

Team: 038C

**JOHN H. JACKSON MOOT COURT COMPETITION
2018-2019**

**Zycron – Certain Measures Electric
Vehicles Charging Points and
Infrastructure**

Avilion
(Complainant)

VS

Zycron
(Respondent)

SUBMISSION OF THE COMPLAINANT

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Short Form	Full Citation
TREATIES AND AGREEMENTS	
Agreement on Rules of Origin	Agreement on Rules of Origin, (entered into force on January 1, 1995) 1868 U.N.T.S. 397.
DSU	Understanding on Rules and Procedures Concerning the Settlement of Disputes, 1869 U.N.T.S. 401 (1994).
GATT	General Agreement on Tariffs and Trade 1994 (15 April 1994) LT/UR/A-1A/1/GATT/1.
GPA	Revised Agreement in Government Procurement (30 March 2012 entered into force on April 6, 2014) GPA/113.
ILO Conventions	The Hours of Work (Coal Mines) Convention (No. 31) adopted in 1931 to the Safety and Health in Mines Convention (No.176), adopted in 1995.
SCM	Agreement on Subsidies and Countervailing Measures (15 April 1994 entered into force on January 1, 1995) 869 U.N.T.S. 14.
VCLT	Vienna Convention on the Law of Treaties (22 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

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LIST OF ABBREVIATIONS

Abbreviation	Description
AB	Appellate Body
ARO	<i>Agreement on Rules of Origin 1995</i>
Art./Arts.	Article/Articles
CC	Conditions of competition
CQ	Charging Queen
Directive n.12	Procurement Directive n.12-2018/2019 ‘2018 EV Charging Points Procurement Directive’
DSB	Dispute Settlement Body
EC	European Communities
EEC	European Economic Community
EV	Electric Vehicle
FTA	Free Trade Agreement
GATT	<i>General Agreement on Tariffs and Trade 1994</i>
GEA	Going Electric Act
GEP	Going Electric Plan
GPA	<i>Agreement on Government Procurement 1994</i>
HS	Harmonized System
ILO	International Labour Organization
MFN	Most Favoured Nation
MIET	Zycron’s Ministry of Infrastructure and Electric Transport
MIZ	Made in Zycron
OECD	Organisation for Economic Co-operation and Development
OTA	Orbius Tertius Agreement
OUF	Official Unitary Fee
Para./Paras.	Paragraph/Paragraphs
PPM	Processes and Production Methods
ROO	Rules of Origin
RTA	Regional Trade Agreement
SCM	<i>Agreement on Subsidies and Countervailing Measures 1994</i>
SDGs	UN Sustainable Development Goals of 25 September 2015 (<i>Transforming Our World: the 2030 Agenda for Sustainable Development</i> , A/RES/70/1)
SOC	Schedule of Commitments
VCLT	<i>Vienna Convention on the Law of Treaties</i>
WTO	World Trade Organization
ZD	Zycronian Dollars

SUMMARY OF ARGUMENTS

I. THE PROCUREMENT REQUIREMENTS VIOLATE ART. I:1 AND ART. III:4 OF GATT AND ART. IV:1-2 OF GPA

- Procurement requirements violate Art. I:1 because Directive n.12 confers an advantage to Tlön in terms of market access opportunities which are unavailable to other WTO members.
- They violate Article III:4 of GATT because domestic Solaris and imported Solaris are like products and Solaris from Avilion is treated less favourably *vis-à-vis* domestic Solaris.
- They violate Art. IV:1-2 of GPA because in the procurement process less favourable treatment is accorded to foreign GPA parties, particularly Avilion and locally-established suppliers on the basis that components are acquired from foreign countries.

II. THE PROCUREMENT REQUIREMENTS ARE NOT JUSTIFIED UNDER ART. III:8(A) AND ART. XX OF GATT OR ART. III:2 OF GPA

- Procurement requirements are not justified under Art. III:8(a) because the product discriminated against i.e. imported Solaris and the product procured i.e. EV charging points are not in a competitive relationship.
- They are justified under Art. XX of GATT and Art. III:2 of GPA because they neither falls list of legitimate exceptions under the Art. nor do they satisfy the chapeau requirements.
- They cannot be provisionally justified under GATT 1994 Art. XX subparagraphs (a) or (g). XX(a) is unavailable because less trade-restrictive alternatives exists. XX(g) is unavailable because the procurement requirements are not designed to further the conservation objective and is unnecessary to accomplishing the objective.

III. THE IMPLEMENTATION OF THE ACCUMULATION OF ORIGIN RULE VIOLATES ART. 3.1(B) OF SCM

- The tariff exemption under Art. 3.2 of the OTA is a subsidy because it is a financial contribution made by the government, and confers a benefit on Zycronian companies.
- OUF is an import substitution subsidy because it is *de facto* contingent upon the use of Zycronian goods over imported goods for the processing of Solaris.

IV. THE IMPLEMENTATION OF OUF MECHANISM VIOLATES ART. 3.1(B) OF SCM

- The ‘Official Unitary Fee’ (OUF) mechanism is a subsidy because it was a financial contribution made by the government, which conferred a benefit on Zycronian companies.
- OUF is an import substitution subsidy because it is *de jure* contingent upon the use of Zycronian Solaris over imported Solaris.

V. THE IMPLEMENTATION OF THE ACCUMULATION OF ORIGIN RULE AND ZYCRON CUSTOMS REGULATION NO. 50 VIOLATES ART. I:1 AND XI:1 OF GATT AND ART. 2(B) AND (C) OF ARO

- The measure violates Art. I:1 because the tariff exemption and the favourable import licensing procedures confer an advantage to Solaris and importers from the OTA which are unavailable to those from non-OTA countries.
- The measure violates Art. XI:1 because the import licensing system has a “limiting” effect and is discretionary and non-automatic.
- The measure violates Art. 2(b) and (c) of ARO because the ROO are being used to pursue trade objectives and they create a restrictive effect.

VI. THE IMPLEMENTATION OF THE ACCUMULATION OF ORIGIN RULE AND ZYCRON CUSTOMS REGULATION NO. 50 ARE NOT JUSTIFIED UNDER ART. XXIV OF GATT

- The measure is not justified under Art. XXIV because Art. XXIV is inapplicable to the OTA Agreement and does not cover ROO.
- In any case, the measure is not justified under Art. XXIV because it does not meet the requirements of Para. 5(b), nor is it necessary for the formation of the free trade area.

