

Team: 038R

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

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

Avilion  
*(Complainant)*

**VS**

Zycron  
*(Respondent)*

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**SUBMISSION OF THE RESPONDENT**

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**LIST OF REFERENCES**

<b>Short Form</b>	<b>Full Citation</b>
<b>TREATIES AND AGREEMENTS</b>	
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.

<b>WTO MATERIALS</b>	
<i>Border Tax Adjustments</i>	Working Party Report, <i>Border Tax Adjustments</i> (2 December 1970) BISD 18S/97.
<i>Committee on Trade and Development – Dispute Settlement Practice Relating to GATT Article XX (2001)</i>	Committee on Trade and Development, <i>GATT/WTO Dispute Settlement Practice Relating to GATT Article XX, Paragraph (b), (d) and (g)</i> , (8 March 2002) WT/CTE/W/203.
ILO Declaration on Social Justice for a Fair Globalization	ILO Declaration on Social Justice for a Fair Globalization, ILO, Provisional Record 13 A/B, International Labour Conference, 97th session (Geneva, International Labour Office, 2008).
<i>Singapore Declaration</i>	WTO, <i>Singapore Ministerial Declaration</i> (13 December 1996), WTO/DOC/WT/ MIN(96)/DEC.
Trade and SDGs (2018)	WTO, <i>Mainstreaming Trade to Attain the Sustainable Development Goals</i> , 2018.
<i>Transparency Mechanism for Regional Trade Agreements</i>	WTO, <i>Transparency Mechanism for Regional Trade Agreements</i> (18 December 2006) WT/L/671.
<i>Understanding on the Interpretation of Art. XXIV, 1994</i>	WTO, <i>Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994</i> .

<b>ELSA DOCUMENTS</b>	
Clarifications	Clarifications, John H. Jackson Moot Court Competition on WTO Law, Case 2018-2019, <i>Zycon – Certain Measures Related to Electric Vehicles Charging Points and Infrastructure</i> .
Factsheet	Problem, John H. Jackson Moot Court Competition on WTO Law, Case 2018-2019, <i>Zycon – Certain Measures Related to Electric Vehicles Charging Points and Infrastructure</i> .

<b>WTO APPELLATE BODY REPORTS</b>	
<i>Argentina – Import Measures</i>	Appellate Body Report, <i>Argentina – Measures Affecting the Importation of Goods</i> , (15 January 2015) WT/DS438/AB/R, WT/DS444/AB/R, WT/DS445/AB/R.
<i>Brazil – Retreaded Tyres</i>	Appellate Body Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , (3 December 2007) WT/DS332/AB/R.
<i>Canada – Aircraft</i>	Appellate Body Report, <i>Canada – Measures Affecting the Export of Civilian Aircraft</i> , (2 August 1999) WT/DS70/AB/R.
<i>Canada – Autos</i>	Appellate Body Report, <i>Certain Measures Affecting the Automotive Industry</i> , (31 May 2000) WT/DS139/AB/R, WT/DS142/AB/R.
<i>Canada – Renewable Energy</i>	Appellate Body Report, <i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-In Tariff Program</i> , (24 May 2013) WT/DS412/AB/R, WT/DS426/AB/R.
<i>China – Rare Earth</i>	Appellate Body Reports, <i>China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum</i> , (29 August 2014) WT/DS431/AB/R / WT/DS432/AB/R / WT/DS433/AB/R.
<i>China – Raw Materials</i>	Appellate Body Reports, <i>China – Measures Related to the Exportation of Various Raw Materials</i> , (23 January 2013) WT/DS394/20.
<i>Colombia – Textiles</i>	Appellate Body Report, <i>Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear</i> , (22 June 2016) WT/DS461/AB/R and Add.1.
<i>EC – Asbestos</i>	Appellate Body Report, <i>European Communities – Measures Affecting Asbestos and Products Containing Asbestos</i> , (12 March 2001) WT/DS135/AB/R.
<i>EC – Seal Products</i>	Appellate Body Report, <i>EC – Measures Prohibiting the Importation and Marketing of Seal Products</i> , (22 May 2014) WT/DS400/AB/R and WT/DS401/AB/R.
<i>EC and certain member States – Large Civil Aircraft</i>	Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , (18 May 2011) WT/DS316/AB/R.
<i>EC and certain member States – Large Civil Aircraft (Article 21.5 – US)</i>	Appellate Body Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft: Recourse to Article 21.5 of the DSU by the United States</i> , (15 May 2018) WT/DS316/AB/RW.
<i>India – Solar Cells</i>	Appellate Body Report, <i>India – Certain Measures Relating to Solar Cells and Solar Modules</i> , (16 September 2016) WT/DS456/AB/R.

