products originating in different countries.[92] CH.V CHIMEHA provides that a zero import tariff duty will apply to the intra-FTA trade of 51 green goods. Notably, this treatment is non-discriminatorily extended to green goods originating in countries that achieve GA status.[93] Accordingly, the State of Haito will *first* that Complainant has failed to discharge its burden of proof that measure at stake is inconsistent with Art.I:1 **(A)**, *since*; the tariff abolition is provided to *all like* products **(1)**, *immediately and unconditionally* **(2)**; and, *second*, that, in any event, with respect to the intra-CHIMEHA trade, the zero import tariff is justified under the Enabling Clause and Art.XXIV GATT **(B)**.

A. The zero import tariff on green goods from GA countries is in full conformity with Art.I:1 GATT

34. CH.V of the CHIMEHA, as concluded between the FTA parties, awards the advantage of zero import tariff to 51 green goods originating in FTA and GA countries. Respondent avers, and shall plainly rebut, that this advantage is accorded in violation of Art.I:1 GATT; since, *first regulatory differences* among GA and non-GA green goods preclude a finding of likeness **(1)** and, *second*, in any event, the advantage is *unconditionally* and *immediately* extended to all, alleged, like products **(2)**.

[90] ABR, *Turkey-Textiles,* [46]; ABR, *Korea-Dairy,* [77]; Lissel (2014), 94; Estrella & Horlick (2006), 119; Lockhart & Mitchell (2005), 230; Marceau & Reiman (2001), 313; Hudec & Southwick (1999) ,49.

[91] ABR, *Peru- Agricultural Products* [5.113].

[92] ABR, *EC-Bananas III,* [190]; ABR, *Canada-Autos,* [84]; PR,*Colombia- Ports of Entry,* [7.322]; ABR, *EC-Tariff Preferences,* [101]; ABR, *EC-Seal Products*, [5.86].

[93] EMC^2 Case, [13, 27].

1. The regulatory differences among GA and non-GA green goods render the relevant products *unlike*

35. Complainant asserts that the distinction among GA and non-GA Members is a difference in treatment exclusively based on origin.[94] However, Complainant blatantly disregards that CH.V introduces a regulatory framework under which the status of GA Member is established.[95] Particularly, CH.V provides that each country that reciprocates the zero tariff treatment to green goods, thus, fostering the environmental sustainability concerns of the CHIMEHA parties, is eligible for GA status.[96] To this end, the Panel in *Argentina-Financial Services* stipulated that when differential treatment is grounded on the existence of a regulatory framework, *even though inextricably linked to origin*, the presumption of likeness based on origin is inapplicable.[97] In that dispute, the Panel found that if Argentina indeed differentiated its treatment between countries listed as cooperative and non-cooperative by virtue of the regulatory in nature criterion of access to tax information of foreign suppliers, a likeness finding would be prevented.[98] Similarly, in our case, the differentiated treatment among countries listed as GA and non-GA by virtue of the regulatory criterion of reciprocal zero tariff treatment on green goods precludes a finding of likeness.[99] This is reiterated by the fact that the different regulatory context in which GA and non-GA imports of green goods are placed affects their competitive engagement.[100]

2. In any event, the zero import tariff is an advantage extended *immediately and unconditionally* to all alleged like products

36. The AB in *Canada-Autos* professed that the mere fact that an advantage is granted subject to conditions, does not connote the discriminatory nature of these conditions, in the sense that in such cases there no *per se* violation of Art.I:1 GATT.[101] In particular, the WTO Panel in *US-Poultry* substantiated its finding of conditional discriminatory treatment under Art.I:1 on the fact that Section 727 plainly excluded China from the importation of poultry products, notwithstanding whether the Chinese poultry imports conformed or not with the food safety conditions imposed by the US.[102] In stark contrast, the zero import tariff is to be extended immediately to all supplier Members achieving GA status, *i.e.* substantiating conformity with

[94]ABR, *Argentina-Financial Services,* [6.38, 6.61]; PR, *Turkey- Rice,* [7.214-7.216].
[95] ABR, *Argentina-Financial Services,* [6.56]; PR, *China- Payment Services,* [7.697].
[96] EMC^2 Case, [13, 27]; ABR, *Brazil-Tyres,* [179]; Condon (2009), 4; Howse & Eliason (2008), 3.
[97] ABR, *Argentina-Financial Services,* [6.56]; PR, *China- Payment Services,* [7.697]; PR, *US-Poultry,* [7.429]; Trachtman & Porges (2003), 785; Diebold (2010),11, 76.
[98] PR, *Argentina-Financial Services*, [7.179].
[99] EMC^2 Case, [6, 27].
[100] ABR, *US – Clove Cigarettes*, [119-120]; PR, *Argentina-Financial Services,* [7.178].
[101] ABR, *Canada- Autos,* [76]; PR, *US-Poultry*, [7.437]; PR,*Colombia- Ports of Entry,* [7.362].
[102] PR, *US-Poultry*, [7.439-7.440].

the non-discriminatory condition of reciprocal zero tariff treatment to green goods.[103] Therefore, CH.V CHIMEHA is in full conformity with Art.I:1 GATT.