STATEMENT OF FACTS

1. Avilion and Zycron are developed countries, and the founding members of the WTO. Zycron is located in the Matte Peninsula, neighboring Tlön and Ugbar. The region hosts the world's largest reserves of Solaris metal. Solaris has recently been in great demand due to the discovery of its new uses, especially in the energy industry. Avilion has Solaris mines of its own, and uses bulk of the extraction for manufacture of EV batteries and charging points. For long, Charging Queen, a company incorporated in Avilion, dominated the EV batteries and charging points market in the world.
2. Zycron and Tlön signed the OTA, later supplemented with an additional protocol creating a free trade area between the two countries. The OTA sought to integrate the Solaris industry in the two countries and to establish their dominance in the world Solaris market. To this end, the OTA established certain procedures like the "official certification". OTA also established the "Accumulation of Origin" Rule, which provided a tariff exemption for import and export between the OTA parties. Further, both the countries adopted customs regulations for the implementation of this rule. All these measures complicated the import process and made it highly cumbersome for the non-OTA countries to import Solaris.
3. The Zycron government enacted the GEA with an aim to increase the use of EVs in Zycron. The GEA envisaged an extensive network of EV charging points. In order to build the necessary infrastructure, Zycron's MIET radically reformed the public procurement regulations in Zycron. Further, the government launched the "Made in Zycron" initiative with the objective to create jobs, support Zycron's manufacturing and to further Zycron's economic objectives.
4. The MIET issued a call for a long-term framework purchasing agreement for the installation and management of public EV charging points. The winning bidder was to be awarded a 10-year contract, valued at 280,000,000 ZD. The charging points were to remain state-owned, though they would be operated by private companies in return for direct weekly payments by the government – "OUF". Further, through its Directive n.12, the MIET specified a local content requirement for being eligible to participate MIET project bidding. Additionally, the MIET circulated the 23 March 2018 Guideline, which preached environmental and labor considerations as its goal. However, MIET excluded Charging Queen from the procurement competition on the basis of Directive n.12 and the March 2018 Guideline.

IDENTIFICATION OF MEASURES AT ISSUE

- i. The procurement requirements established in the “Made in Zycron” initiative, by way of Directive n.12 and the March 2018 Guideline issued by MIET.
- ii. The implementation of the OUF as under the GEA, which is to be paid to the successful bidders under the MIET framework purchasing agreement.
- iii. The implementation of the Accumulation of Origin Rule in Art. 3 of the OTA, which provides for a tariff exemption to the OTA parties.
- iv. Zycron’s Customs Regulation No. 50 established for the implementation of the Accumulation of Origin Rule in Art. 3 of the OTA.

LEGAL PLEADINGS

I. THE PROCUREMENT REQUIREMENTS VIOLATE ART. I:1 OF GATT

1. Art. I:1 embodies the MFN treatment principle, which prohibits discrimination between “like” imports from different WTO members.¹ A measure is inconsistent with Art. I:1 if: it falls within the scope of application of Art. 1; the products at issue are “like” products [a]; an advantage is conferred [b]; and such advantage is not extended immediately and unconditionally to all other WTO Members [c].² In the instant case, Directive n.12 gives a preference to Solaris and other metals sourced from the OTA parties over other WTO members, in event of a shortage of Solaris supply in Zycron.³ Directive n.12 falls under Art. I:1 as it prescribes “rules” in “connection with importation” of Solaris.⁴

a. The products at issue are “like” Products

2. In examining “likeness” between two products, four characteristics have to be considered: *first*, properties, nature and quality; *second*, end uses; *third*, consumers’ tastes and habits; and *fourth*, tariff classifications.⁵ There exists no evidence to suggest that domestic and imported Solaris are different in terms of any of the characteristics mentioned above. *Origin* and *PPMs* are the only distinguishing criteria. However, these are irrelevant for likeness analysis.⁶ Thus, products at issue are like.

b. Directive n.12 is a measure granting an advantage

3. Art. I:1 covers *any* advantage to *any* product originating in the territory of *any* other

¹ ABR, *EC – Bananas III*, [190]; ABR, *Canada – Autos*, [84]; PR, *Colombia – Ports of Entry*, [7.322].

² ABR, *EC – Seal Products*, [5.86]; PR, *Indonesia – Autos*, [14.138].

³ Para. 4.10, Factsheet.

⁴ Art. 1, GATT; PR, *EC – Commercial Vessels*, [7.80].

⁵ PR, *US – Tuna II (Mexico)*, [7.234]-[7.240]; ABR, *EC – Asbestos*, [101]-[109], Border Tax Adjustments [18].

⁶ PR, *US – FSC (Article 21.5 – EC II)*, [8.133]; PR, *India – Autos*, [7.175]; PR, *US – Tuna II (Mexico)*, [317]; Conrad (2011), 13.

country.⁷ “Advantage” under Art. I:1 means creating more favourable competitive opportunities or affecting the commercial relationship between products of different origins.⁸ Under Directive n.12, if there is shortage of Solaris supply in Zycron, the OTA parties will have the first right to cover the deficit⁹ since the OTA is an international economic integration agreement.¹⁰ Therefore, Directive n.12 confers an advantage to Tlön in terms of market access opportunities which are unavailable to other WTO members.

c. The advantage is not accorded immediately and unconditionally

4. “Immediately” means that the advantage must be granted without delay.¹¹ “Unconditionally” means according an advantage to the like products of all Members without discrimination on the basis of origin.¹² Directive n.12 grants the advantage only to the OTA parties, and does not extend it to other WTO members unconditionally and immediately.¹³ Therefore, Directive n.12 is inconsistent with Art. I:1 of GATT.

II. THE PROCUREMENT REQUIREMENTS VIOLATE ART. III:4 OF GATT

5. Art. III:4 contains the national treatment obligation which prohibits discriminatory treatment of imported products *vis-à-vis* like domestic products.¹⁴ This measure is inconsistent with Art. III:4 because: *first*, the imported and domestic products are “like products”; *second*, it is a law, regulation, or requirement [a]; and *third*, it accords imports *less favourable treatment* than “like” domestic products [b].¹⁵ The requirement of ‘likeness’ has been pleaded above.¹⁶

a. The procurement requirements are covered by Art. III:4 of GATT

6. “Requirement” is an obligation that an enterprise must comply with in order to obtain an *advantage*.¹⁷ Government policy prescribing *local content requirement* for an entity to obtain a certain advantage is “requirement” within the meaning of Art. III:4.¹⁸ In the instant case, the tender award is the advantage that the entities wish to obtain. The MIZ initiative and Directive n.12 are government measures prescribing a local content requirement.¹⁹ March 2018 Guideline necessarily requires the supplier to comply with environment, social and labour

⁷ ABR, *EC – Seal Products*, [5.86]; ABR, *Canada – Autos*, [79].

⁸ PR, *EC – Bananas III*, [7.239]; PR, *Columbia-Ports of Entry*, [7.340].

⁹ Para. 4.10, Factsheet.

¹⁰ Para. 4.10, Factsheet.

¹¹ PR, *US – Tuna II (Mexico)*, [7.412].

¹² PR, *Canada – Autos*, [7.412].

¹³ Para. 4.10, Factsheet.

¹⁴ ABR, *EC – Seal Products*, [5.79].

¹⁵ ABR, *EC – Seal Products*, [5.99].

¹⁶ Legal Pleadings [2].

¹⁷ PR, *India – Autos*, [7.181]-[7.186].

¹⁸ PR, *Argentina – Import Measures*, [6.280].