<i>Korea – Various measures on Beef</i>	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , (10 January 2001) WT/DS161/AB/R, WT/DS169/AB/R.
<i>Peru – Agricultural Products</i>	Appellate Body Report, <i>Peru – Additional Duty on Imports of Certain Agricultural Products</i> , (31 July 2015) WT/DS457/AB/R and Add.1.
<i>Thailand – Cigarettes (Philippines)</i>	Appellate Body Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines</i> , (17 June 2011) WT/DS371/AB/R.
<i>Turkey – Textiles</i>	Appellate Body Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , (19 November 1999) WT/DS34/AB/R.
<i>US – Gambling</i>	Appellate Body Report, <i>Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , (20 April 2005) WT/DS285/AB/R.
<i>US – Gasoline</i>	Appellate Body Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , (20 May 1996) WT/DS2/AB/R.
<i>US – Shrimp</i>	Appellate Body Report, <i>United States – Import Prohibitions of Certain Shrimp and Shrimp Products</i> , (12 October 1998) WT/DS58/AB/R.
<i>US – Shrimp, (Article 21.5)</i>	Appellate Body Report, <i>United States – Import Prohibitions of Certain Shrimp and Shrimp Products: Recourse to Article 21.5 of the DSU by Malaysia</i> , (22 October 2001) WT/DS58/AB/RW.
<i>US – Tax Incentives</i>	Appellate Body Report, <i>United States – Conditional Tax Incentives for Large Civil Aircraft</i> , (4 September 2017) WT/DS487/AB/R.

#### WTO AND GATT PANEL REPORTS

<i>Brazil – Retreaded Tyres</i>	Panel Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , (12 June 2007) WT/DS332/R.
<i>Brazil – Taxation</i>	Panel Report, <i>Brazil – Certain Measures Concerning Taxation and Charges</i> , (30 August 2017) WT/DS472/10, WT/DS497/8.
<i>Canada – Autos</i>	Panel Report, <i>Certain Measures Affecting the Automotive Industry</i> , (11 February 2000) WT/DS139/R, WT/DS142/R.
<i>Canada – Renewable Energy</i>	Panel Report, <i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector and Feed-In Tariff Program</i> , (19 December 2002) WT/DS412/R, WT/DS426/R.
<i>Canada – Salmon and Herring</i>	GATT Panel Report, <i>Canada – Measures Affecting Exports of Processed Salmon and Herring</i> , (22 March 1988) L/6268 - 35S/98.
<i>China – Publications and Audiovisual Products</i>	Panel Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , (12 August 2009) WT/DS363/R.
<i>China – Raw Materials</i>	Panel Report, <i>China – Measures Related to the Importation of Various Raw Material</i> , (5 July 2011) WT/DS394/R, WT/DS395/R, WT/DS398/R.
<i>Dominican Republic – Import and Sale of Cigarettes</i>	Panel Report, <i>Dominican Republic- Import and Sale of Cigarettes</i> , (26 November 2004) WT/DS302/R.