B. In any event, the zero import tariff applicable in the intra-CHIMEHA trade is justified under both the Enabling Clause and Art.XXIV

37. It has been established that a FTA member is exempted from the obligation to comply with the principle of MFN inside the FTA, as Art.XXIV GATT and the Enabling Clause constitute an exception to Art.I GATT.[104] Thus, CH.V of the CHIMEHA that directly provides zero import tariff on green goods, originating in territories of the CHIMEHA parties constitutes a WTO consistent environmental scheme.[105]

V. THE PROVISIONS OF THE CHAPTER IV OF THE CHIMEHA FTA ON AD ARE CONSISTENT WITH ART.9.2 OF THE WTO ADA

38. Pursuant to Art.9.1 ADA, the implementation of AD regulations lies upon the discretion of national authorities, while Art.9.2 ADA, dictates that AD duties, once imposed, should be collected on a non-discriminatory fashion among suppliers related to the injurious dumping.[106] In our case, Respondent shall establish that contrary to Chilo's assertions, the reciprocal elimination of AD measures pursuant to CH. IV CHIMEHA is consistent with Art.9.2 ADA (**A**). In any case, we will prove that the provisions for the elimination of AD duties are justified under Art.XXIV GATT (**B**).

A. The removal of AD measures does not violate Art.9.2 ADA

39. Art.9.2 ADA mandates the non-discriminatory collection of AD duties from all sources found to be dumped and causing injury.[107] In our case, the provisions of CH. IV are WTO consistent, as, *first*, the right not to impose AD measures does not fall under the scope of Art. 9.2 ADA **(1)** and, *second*, WTO members are not required to provide non-discriminatory treatment during investigations or reviews **(2).**

1. Art. 9.2 ADA does not regulate the right to abolish AD duties

40. WTO members enjoy full discretionary authority on the matter of imposition AD measures after an investigation under Art.9.1 ADA.[108] Thus, a Member may waive its right to impose AD measures, as the non-discrimination principle enshrined in Art. 9.2 ADA does not

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[103] EMC² Case, [13].
[104] ABR, *EC-Tariff Preferences,*[83, 90, 99,103]; Ochieng (2007), 375; Davey (2012), 270,284; ABR, *Turkey-Textiles,* [46]; ABR, *Korea-Dairy,* [77]; Lissel (2014), 94.
[105] EMC² Case, [13, 27]; Howse & Eliason (2008), 3; Howse & Bork (2012), 6.
[106] Sup Lee (2012), 127; Messerlin et al (2008), 207; Huang (2012), 63.
[107] ABR, *EC-Fasteners,* [338]; Messerlin et al (2008), 209.
[108] Messerlin et al (2008), 207; Sheela Rai (2016), 10; Sup Lee (2012), 127.

refer to the application of the measure *per se*, rather to the manner under which the measure shall be applied.[109] Crystallizing the non-confounded function of the two sub-paragraphs, the AB in *US-Shrimp* stated that when different provisions cover the capability to apply a measure and the relevant method of application, they should be scrutinized separately. [110] In our case, CH.IV CHIMEHA refers to the abolition of the CHIMEHA parties' right to impose anti-dumping duties among them, and not to issues of AD duties' administration.[111] Thus, CH.IV CHIMEHA does not fall under the scrutiny of Art.9.2.[112]

2. The non-discrimination principle does not apply to AD investigations and reviews

41. It has been established that anti-dumping procedures constitute an extended exception to the MFN principle.[113] Therefore, *but for* the specified non-discrimination requirement of Art.9.2 ADA, WTO members are not required to provide MFN treatment during investigations and reviews.[114] For, a WTO member may be in conformity with Art. 9.2 by simply collecting the duties properly, even if the imposition of the duties is discriminatory following an equally or even more discriminatory investigation.[115]

B. In any event, the reciprocal elimination of AD measures within the CHIMEHA is justified under Art.XXIV of the GATT 1994

43. Even in the remote case that CH.IV is found to be inconsistent with ADA, it is still justified, *since*, Art.XXIV constitutes an exception to ADA provisions **(1)** and AD duties constitute an ORRC, which shall be eliminated in vies of Art.XXIV:8(b) **(2)**.