¹⁹ Para. 4.9, Factsheet.

obligations so as to participate in the tendering process.²⁰ Therefore, MIZ initiative, Directive n.12 and March 2018 Guideline are requirements covered by Art. III:4.

b. Imports are treated less favourably than “like” domestic products

7. A measure results in less favourable treatment if it modifies CC in the domestic market to the detriment of imports.²¹ In the instant case, the local content requirement generates an incentive to purchase domestic Solaris over imported Solaris.²² Failure to comply with the local content requirement makes the supplier ineligible to participate in the tendering process. Therefore, CC in Zycronian market are modified to favour domestic products.

8. The March 2018 Guideline results in *de facto* less favourable treatment. *De facto* discrimination involves assessing the “implications” on CC from the design, structure and operation of the measure.²³ The March 2018 Guideline places compliance requirement on all suppliers but only CQ and other foreign suppliers have been excluded from the tendering process.²⁴ The labour and environmental concerns in Solaris industry are not limited to CQ. The measure is not genuinely driven by environmental or labour considerations. It exhibits protective application, and is an aggressive industrial policy to establish Zycron as the market leader by treating the foreign suppliers less favourably.

9. Therefore, the procurement requirements are inconsistent with Art. III:4.

III. THE PROCUREMENT REQUIREMENTS ARE BEYOND THE SCOPE OF ART. III:8(A)

10. Art. III:8(a) of GATT permits government procurement measures to derogate solely from the national treatment obligation,²⁵ and not from the MFN obligation.²⁶ A measure is covered under Art. III:8(a) if: *first*, it is a law, regulation or requirement governing procurement; *second*, procurement is by government agencies, and *third*, the procurement is for governmental purposes. The first criterion has not been met.

11. A measure is law, regulation or requirement governing procurement if: *first*, an articulate connection exists between procurement and the measure²⁷ and; *second*, the product of foreign origin must be in competitive relationship with the product purchased.²⁸ In the instant case, the products are not in a competitive relationship. The competitive relationship

²⁰ Para. 4.12, Factsheet.

²¹ ABR, *EC – Seal Products*, [5.101]; ABR, *Korea – Various Measures on Beef*, [7.199].

²² Para. 4.9, Factsheet.

²³ ABR, *US – COOL*, [269].; PR, *Brazil – Taxation*, [7.212].

²⁴ Para. 4.13, Factsheet; Clarification Nos. 28 and 31.

²⁵ ABR, *Canada – Renewable Energy*, [5.56]; Arrowsmith (2003), 61-63; Dischendorfer (2000), 15-17; Reich (1997), 144; Arrowsmith (2011), 6.

²⁶ Art III: 8(a), GATT.

²⁷ ABR, *Canada – Renewable Energy*, [5.78].

²⁸ ABR, *Canada – Renewable Energy*, [5.74].

encompasses products which are either identical, or like, or directly competitive or substitutable.²⁹ In the instant case, Solaris and other metals are subject to discrimination and EV charging points are the products being procured. Solaris and other metals are neither directly competitive with, nor substitutable for EV charging points. Thus, the products are not in a competitive relationship.

12. Therefore, the procurement is beyond the scope of Art. III:8(a).

IV. PROCUREMENT REQUIREMENTS VIOLATE ART. IV:1-2 OF GPA

13. Art. IV embodies the non-discrimination principle, which includes MFN and national treatment obligation.³⁰ The test is whether: *first*, the procurement is covered by the GPA[a]; *second*, ‘no less favourable treatment’ is accorded to foreign GPA parties *or* among parties *or* against locally-established supplier [b] and *third*, extension of such favourable treatment “immediately” and “unconditionally” to all GPA parties.³¹ *Additionally*, there may be an implied requirement that the products and services at issue should be ‘like’ [c].³²

a. GPA covers the procurement at issue

14. A procurement is covered by GPA if: *first*, the goods, services, or any combination procured is specified in country’s SOC and is not for resale; *second*, it is through contractual means; *third*, its value is equal to or in excess of the relevant threshold specified in the contracting party’s Annex to Appendix I; *fourth*, it is carried out by an entity mentioned in Annex 1 of GPA SOC; and *fifth*, it is not otherwise excluded by Annexes to Appendix I.³³ The procurement of EV charging points by MIET fulfils all requisites under Appendix I³⁴ and is not excluded by the General Notes, Annex 7.³⁵

15. General Notes Annex 7 to the Zycron’s SOC limit the application of GPA.³⁶ Contracts granted *under* international economic integration agreements and international peace agreements have been excluded. “Under” means “*controlled, managed, or governed by*”.³⁷ However, in the instant case, the procurement is *controlled* and *governed* by the domestic regulations. The GEA laid emphasis on electrification of road transport.³⁸ MIZ initiative, Directive n.12 and March 2018 Guideline directly control the procurement and are domestic

²⁹ ABR, *Canada – Renewable Energy*, [5.63]; ABR, *India – Solar Cells*, [5.40]; Davies (2015), 546.

³⁰ Anderson (2017), 19; McCrudden (1999), 15; Davies (2011), 434.

³¹ Art. IV: 1-2, GPA; McCrudden (1999), 15; Matsushita (2006), 306.

³² Corvaglia (2017), 122.

³³ Art. II:2, GPA; Anderson (2017), 16.

³⁴ Paras. 4.6-4.7, Factsheet.

³⁵ PR, *Korea – Procurement*, [7.12].

³⁶ Para. 4.7, Factsheet.

³⁷ Art. 31, VCLT; Oxford Online Dictionary, <<https://en.oxforddictionaries.com/definition/under>>.

³⁸ Para. 3.3, Factsheet.

regulatory instruments. MIZ initiative was launched by an Executive Order of the Government³⁹ while Directive n.12 and March 2018 Guideline were issued by the MIET.⁴⁰ OTA has no role to play in the procurement. Thus, procurement is not excluded.

b. Treatment accorded has been less favourable

16. The jurisprudence on GPA standard “treatment no less favourable” is extremely limited.⁴¹ However, the standard of non-favourable treatment used in other WTO legal texts can be used to aid the interpretation under GPA because the underlying principle is the same.⁴² Therefore, “treatment no less favourable” shall imply a modification in CC.⁴³

i. Foreign GPA parties have been treated less favourably

17. As stated earlier, the procurement requirements treat the imported Solaris less favourably.⁴⁴ Furthermore, the foreign suppliers have to comply with domestic content requirement which forces them to either import Solaris from Zycron, or set up manufacturing facilities in Zycron. Both these alternatives entail higher costs, *inter alia*, *ad valorem* export tax,⁴⁵ import duties, transportation and construction expenditure.