<i>EC – Selected Customs Matters</i>	Panel Report, <i>European Communities – Selected Custom Matters</i> , (16 June 2006) WT/DS315/R.
<i>EC – Tariff Preferences</i>	Appellate Body Report, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , (1 December 2003) WT/DS246/R.
<i>India – Quantitative Restrictions</i>	Panel Report, <i>India – Quantitative Restrictions on Imports of Agricultural, Textiles and Industrial Products</i> , (6 April 1999) WT/DS90/R.
<i>Indonesia – Import Licensing Regimes</i>	Panel Report, <i>Indonesia – Importation of Horticultural Products, Animals and Animal Products</i> , (22 December 2016) WT/DS477/R, WT/DS478/R.
<i>Korea – Various measures on Beef</i>	Panel Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , (31 July 2000) WT/DS161/R, WT/DS169/R.
<i>Korea – Procurement</i>	Panel Report, <i>Korea – Measures Affecting Government Procurement</i> , (19 June 2000) WT/DS163/R.
<i>Turkey – Textiles</i>	Panel Report, <i>Turkey – Restrictions on Imports of Textile and Clothing Products</i> , (31 May 1999) WT/DS34/R.
<i>US – Canadian Tuna</i>	GATT Panel Report, <i>United States – Prohibition on Import of Tuna and Tuna Products from Canada</i> , (22 February 1982) L/5198 - 29S/91.
<i>US – Large Civil Aircraft (2<sup>nd</sup> complaint) (Article 21.5 – EU)</i>	Panel Report, <i>United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint): Recourse to Article 21.5 of the DSU by the European Union</i> , (9 June 2017) WT/DS353/RW.
<i>US – Shrimp (Article 21.5)</i>	Panel Report, <i>Import Prohibition of Certain Shrimp and Shrimp Products: Recourse to Article 21.5 by Malaysia</i> , (15 June 2001) WT/DS58/RW.
<i>US – Springs Assemblies</i>	GATT Panel Report, <i>United States – Imports of Certain Automotive Spring Assemblies</i> , (26 May 1983) L/5333 - 30S/107.
<i>US – Textiles Rules of Origin</i>	Panel Report, <i>United States – Rules of Origin for Textiles and Apparel Products</i> , (20 June 2003) WT/DS243/R.
<i>US – Tuna II (Mexico)</i>	Panel Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , (15 September 2011) WT/DS381/R.

## SECONDARY SOURCES

<i>Anderson (2017)</i>	Robert D. Anderson and Anna Caroline Müller, <i>Working Paper: The revised WTO Agreement on Government Procurement (GPA): Key design features and significance for global trade and development</i> , (2017) WTO Staff Working Paper, No. ERSD-2017-04, World Trade Organization (WTO), Geneva.
<i>Arrowsmith (2003)</i>	Sue Arrowsmith, <i>Government Procurement in the WTO</i> (The Hague: Kluwer Law International, 2003).
<i>Arrowsmith (2011)</i>	Sue Arrowsmith, <i>World Trade Organization: The WTO Regime on Government Procurement: Challenges and Reform</i> (CUP 2011).