1. Art.XXIV constitutes an exception to ADA provisions

44. As it was found in *Turkey- Textiles,* Art.XXIV GATT could justify any measure that is found to be inconsistent with GATT.[116] ADA and Art.VI GATT have been found to apply cumulatively, as AD measures are meant to comply both with the provisions of GATT and the provisions of ADA.[117] Therefore, Art.XXIV GATT constitutes an exception to ADA provisions as well.

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[109] PR, *EC-Salmon,* [7.702]; Messerlin et al (2008), 207; EMC^2 Case, [12.1].
[110] ABR, *US-Shrimp,* [113-115]; ABR, *US-Gasoline,* 22.
[111] EMC^2 Case, [12.1].
[112] PR, *EC-Salmon,* [7.702]; Messerlin et al (2008), 207; EMC^2 Case, [12.1].
[113] Voon (2009), 17; Lissel (2014), 28; Islam & Alam (2009), 17; Hyder (1968), 96.
[114] ABR, *EC-Fasteners,* [349]; ABR, *US- ADCD (China),* [552]; Messerlin et al (2008), 209;
[115] Ahn (2008), 126; Voon (2009), 17;
[116] ABR, *Turkey-Textiles,* [46]; ABR, *Korea-Dairy,* [77]; Lockhart & Mitchell (2005), 230; Marceau & Reiman (2001), 313.
[117] ABR, *Thailand–Antidumping Duties on Angles,* [109], Qureshi (2006), 180.

2. The AD measures are to be eliminated within the CHIMEHA

45. According to Art.XXIV:8(b) GATT, all ORRCs should be eliminated within a FTA, excluding the provisions listed in the parenthesis.[118] The ordinary meaning of the term "restrictive regulation of commerce" is that of regulations that limit or "confine" within bounds trade.[119] Accordingly, by virtue of Art.31.1 VCLT and in light of the purpose of Art.XXIV GATT to provide unrestricted intra-FTA market access to FTA Members,[120] all measures restraining trade flows among FTA parties must be seen as "restrictive" that are to be eliminated by virtue of Art.XXIV:8(b) GATT.[121]

46. In detail, restrictive border measures applicable on imports from FTA parties fall under the definition of ORRC.[122] AD measures constitute measures applied on the borderline that opt to keep under control injurious imports.[123] Hence, it is evident that AD procedures constitute ORRCs, which shall be eliminated within an FTA.[124] Therefore, the elimination of reciprocal AD measures among CHIMEHA parties is justified pursuant to Art. XXIV:8 GATT.

[118] Pauwelyn (2004), 126.
[119] Black's Law (2009), 304, 1429.
[120] Art.3.2 DSU; ABR, *US-Gambling*, [164]; ABR, *US-Shrimp,* [114]; ABR*, Argentina-Footwear* [91]; Van Damme (2009), 50.
[121] ABR, *Turkey Textiles*, [57]; Nsour (2008), 7; Adlung & Morisson(2010), 1108.
[122] Estrella & Horlick (2006), 130.
[123] Falade (2014), 237.
[124] Lockhart & Mitchell (2005), 237,238; Talanov (2011), 12; Marceau (1994).

REQUEST FOR FINDINGS

For the above reasons, Haito respectfully asks this Panel to find that there are legal impediments to its jurisdiction to hear Chilo's substantive complaints. In the alternative, Haito requests the Panel to find that:

1. The BOP QRs are in full conformity with Art.XI,XII,XVIII and XXIV GATT, since they considered necessary within an FTA and thus, they shall be imposed to all, including CHIMEHA parties, pursuant to the rule of parallelism

and

2. The reduction of TRQs on coffee does not fall under the scope of Art.XIII GATT. In any event, the TRQs are consistent with Art.XIII:1,2 GATT, since they are alloted to all substantially interested suppliers, without distorting the trade

and

3.The S&DT provided to Haito is consistent with the Enabling Clause, since it constitutes a proportional, mutual advantageous arrangement among the CHIMEHA parties, and therefore, it is in full conformity with Art.I GATT. In any event, it is justified under Art.XXIV GATT

and

4. The 0% import duty on green goods is in full conformity with Art.I:1 GATT, since the advantage of duty free access is accorded to like products immediately and unconditionally. In any event, the 0% import duty on green goods among CHIMEHA parties is justified under the Enabling Clause and Art.XXIV GATT

and

5. The reciprocal abolition of AD within the CHIMEHA does not violate Art.9.2 ADA, since it does not fall within its application and in any case, it does not violate the principle of non-discrimination. Furthermore, it is justified under Art.XXIV GATT, since the application of AD among CHIMEHA parties is considered necessary for the fulfillement of the FTA's purpose.

Therefore, Haito requests the Panel to make no recommendation to the Dispute Settlement Body, as Respondent is in full conformity with its WTO obligations.