18. Directive n.12 gives preference to Solaris from OTA parties over other GPA parties, in event of a shortage.⁴⁶ Therefore, a GPA party is treated less favourably.

ii. Locally-established suppliers have been discriminated against

19. Art. IV:2 prohibits discrimination against a locally-established supplier on the basis that the subject of procurement has components from foreign countries.⁴⁷ As per Directive n.12, using Solaris from non-OTA countries renders the local supplier ineligible for the tender award. Thus, Directive n.12 discriminates against a locally-established supplier.

c. In any case, the products at issue are “like”

20. GPA is silent on issue of ‘likeness’. The text of the revised GPA is a result of careful drafting.⁴⁸ Hence, the omission ought to have been intentional.⁴⁹ Even if the requirement of “likeness” is implicit in the GPA.⁵⁰ It has been pleaded above that the products are not “like”.⁵¹

³⁹ Para. 4.2, Factsheet.

⁴⁰ Paras. 4.9 and 4.12, Factsheet.

⁴¹ PR, *Norway – Trondheim Toll Ring*; Corvaglia (2017), 121.

⁴² McCrudden (2007), 469–506.

⁴³ Arrowsmith (2003), 163; Bolton (2011), 469; Corvaglia (2017), 121.

⁴⁴ Legal Pleadings [7]–[8].

⁴⁵ Para. 1.3, Factsheet.

⁴⁶ Para. 4.10, Factsheet.

⁴⁷ Art. IV: 2, GPA; Anderson (2017), 18.

⁴⁸ Trachtman (2000), 355; Arrowsmith (2009), 149–186.

⁴⁹ Arrowsmith (2009), 149.

⁵⁰ Lester (2012), 714.

⁵¹ Legal Pleadings [2].

PPMs cannot determine likeness, especially under the GPA because such inclusion will be incongruent with the object and purpose of GPA. The GPA intends to liberalize public procurement and increase transparency.⁵² PPM requirements involve a subjective analysis by the procuring entity which in turn gives them unwarranted discretion. This renders the procurement complex, arbitrary, non-transparent and may even result in protectionism.⁵³

21. Therefore, the procurement requirements violate Art. IV:1-2.

V. THE PROCUREMENT REQUIREMENTS ARE NOT JUSTIFIED UNDER ART. XX OF GATT AND ART. III:2 OF GPA

22. A measure is justified under Art. XX and Art. III:2, if: *first*, the measure must fall under the list of legitimate exceptions under Art. XX (a)-(j) or Art. III:2 (a)-(d) **[a and b]**, and *second*, comply with the requirements of the chapeau **[c]**.⁵⁴

a. The measure do not satisfy the requirements of Art. XX(a) and Art. III:2(a)

23. The term “public morals” denotes the standards of right and wrong conduct maintained by a community or a nation.⁵⁵ A measure is justifiable if it is *designed* to protect public morals and is *necessary* for the same.⁵⁶ The necessity test involves “weighing and balancing” of the importance of the legitimate objective claimed, its degree of contribution, and its degree of trade-restrictiveness.⁵⁷

24. Environment and labour considerations may amount to public morals under Art. XX(a). However, the MIZ initiative and Directive n.12 are not designed to protect labour and environmental concerns, and rather aim at protectionism. *Furthermore*, the measure is not necessary. *First*, there is no “evidence or data, pertaining to the past or the present”⁵⁸ to suggest that the measure materially *contributes* to environmental and labour considerations. *Second*, rejecting the tender award for non-compliance of international obligations is more trade restrictive than necessary since lesser restrictive alternatives exist.⁵⁹ A labelling system is one such alternative. It can protect Zycron's morals by allowing nationals to make a choice as to how the environment and labour should be treated. The contribution of the measure to the objective is clearly outweighed by its high degree of trade restrictiveness. Thus, the “weighing and balancing” test is not satisfied in favour of the measure and it is not necessary.

⁵² Preamble, Revised GPA; Anderson (2011), 15; Cottier (2002), 111-132.

⁵³ McCrudden (1999), 41; Conard (2011), 211; Vranes (2009), 191-93.

⁵⁴ ABR, *EC – Seal Products*, [5.169]; ABR, *Brazil – Retreaded Tyres*, [139].

⁵⁵ ABR, *US – Gambling*, [296]; PR, *China – Publication and Audiovisual Products*, [7.759].

⁵⁶ ABR, *US – Gambling*, [296]; ABR, *Colombia – Textiles*, [5.67]-[5.70].

⁵⁷ ABR, *EC – Asbestos*, [172]; ABR, *EC – Seal Products*, [5.169].

⁵⁸ ABR, *Brazil – Retreaded Types*, [151].

⁵⁹ ABR, *China – Publication and Audiovisual Products*, [310]; ABR, *Brazil – Retreaded Tyres*, [150].

b. The measure does not satisfy the requirements of Art. XX(g)

25. A measure is justified under Art. XX(g) if it: *first*, relates to the conservation of exhaustible natural resources and; *second*, has been made in effective conjunction with the restrictions imposed on domestic production or consumption.⁶⁰

26. *First*, a measure must be “primarily aimed at” conservation of exhaustible natural resource.⁶¹ The “conservation” of exhaustible resource means a *reduction* in the pace of its extraction, or by *ceasing* its extraction altogether.⁶² The measure neither reduces the pace, nor ceases the extraction of Solaris. Instead, giving a preferential treatment increases the pressure on the limited exhaustible reserves of these metals in Zycron and Tlön.

27. *In any case*, the second condition is not fulfilled. For a measure to be “in conjunction” with domestic restrictions, it has to be applied in an even-handed manner.⁶³ In the instant case, the application of March 2018 Guideline specifically excludes foreign suppliers only.⁶⁴ There is no evidence to suggest that labour and environmental conditions in Zycronian industry are better than those in other countries. Thus, the measure cannot be justified under Art. XX(g).

c. Procurement requirements fail to satisfy the chapeau

28. A measure violates the chapeau if its application results in arbitrary and unfair discrimination between countries with the same conditions, or if it amounts to a disguised restriction to trade.⁶⁵ Such discrimination occurs if the measure lacks *flexibility* to account for the different situations in different countries and coerces the nations into a particular practice.⁶⁶

29. The March 2018 Guideline applies a rigid award criteria which was unilaterally defined and implemented.⁶⁷ It coerces the foreign suppliers and countries to adopt onerous Zycronian and international standards with regard to environment, social and labour law.⁶⁸ This imposes an undue burden on the countries, especially since there is no sufficient technology transfer or transition period. *Furthermore*, labour conditions may constitute “comparative advantage” for some countries.⁶⁹ The WTO disallows any policy questioning the labour standards since such policies may result in protectionism and may fail to account for situation of other countries.⁷⁰

⁶⁰ ABR, *US – Shrimp*, [126]; Van den Bossche (2013), 565.

⁶¹ PR, *Canada – Salmon and Herring*, [4.6]; ABR, *US – Gasoline*, [15]; Howse (2002), 501.

⁶² ABR, *China – Rare Earth*, [5.89].

⁶³ ABR, *US – Gasoline*, [20]-[21].

⁶⁴ Clarification No. 28.