<i>Blank (1997)</i>	Annet Blank and Gabrielle Z. Marceau, 'A History of Multilateral Negotiations on Procurement: From ITO to WTO' in Bernard M Hoekman and Petros C Mavroidis, <i>Law and Policy in Public Purchasing: The WTO Agreement on Government Procurement</i> (University of Michigan 1997).
<i>Conrad (2011)</i>	Conrad C.R., 'Processes and Production Methods (PPMs) in WTO Law: Interfacing Trade and Social Goals' (CUP 2011).
<i>Corvaglia (2016)</i>	Maria A Corvaglia, 'Public Procurement and Private Standards: Ensuring Sustainability Under the WTO Agreement on Government Procurement' (2016) 19 <i>Journal of International Economic Law</i> , 607.
<i>Corvaglia (2017)</i>	Maria Anna Corvaglia, <i>Public Procurement and Labour Rights: Towards Coherence in International Instruments of Procurement Regulations</i> (Hart Publishing 2017).
<i>Cottier (2012)</i>	Thomas Cottier and Matthias Oesch, <i>Direct and Indirect Discrimination in WTO and EU Law</i> (CUP 2012).
<i>Davies (2011)</i>	Arwel Davies, 'The National Treatment and exceptions provision of the Agreement on Government Procurement and the pursuit of Horizontal Policies' in Sue Arrowsmith and Robert D Anderson (eds), <i>The WTO Regime on Government Procurement: Challenge and Reform</i> (CUP 2011) 429-423.
<i>Davies (2015)</i>	Arwel Davies, 'The GATT Article III:8(a) Procurement Derogation and Canada – Renewable Energy', (2015) 18 <i>Journal of International Economic Law</i> , 543.
<i>Dischendorfer (2000)</i>	M. Dischendorfer, 'The Existence and Development of Multilateral Rules on Government Procurement under the Framework of the WTO', (2000) 9 <i>Public Procurement Law Review</i> , 1.
<i>Goode (1998)</i>	W. Goode, <i>Dictionary of Trade Policy Terms</i> , (2 <sup>nd</sup> ed. CUP 1998).
<i>Hilpold (2003)</i>	Peter Hilpold, 'Regional Integration According to Article XXIV GATT – Between Law and Politics' (2003) 7 <i>Max Planck UNYB</i> , 221.
<i>Howse (2000)</i>	Robert Howse and Donald Regan, 'The Product/Process Distinction—An Illusory Basis for Disciplining “Unilateralism” in Trade Policy', (2000) 11 <i>European Journal of International Law</i> , 249.
<i>Howse (2002)</i>	Robert Howse, 'The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate', (2002) 27 <i>Columbia Journal of Environmental Law</i> , 491.
<i>Howse (2010)</i>	Robert Howse, <i>Climate Mitigation Subsidies and the WTO Legal Framework: A Policy Analysis</i> (International Institute of Sustainable Development 2010).
<i>James (1997)</i>	E.W. James, 'APEC Preferential Rules of Origin: Stumbling Blocks for Liberalization of Trade?' (1997) 31 <i>Journal of World Trade</i> , 113.
<i>James (2000)</i>	E.W. James and M. Umemoto, 'NAFTA Trade with East Asia: Rules of Origin and Market Access in Textiles, Apparel Footwear and Electrical Machinery' (2000) 17 <i>ASEAN Econ Bull</i> , 293.
<i>Kaufmann (2011)</i>	Christine Kaufmann and others, 'A Call for a WTO Ministerial Decision on Trade and Human Rights' in Thomas Cottier and Panagiotis Delimatsis (eds), <i>The Prospect of International Trade Regulation: From Fragmentation to Coherence</i> (CUP 2011) 323–358.