⁶⁵ Article XX, GATT; ABR, *EC – Seal Products*, [5.317]; ABR, *US – Shrimp*, [50]; PR, *EC – Tariff Preferences*, [7.225-7.235]; PR, *Brazil – Retreaded Tyres*, [7.226]-[7.251].

⁶⁶ ABR, *US – Shrimp*, [161]-[164].

⁶⁷ PR, *US – Shrimp*, (Article 21.5), [5.46].

⁶⁸ Para. 4.12, Factsheet.

⁶⁹ Singapore Declaration, [4].

⁷⁰ Singapore Declaration, [4].

30. Therefore, the measure is not justified under Art. XX of GATT and Art. III:2 of GPA.

VI. THE IMPLEMENTATION OF THE ACCUMULATION OF ORIGIN RULE VIOLATES ART.

3.1(B) OF SCM

31. Art. 3 of the OTA provides for a tariff exemption under the “Accumulation of Origin” Rule.⁷¹ The implementation of this Rule violates the SCM Agreement because: *first*, the tariff exemption constitutes a subsidy under Art. 1.1 of SCM [a]; and *second*, the subsidy is *de facto* contingent on a local content requirement prohibited under Art. 3.1(b) of SCM [b].

a. The tariff exemption constitutes a subsidy under Art. 1.1 of SCM.

32. The tariff exemption under the Accumulation of Origin Rule constitutes a subsidy under Art. 1.1 of SCM because: *first*, it is a financial contribution made by the government (i); and *second*, a benefit is conferred on the recipient (ii).

i. The tariff exemption is a financial contribution made by the government

33. Government revenue foregone, that is otherwise due to it, is a financial contribution under SCM.⁷² The test to ascertain whether a measure is a subsidy is: *first*, to identify the “tax treatment applicable” to the alleged subsidy recipients; *second*, to identify the “benchmark for comparison”; and *third*, to compare the two.⁷³

34. In the instant case, Art. 3.2 of the OTA provides a tariff exemption on Solaris and Solaris products that originate in an OTA party.⁷⁴ This constitutes the *challenged tax treatment*. The tariff charged by Zycron for import of Solaris and Solaris products, from countries other than the OTA parties, constitutes the *benchmark for comparison*.⁷⁵ The comparison between the two demonstrates that the tariffs that would have resulted in revenue for the Zycronian government are *foregone* due to the tariff exemption.

35. *Additionally*, the financial contribution must be made by the government.⁷⁶ In the instant case, since the government is foregoing revenue, the financial contribution is clearly made. Thus, this tariff exemption amounts to a financial contribution made by the government.

ii. A benefit is conferred on the recipient of the financial contribution

36. A benefit is conferred when the measure provides an advantage to its recipient in comparison with the prevailing market conditions.⁷⁷ In cases where the financial contribution

⁷¹ Para. 2.4, Factsheet.

⁷² Art. 1.1(a)(1)(ii), SCM.

⁷³ ABR, *US – Large Civil Aircraft (2nd complaint)*, [812] – [814]; PR, *Brazil – Taxation*, [7.394]-[7.395].

⁷⁴ Article 3.2, OTA.

⁷⁵ Clarification No. 60.

⁷⁶ Art. 1.1(a)(1), SCM.

⁷⁷ ABR, *US – Softwood Lumber IV*, [51]; PR, *Canada – Renewable Energy*, [7.271]; ABR, *Canada – Renewable Energy*, [5.246]; ABR, *Canada – Aircraft*, [157]; Pal (2014), 130; Rubini (2014).

is in the form of *government revenue foregone*, benefit can easily be identified.⁷⁸ A tax break does not occur in normal market conditions, and has to be due to government intervention.⁷⁹

37. In the instant case, the import tariff exemption given by the Zycronian government through the implementation of the Accumulation of Origin Rule makes it cheaper for the Zycronian importers to import Solaris from Tlön.⁸⁰ Therefore, there is a clear benefit conferred. Hence, this constitutes a subsidy within the meaning of Art. 1.1 of SCM.

b. The subsidy is *de facto* contingent on a local content requirement

38. Art. 3.1(b) prohibits subsidies that are contingent on the use of domestic over imported goods.⁸¹ Art. 3.1(b) covers both *de facto* and *de jure* contingency.⁸² The design and structure of the measure, the modalities of operation, and the relevant factual circumstances should be considered in ascertaining the contingency.⁸³

39. Presently, the OTA has been signed by two parties – Zycron and Tlön.⁸⁴ Tlön exports raw Solaris, without any processing.⁸⁵ Since this Solaris is raw, it necessarily has to undergo further processing in Zycron for any subsequent production activity. *Moreover*, for the production of any product which uses this Solaris, domestic products from Zycron would have to be used. The facts demonstrate that this subsidy is designed and structured in a way to ensure the inevitable use of Zycronian products. Thus, it entails a local content requirement.

40. *Further*, Tlön also provides its Solaris exporters with an export tariff exemption under Art. 3.2 of the OTA which incentivizes trade between the two countries.⁸⁶ Thus, all of Zycron's Solaris needs which it cannot fulfil domestically, will almost inevitably be met by Tlön.

41. Hence, the design, structure and operation of the subsidy indicate that it is *de facto* contingent upon the local content requirement, thus violating Art. 3.1(b) of SCM.

VII. THE IMPLEMENTATION OF OUF MECHANISM VIOLATES ART. 3.1(B) OF SCM

42. The implementation of the OUF mechanism violates the SCM because: *first*, it is a subsidy under Art. 1.1 of SCM [a]; and *second*, it violates Art. 3.1(b) of SCM [b].

a. The OUF mechanism is a subsidy under Art. 1.1 of SCM

43. The OUF mechanism is a subsidy under Art. 1.1 of SCM because: *first*, it is a financial contribution made by the government (i); and *second*, a benefit is thereby conferred (ii).

⁷⁸ PR, *US – Large Civil Aircraft (2nd complaint)*, [7.169]; PR, *US – FSC*, [7.103].

⁷⁹ PR, *US – Large Civil Aircraft (2nd complaint)*, [7.170].

⁸⁰ Para. 2.4, Factsheet; Clarifications No. 60 and 66.

⁸¹ ABR, *Canada – Autos*, [123]; Rubini (2012), 532.

⁸² ABR, *Canada – Autos*, [143].

⁸³ ABR, *EC and certain member States – Large Civil Aircraft*, [1046].

⁸⁴ Para. 2.1, Factsheet.

⁸⁵ Para. 1.3, Factsheet.

⁸⁶ Art. 3.2, OTA; Clarifications No. 51 and 60.

i. It is a financial contribution made by the government

44. OUF is provided by the government.⁸⁷ It is a financial contribution by way of “direct transfer of funds”; and *in any case*, there is a “purchase of goods” by the government.

*- **The OUF is a financial contribution in the form of direct transfer of funds***

45. “Direct transfer of funds” involves conveyance of funds from the government to the recipient.⁸⁸ It covers money, financial resources, and/or financial claims as a subject of transfer.⁸⁹ The transfer may or may not involve reciprocal rights and obligations.⁹⁰

46. In the instant case, the OUF mechanism is similar to a feed-in tariff scheme, and involves a “direct transfer of funds”. The mechanism ensures a weekly fee to the EV charging station operators, in the form of cash payments.⁹¹ OUF covers the operational costs, and a reasonable profit for the operators.⁹² This is in return for the provision of free charging provided to Zycronian EV owners.⁹³ Therefore, the provision of OUF to the EV charging station operators is a financial contribution in the form of “direct transfer of funds” under Art. 1.1(a)(1)(i).

*- **In any case, there is a purchase of goods by the government***

47. It is possible for a transaction to fall under more than one subparagraph in Art. 1.1.⁹⁴ In *Canada – Renewable Energy*, the relevant factual circumstances were examined to characterise the measure as a “purchase of goods”.⁹⁵ The determinative facts were that a government agency paid for the electricity generated; the electricity was taken possession of by the government; and that the scheme was characterised as government procurement under the domestic law.⁹⁶

48. Similarly, in the instant case, OUF is paid by the government.⁹⁷ The government takes possession of the electricity despite being generated by private operators, since the charging stations are state-owned.⁹⁸ Moreover, the challenged measures have been referred to as procurement/purchase of electricity in all the documents under the GEA or the MIET.⁹⁹

49. Therefore, the measure is a financial contribution under Art. 1.1(a)(1)(iii) of SCM.

⁸⁷ Para 4.6, Factsheet; Clarification No. 36.

⁸⁸ ABR, *US – Large Civil Aircraft (2nd complaint)*, [614].

⁸⁹ ABR, *Japan – DRAMS (Korea)*, [250]; Trebilcock (2013), 368.

⁹⁰ ABR, *US – Large Civil Aircraft (2nd complaint)*, [617].

⁹¹ Para. 4.6, Factsheet.

⁹² Para. 3.4, Factsheet; Clarification Nos. 20, 36, 39, 41.

⁹³ Para. 4.6, Factsheet.

⁹⁴ ABR, *US – Large Civil Aircraft (2nd complaint)*, fn. 1287 [613]; ABR, *Canada – Renewable Energy*, [5.119].

⁹⁵ ABR, *Canada – Renewable Energy*, [5.128].

⁹⁶ ABR, *Canada – Renewable Energy*, [5.127].

⁹⁷ Para. 4.6, Factsheet; Clarification No. 36.

⁹⁸ Para. 3.4, Factsheet.

⁹⁹ Paras. 4.2-4.3, 4.6-4.9, 4.11, 4.13, Factsheet.

ii. *A benefit is conferred on the recipient of the financial contribution*

50. A benefit is conferred when the financial contribution provides an advantage to its recipient,¹⁰⁰ on terms more favourable than those in the market.¹⁰¹ In the instant case, OUF allows Zycronian companies to produce charging points at lesser cost as compared to international producers.¹⁰² OUF is contingent on a company signing the MIET purchasing agreement.¹⁰³ Directive n.12, issued by the MIET, makes this contract conditional on the use of Zycronian materials in the production of the charging stations.¹⁰⁴ The cumbersome certification process and higher tariffs makes it onerous for the foreign companies to procure Zycronian Solaris. This implies that it is only the Zycronian companies that get the MIET tender, and are thus the *only* recipients of OUF.

51. *Consequently*, the implementation of the OUF mechanism leads to an increase in the scale of operation of the local companies, which results in cheaper production due to economies of scale.¹⁰⁵ *Moreover*, the Zycronian government guarantees a minimum financial contribution even when no cars visit the charging stations and operation costs are minimal.¹⁰⁶ The *guarantee* and the *long duration of the contract* extending to 10 years in the present case,¹⁰⁷ indicate that it is a financial contribution above the market standard.¹⁰⁸ Thus, a benefit is conferred.

52. Hence, the OUF mechanism is a subsidy under Art. 1.1 of SCM.

b. The OUF mechanism violates Art. 3.1(b) of SCM

53. Art. 3.1(b) prohibits subsidies that are contingent on the use of domestic over import goods.¹⁰⁹ In the instant case, OUF is provided only to those charging station operators that acquire an MIET tender.¹¹⁰ Directive n.12 explicitly provides for a local content requirement.¹¹¹ Clearly, this is a *de jure* contingency on the use of domestic over imported products.

54. *Moreover*, while there is an exception to the local content requirement,¹¹² this does not affect the measure's characterization as a prohibited subsidy. *First*, there need not be a

¹⁰⁰ ABR, *US – Softwood Lumber IV*, [51]; ABR, *Canada – Renewable Energy*, [5.246]; ABR, *Canada – Aircraft*, [157]; PR, *EC and certain member States – Large Civil Aircraft*, [7.382]; Pal (2014), 130.

¹⁰¹ PR, *US – Large Civil Aircraft (2nd complaint)*, [7.475]; ABR, *Canada – Aircraft*, [157].

¹⁰² Para. 4.6, Factsheet.

¹⁰³ Para. 4.6, Factsheet.

¹⁰⁴ Para. 4.9, Factsheet.

¹⁰⁵ Clarification No. 37.

¹⁰⁶ Para. 4.6, Factsheet; Clarifications No. 36 and 37.

¹⁰⁷ Para. 4.6, Factsheet; Clarification No. 37.

¹⁰⁸ Wilke (2011), 17.

¹⁰⁹ Art. 3.1(b), SCM; PR, *Brazil – Taxation*, [7.822]; ABR, *Canada – Autos*, [123]; Rubini (2012), 532.

¹¹⁰ Para. 4.6, Factsheet.

¹¹¹ Para. 4.9, Factsheet.

¹¹² Para. 4.10, Factsheet.

complete exclusion of imported goods.¹¹³ The term “over” in Art. 3.1(b) refers only to a preference of domestic goods.¹¹⁴ In the instant case, imported Solaris can be used only when there is no domestic Solaris.¹¹⁵ *Second*, the exception is only with respect to Solaris.¹¹⁶ The other metals used in the production process still need to be locally sourced.

55. Thus, the exception does not prevent the subsidy from being *de jure* contingent on the use of domestic over imported goods. Therefore, it violates Art. 3.1(b) of SCM.

VIII. ZYCRON VIOLATES ART. I:1 OF GATT

56. The implementation of Arts. 3.1 and 3.2 of the OTA, through the Zycron Customs Regulation No. 50, violates Art. I:1 because all four elements of Art. I:1 have been satisfied.¹¹⁷ As pleaded above, the products at issue are “like”.¹¹⁸

a. The measures at issue fall within the scope of application of Art. I:1

57. “Rules and formalities in connection with importation” include import licensing procedures.¹¹⁹ The OTA prescribes differential import licensing procedures for OTA parties as compared to non-OTA countries.¹²⁰ Thus, the measure falls within the scope of Art. I:1.

b. The measures at issue confer an advantage

58. The test for determining an advantage has been stated above.¹²¹ OTA importers need to submit an electronic self-declaration to be subjected to zero tariffs. In contrast, export of Solaris and Solaris products into non-OTA countries requires an onerous official certification process and is charged with a 4% *ad valorem* tariff. Thus, products originating in OTA countries that are imported by other OTA countries are conferred with an advantage.