<i>Komuro (1998)</i>	N. Komuro, 'International Harmonization of Rules of Origin', in P. Ruttley et al. (eds), <i>The WTO and International Trade Regulation</i> (Cameron 1998).
<i>Lester (2012)</i>	Simon Lester, Bryan Mercurio and Arwel Davies, <i>World Trade Law: Text, Material and Commentary</i> (2012).
<i>Maraceau (2002)</i>	Gabrielle Marceau, 'The WTO Dispute Settlement and Human Rights', 2002, 13 <i>European Journal of International Law</i> , 75.
<i>Mavroidis (2018)</i>	P. Mavroidis and E. Vermulst, 'The Case for Dropping Preferential Rules of Origin' (2018) 52 <i>Journal of World Trade</i> , 1.
<i>McCrudden (1999)</i>	Christopher McCrudden, 'International economic law and the pursuit of human rights: A framework for discussion of the legality of 'selective purchasing' laws under the WTO Government procurement agreement', 1999, 2 <i>Journal of International Economic Law</i> , 3.
<i>McCrudden (2007)</i>	C. McCrudden, <i>Buying Social Justice: Equality, Government Procurement and Legal Change</i> (OUP, 2007).
<i>Potts (2008)</i>	Jason Potts, <i>The Legality of PPMs under the GATT: Challenges and Opportunities for Sustainable Trade Policy</i> (International Institute for Sustainable Development 2008).
<i>Rivas (2006)</i>	José Antonio Rivas, 'Do Rules of Origin in FTAs Comply with Article XXIV GATT?' in Lorand Bartels and Federico Ortino (eds), <i>Regional Trade Agreements and the WTO Legal System</i> (OUP 2006) 149-171.
<i>Rubini (2011)</i>	Luca Rubini, <i>The Subsidization of Renewable Energy in the WTO: Issues and Perspectives</i> (International Institute for Sustainable Development 2011).
<i>Rubini (2012)</i>	Luca Rubini, 'Ain't Wastin' Time No More: Subsidies for Renewable Energy, the SCM Agreement, Policy Space, and Law Reform' (2012) 15(2) <i>Journal of International Economic Law</i> , 525.
<i>Shadikhodjaev (2013)</i>	Sherzod Shadikhodjaev, 'First WTO Judicial Review of Climate Change Subsidy Issues' (2013) 107(4) <i>The American Journal of International Law</i> , 864.
<i>Shibata (1967)</i>	H. Shibata, 'The Theory of Economic Unions: A Comparative Analysis of Customs Unions, Free Trade Areas and Tax Unions' in C.S. Shoup (ed), <i>Fiscal Harmonization in Common Markets</i> , (CUP, 1967) 145-264.
<i>Singh (2017)</i>	G. Singh, <i>Subsidies in the Context of the WTO's Free Trade System</i> (Springer International Publishing AG 2017).
<i>Van Den Bossche &amp; Zdouc (2013)</i>	Van Den Bossche P. & Zdouc W., <i>The Law and Policy of the World Trade Organisation</i> (CUP 2013).
<i>Vermulst (1990)</i>	E. Vermulst and P. Waer, 'European Community Rules of Origin as Commercial Policy Instruments?' (1990) 24 <i>Journal of World Trade</i> , 55.

**LIST OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Description</b>
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, A/RES/70/1</i> )
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 DO NOT VIOLATE ART. III:4 OF GATT AND ART. IV:1-2 OF GPA**

- Violation of Art. I by procurement requirements is admitted but the same is justified under Art. III:8(a) of GATT.
- They do not violate Article III:4 of GATT because domestic Solaris and imported Solaris are not like products. Furthermore, March 2018 Guideline does not treat imported Solaris less favourably *vis-à-vis* domestic Solaris.
- They do not violate Art. IV:1-2 of GPA because procurement is excluded from the application of GPA by virtue of General Notes, Annex 7.

**II. THE PROCUREMENT REQUIREMENTS ARE JUSTIFIED UNDER ART. III:8(A) AND ART. XX OF GATT AS WELL AS ART. III:2 OF GPA**

- Procurement requirements are 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 in a competitive relationship. Furthermore, procurement is for governmental purpose and by government agencies.
- They are justified under Art. XX of GATT and Art. III:2 because they falls under list of legitimate exceptions and satisfy the chapeau requirements.

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

- The OUF mechanism is not a subsidy under Art. 1.1 of SCM since it is not a financial contribution. Even if it is assumed to be a financial contribution by the government, it does not confer any benefit on the recipient.
- In any case, if OUF is assumed to be a subsidy under Art. 1.1 of SCM, it is not a prohibited subsidy under Art 3.1(b) of SCM since it is not contingent upon the use of domestic goods over imported goods.

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

- The tariff exemption under the Accumulation of Origin Rule in Art. 3.2 of the OTA is not in violation of the SCM Agreement.
- The tariff exemption is not a prohibited subsidy under Art. 3.1(b) of SCM since it is not contingent on the use of domestic goods over imported goods.