59. *Moreover*, this advantage has not been extended to other WTO members unconditionally and with immediate effect. Accession to the OTA is necessary for the advantage to be conferred.¹²²

60. Therefore, the measure is inconsistent with Art. I:1 of GATT.

IX. ZYCRON VIOLATES ART. XI:1 OF GATT

61. A measure violates Art. XI if: *first*, it is a restriction other than a duty, tax or other charge; *second*, the restriction is made effective through quotas, import or export licenses or

¹¹³ ABR, *US – Tax Incentives*, [5.22].

¹¹⁴ ABR, *EC and certain member States – Large Civil Aircraft (Article 21.5 – US)*, [5.57].

¹¹⁵ Para. 4.10, Factsheet.

¹¹⁶ Para. 4.10, Factsheet.

¹¹⁷ Legal Pleadings [1].

¹¹⁸ Legal Pleadings [2].

¹¹⁹ PR, *EC – Bananas III*, [7.107] and [7.189].

¹²⁰ Paras. 2.3 and 2.5, Factsheet.

¹²¹ Legal Pleadings [3].

¹²² Clarification Nos. 51, 61 and 64.

other measures that quantitatively restrict; *third*, it is maintained by a WTO member; and *fourth*, it is not an exception provided in Art. XI:2.¹²³ The first requirement has been met because: *first*, the import licensing system restricts imports by particular persons and has a “limiting” effect [a]; and *second*, it is discretionary and non-automatic [b]. The second and third requirements have been satisfied *prima facie*.¹²⁴ Furthermore, the measure is not an exception under Art. XI:2. Hence, the fourth requirement has also been satisfied.

a. Restrictions on imports by particular persons has a “limiting” effect

62. A measure should not have a “limiting” effect on the quantity of a product being imported or exported.¹²⁵ Import licensing systems are a restriction if a particular group is precluded from importing.¹²⁶ In the instant case, Solaris is exported only to importers who are able to produce the requisite “official certification” from the end-user, which is then validated.¹²⁷ This precludes imports to those who cannot procure such certification.

63. *Admittedly*, all certifications till date have ultimately been validated.¹²⁸ However, the limiting effects need not be quantified and can be demonstrated through the design, architecture and revealing structure of the measure.¹²⁹ In the instant case, the certification process has led to continuous delays and increased costs for importers from non-OTA countries.¹³⁰ Meanwhile, importers from OTA countries merely have to submit an electronic self-declaration.¹³¹ Thus, it has a “limiting” effect.

b. The import licensing system is discretionary and non-automatic

64. Discretionary or non-automatic import licensing systems are a restriction under Article XI:1.¹³² Export licensing practices leading to undue delay in the selective issuing of licenses qualify as non-automatic.¹³³ Unfettered or undefined discretion with licensing agencies to reject a license application violates Art. XI:1.¹³⁴

65. In the instant case, the official certification process has led to continuous delays due to the lengthy bureaucracy implemented in Zycron’s Ministry of Defence.¹³⁵ These Ministries

¹²³ Art. XI, GATT.

¹²⁴ Paras. 1.1 and 2.3-2.6, Factsheet.

¹²⁵ ABR, *China – Raw Materials*, [319]-[320]; PR, *India – Quantitative Restrictions*, [5.129].

¹²⁶ PR, *India – Quantitative Restrictions*, [5.142]-[5.143].

¹²⁷ Para. 2.3, Factsheet.

¹²⁸ Clarification No. 45.

¹²⁹ ABR, *Argentina – Import Measures*, [5.217]; ABR, *China – Raw Materials*, [319]-[320].

¹³⁰ Para. 2.6, Factsheet.

¹³¹ Para. 2.5, Factsheet.

¹³² PR, *India – Quantitative Restrictions*, [5.130], PR, *Korea – Various Measures on Beef*, [782].

¹³³ PR, *Japan – Trade in Semi-conductors*, [118].

¹³⁴ PR, *China – Raw Materials*, [7.957].

¹³⁵ Para. 2.6, Factsheet.

may use their discretion to reject a license application. The certification process is not a mere formality and involves substantial examination.¹³⁶ This increases the scope of discretion. Thus, the issuing of import licenses is discretionary and non-automatic.

66. Therefore, the measure is a “restriction” which violates Art. XI:1 of GATT.

X. ZYCRON VIOLATES ART. 2(B) AND (C) OF THE ARO

67. The measure violates Art. 2(b) and (c) of the ARO because: *first*, the ROO are non-preferential and Art. 2(b) and (c) applies [a]; *second*, they are used as instruments to pursue trade objectives [b]; and *third*, they create restrictive, distorting or disruptive effects on international trade [c].

a. The ROO are non-preferential and Art. 2(b) and (c) applies

68. Non-preferential ROO are used for origin determination in GATT trade policy instruments like quantitative restrictions.¹³⁷ In the instant case, Zycron Customs Regulation No. 50 implements the ROO.¹³⁸ This implementation through differential licensing requirements amounts to a quantitative restriction.¹³⁹ Thus, the ROO are non-preferential. *In any case*, the Agreement’s general principles and requirements for non-preferential rules, in matters like transparency and positive standard, apply to preferential rules as well.¹⁴⁰ Thus, Art. 2 provides detailed criteria against which preferential ROO can be assessed.¹⁴¹

b. The ROO are used as instruments to pursue trade objectives

69. Art. 2(b) precludes WTO members from using ROO “to substitute or supplement the intended effect of trade policy instruments”.¹⁴² To assess the objective of ROO, the design, the architecture and the revealing structure has to be examined.¹⁴³ In the instant case, Art. 3.1(4) of the OTA stipulates that production undertaken in an OTA party on non-originating material may be considered in determining the origin of Solaris. Such determination will be made regardless of whether the production is sufficient to confer originating status to the material itself.¹⁴⁴ Thus, for OTA parties, the origin will inevitably remain with an OTA party.

70. Moreover, “favouring imports from one WTO member over imports from another” is a “trade objective” in pursuit of which ROO should not be used.¹⁴⁵ Art. 3.2 of the OTA favours

¹³⁶ Clarification No. 45.

¹³⁷ Inama (1995), 78.

¹³⁸ Para. 2.5, Factsheet.

¹³⁹ Legal Pleadings [61-66].

¹⁴⁰ Annex II, ARO.

¹⁴¹ Cottier (2006), 50.

¹⁴² PR, *US – Textiles Rules of Origin*, [6.43]; Mavroidis (2018), 3.

¹⁴³ PR, *US – Textiles Rules of Origin*, [6.37]-[6.38].

¹⁴⁴ Para. 2.4, Factsheet.

¹⁴⁵ PR, *US – Textiles Rules of Origin*, [6.44].

Solaris imports from OTA parties over other countries.¹⁴⁶ Thus, the ROO are being used as instruments to pursue trade objectives.

c. ROO create restrictive, distorting or disruptive effects on international trade

71. ROO must not “create restrictive, distorting or disruptive effects on international trade”.¹⁴⁷ Restrictive effects are those that create the effect of limiting the level of international trade.¹⁴⁸ A conduct-oriented approach should be adopted so as to determine the effects that the ROO are *capable* of creating in the market.¹⁴⁹ In the instant case, subjecting imports from OTA parties to zero tariffs would inevitably reduce the level of imports from non-OTA countries. Thus, the measure has restrictive and limiting effects on international trade.

72. Therefore, Zycron violates Art. 2(b) and (c) of ARO.

XI. THE MEASURE CANNOT BE JUSTIFIED UNDER ART. XXIV OF GATT

73. The measure is not justified under Art. XXIV because: *first*, Art. XXIV is inapplicable to the OTA Agreement [a]; *second*, it does not cover ROO [b]; and *third*, in any case, the requirements to justify an inconsistent measure under Art. XXIV are not met [c].

a. Art. XXIV is inapplicable to the OTA Agreement

74. Art. XXIV does not apply to the OTA Agreement because the OTA Agreement and the OTA Protocol are distinct in nature [i]; and the OTA Agreement was not validly notified [ii].

i. The OTA Agreement and the OTA Protocol are distinct

75. The OTA Agreement was signed to bring peace and end conflict in the Matte Peninsula,¹⁵⁰ while the OTA Protocol is an additional protocol for the formation of a free trade area.¹⁵¹ The OTA Agreement deals solely with Solaris and Solaris products and subjects them to zero tariffs with *immediate effect*. Meanwhile, the OTA Protocol focusses on reducing tariffs *progressively* each year, aiming at zero tariffs in 2025.¹⁵² The OTA Agreement entered into force on 1 January 2018 while the OTA Protocol entered into force on 1 July 2018.¹⁵³ Thus, the fundamental nature of the OTA Agreement and the OTA Protocol is distinct.

ii. The OTA Agreement was not validly notified under Art. XXIV

76. An FTA needs to be notified.¹⁵⁴ In the instant case, the OTA Agreement has not been

¹⁴⁶ Para. 2.4, Factsheet.

¹⁴⁷ Art. 2(c), ARO; PR, *US – Textiles Rules of Origin*, [6.136]; Singh (2017), 229; Mavroidis (2018), 3.

¹⁴⁸ PR, *US – Textiles Rules of Origin*, [6.141].

¹⁴⁹ PR, *US – Textiles Rules of Origin*, [3.182]–[3.186] and [3.240].

¹⁵⁰ Para. 2.1, Factsheet.

¹⁵¹ Para. 2.7, Factsheet.

¹⁵² Para. 2.7, Factsheet.

¹⁵³ Correction No. C.

¹⁵⁴ Art. XXIV:7, GATT; Para. 1, Transparency Mechanism for RTAs; Para. 1, WTO Understanding.

notified to the WTO under Art. XXIV, nor under the Enabling Clause.¹⁵⁵ However, the OTA Protocol, which led to the formation of the free trade area, was notified to the WTO on 1 July 2018.¹⁵⁶ Given that the OTA Agreement and the OTA Protocol are distinct in nature, a notification of the OTA Protocol would not be a sufficient notification of the OTA Agreement. Thus, the OTA Agreement has not been validly notified.

b. Art. XXIV does not cover ROO

77. Art. XXIV allows derogation from GATT provisions, subject to certain conditions.¹⁵⁷ The Art. does not cover ROO because: *first*, the text of Art. XXIV does not mention “rules of origin” which indicates that the same is not covered under the Art.;¹⁵⁸ and *second*, RTA ROO do not constitute “other restrictions of commerce” under Art. XXIV:5 given that they do not intend to affect trade with third parties.¹⁵⁹ Thus, ROO do not fall within the scope of Art. XXIV.

c. The requirements under Art. XXIV are not met

78. An FTA is justified under Art. XXIV if: *first*, the requirements of Paras. 5(b) and 8(b) are satisfied [i]; and *second*, it is necessary for the formation of the free trade area [ii].¹⁶⁰

i. The measure does not meet the requirements of Art. XXIV:5(b)

79. Under Art. XXIV:5(b), duties and “other restrictions of commerce” after the formation of an FTA shall not be higher or more trade restrictive than those prior to the FTA.¹⁶¹ While duties have not risen within the free trade area, differential import licensing requirements favour OTA importers. The ROO also favour imports of Solaris and Solaris products from OTA countries through the tariff exemption. This has a “restrictive effect” on the competitive opportunities of the non-OTA parties. Thus, the requirements of Art. XXIV:5(b) are not met.

ii. The measure is unnecessary for the formation of the free trade area

80. The purpose of an FTA is to facilitate trade between the constituent members and not to raise trade barriers with third countries.¹⁶² In the instant case, the differential import license requirements lead to continuous delays and increased costs in the importation process.¹⁶³ This raises “barriers to trade” for importers from third countries. Thus, measure is not “necessary for the formation of the free trade area”.

81. Therefore, the measures cannot be justified under Art. XXIV.

¹⁵⁵ Clarification No. 43.

¹⁵⁶ Correction No. C.

¹⁵⁷ ABR, *Turkey – Textiles*, [45]; ABR, *Peru – Agricultural Products*, [5.115].

¹⁵⁸ Art. XXIV, GATT; Hoekman (1993), 86.

¹⁵⁹ Para. 78, Background Note.

¹⁶⁰ ABR, *Turkey – Textiles*, [45]-[46] and [58]; ABR, *Peru – Agricultural Products*, [5.115].

¹⁶¹ Art. XXIV:5(b), GATT; ABR, *Turkey – Textiles*, [54]; ABR, *Peru – Agricultural Products*, [5.112].

¹⁶² Art. XXIV:4, GATT; ABR, *Turkey – Textiles*, [56]-[57]; ABR, *Peru – Agricultural Products*, [5.116].

¹⁶³ Para. 2.6, Factsheet.

REQUEST FOR FINDINGS

For the above reasons, Avilion urges the panel to find that:

1. The procurement requirements established in the “Made in Zycron” initiative, in Directive n.12 and the March 2018 Guideline, are inconsistent with Zycron’s obligations under Art. I:1 and Art. III:4 of the GATT 1994, and Art. IV:1-2 of the GPA.
2. The implementation of the OUF mechanism established by Zycron in the GEA, as well of the Accumulation of Origin Rule in the OTA, are subsidies within the meaning of Art. 1.1 of SCM, and are in violation of Art. 3.1(b) of SCM.
3. The implementation of the Accumulation of Origin Rule in the OTA and the Zycron Customs Regulation No. 50, is inconsistent with Zycron’s obligations under Art. I:1 and Art. XI:1 of the GATT 1994 and Art. 2(b) and (c) of the ARO.