**V. THE IMPLEMENTATION OF THE ACCUMULATION OF ORIGIN RULE AND ZYCRON CUSTOMS REGULATION NO. 50 DO NOT VIOLATE ART. I:1 AND XI:1 OF GATT AND ART. 2(B) AND (C) OF ARO**

- Violation of Art. I:1 by the measure is admitted but the same is justified under Art. XXIV of GATT.
- The measure does not violate Art. XI:1 because the import licensing is non-discretionary and automatic and does not have a “limiting” effect.
- The measure does not violate Art. 2(b) and (c) of ARO because the ROO, being preferential, are not governed by the Art. In any case, it does not violate Art. 2(b) and (c) because the ROO are not used to pursue trade objectives, do not create restrictive effects on international trade and do not pose unduly strict requirements.

**VI. THE IMPLEMENTATION OF THE ACCUMULATION OF ORIGIN RULE AND ZYCRON CUSTOMS REGULATION NO. 50 ARE JUSTIFIED UNDER ART. XXIV OF GATT**

- The measure is justified under Art. XXIV because the Art. applies to the OTA and covers ROO.
- The requirements of Paras. 5(b) and 8(b) are met and the measure is 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 certification procedures as well as the "Accumulation of Origin" Rule, which provided a tariff exemption on trade between the OTA parties. Both the countries adopted customs regulations for the implementation of this rule.
3. The Zycron government enacted the GEA pursuant to the environmental agenda of Zycron's new government. The GEA envisaged an extensive network of EV charging points. In order to build the necessary infrastructure, Zycron's MIET reformed the public procurement regulations in Zycron. Further, the government launched the "Made in Zycron" initiative with the objective to stimulate economic growth, create jobs, support Zycron's manufacturing and exploring emerging technologies in the green economy.
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 a weekly fee – "OUF". Further, through its Directive n.12, the MIET specified that companies using Zycronian Solaris could only participate in the MIET project bidding. Further, the MIET circulated the 23 March 2018 Guideline, which called for observance of environmental, social and labor law provisions in the procurement procedure. MIET excluded Charging Queen from the procurement competition on the basis of the Directive n.12 and the March 2018 Guideline, due to its bad track record in observing environmental and labor considerations.

### 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

#### VII. THE PROCUREMENT REQUIREMENTS DO NOT VIOLATE ART. III:4 OF GATT

1. Art. III:4 contains the national treatment obligation prohibiting discriminatory treatment of imported products *vis-à-vis* like domestic products.<sup>1</sup> A measure violates Art. III:4 if three conditions are satisfied: *first*, the imported and domestic products are “like products”; *second*, the measure at issue is a “law, regulation, or requirement” and; *third*, the treatment accorded to imported products from all WTO Members is “less favourable”.<sup>2</sup> In the instant case, the products are *not like* [a]; and, March 2018 Guideline does not treat imports less favourably [b].

##### **a. The products at issue are not like**

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.<sup>3</sup> PPMs connected to health or environmental risks can define consumer tastes and habits.<sup>4</sup>

3. In the instant case, there is a difference in consumer’s preferences between Solaris sourced from Zycron on one hand, and the mines of CQ on the other. This is because of the difference in the labour conditions. Avilion has a poor record of compliance with ILO minimum labour standards.<sup>5</sup> *Furthermore*, CQ operations have resulted in the death of 33 underage workers.<sup>6</sup> *Consequently*, the citizens of Zycron have strongly rejected Solaris produced from mines with poor working conditions.<sup>7</sup> Thus, the products at issue are not like.

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<sup>1</sup> ABR, *EC – Seal Products*, [5.79].

<sup>2</sup> ABR, *EC – Seal Products*, [5.99].

<sup>3</sup> PR, *US – Tuna II (Mexico)*, [7.234]-[7.240]; ABR, *EC – Asbestos*, [101]-[109]; Border Tax Adjustments [18].

<sup>4</sup> Potts (2008), 30.

<sup>5</sup> Para. 1.5, Factsheet.

<sup>6</sup> Para. 1.5, Factsheet.

<sup>7</sup> Paras. 1.5 and 4.12, Factsheet.

**b. March 2018 Guideline does not treat imports less favourably**

4. To establish less favourable treatment, it must be shown that the measure modifies competition to the detriment of imports.<sup>8</sup> March 2018 Guideline requires *all* the suppliers, both domestic and foreign, to comply with environment, social and labour obligations.<sup>9</sup> The measure is origin-neutral. *Admittedly*, the volume of exports of EV batteries and charging points by CQ to Zycron has drastically dropped. However, a detrimental effect on imports alone does not indicate *de facto* “less favourable treatment”.<sup>10</sup> Exports from CQ have been excluded due to the company’s failure to comply with labour standards and not because of their foreign origin.<sup>11</sup> Thus, March 2018 Guideline does not treat imports less favourably than domestic products.

5. Therefore, the procurement requirements do not violate Art. III:4 of GATT.

**VIII. IN ANY CASE, THE APPLICATION OF ARTS. III: 4 AND I: 1 OF GATT IS LIMITED BY ART. III:8(A)**

6. Art. III: 8(a) permits government procurement measures to derogate from both the national treatment<sup>12</sup> and MFN obligations.<sup>13</sup> It allows the government to choose its own procurement procedures and policies.<sup>14</sup> A measure is justified under Art. III: 8(a) if: *first*, it can be characterized as “laws, regulations or requirements” governing procurement [a]; *second*, it involves procurement by government agencies of products purchased [b]; and *third*, the procurement is undertaken for governmental purposes and not for commercial resale [c].

**a. The measures are regulations or requirements governing procurement of EV Charging Points**

7. The test under the first requirement is two-fold: *first*, the act of procurement should have an *articulate connection* with a binding structure of laws, regulations, or requirements [i];<sup>15</sup> and *second*, the product of foreign origin must be in a *competitive relationship* with the product purchased [ii].<sup>16</sup>

*i. Articulate connection exists between the procurement and measure*

8. The measure “governing” procurement should “control, regulate or determine that

<sup>8</sup> ABR, *EC – Seal Products*, [5.101]; ABR, *Korea – Various Measures on Beef*, [7.199]; PR, *Canada – Autos*, [7.202]; ABR, *Thailand – Cigarettes (Philippines)*, [123].

<sup>9</sup> Para. 4.12, Factsheet.

<sup>10</sup> PR, *Dominican Republic – Import and Sale of Cigarettes*, [96].

<sup>11</sup> Para. 4.13, Factsheet.

<sup>12</sup> ABR, *Canada – Renewable Energy*, [5.56].

<sup>13</sup> Arrowsmith (2003), 61-63; Dischendorfer (2000), 15-17; Blank (1997), 81.

<sup>14</sup> Arrowsmith (2011), 6.

<sup>15</sup> ABR, *Canada – Renewable Energy*, [5.78].

<sup>16</sup> ABR, *Canada – Renewable Energy*, [5.74].

procurement”.<sup>17</sup> The MIZ initiative and Directive n.12 specifies a domestic content requirement that has to be satisfied by each bidder.<sup>18</sup> Similarly, March 2018 Guideline makes it mandatory for a supplier to comply with domestic and international obligations in the field of environmental, social and labour law.<sup>19</sup> Thus, an *articulate connection* exists between the procurement and the measure.

ii. *There is a competitive relationship between the products*

9. The *competitive relationship* encompasses products which are either identical, or like, or directly competitive or substitutable.<sup>20</sup> A *competitive relationship* may exist even when the product discriminated against is completely consumed in the production of the good that is subject to discrimination.<sup>21</sup> In the instant case, the product subject to discrimination is Solaris. The products being procured are the charging points which contain Solaris. Solaris is a physical input which is consumed in the manufacturing of the charging points. Thus, the two products are in a *competitive relationship*.

**b. Measures involve procurement by government agencies**

10. Government agencies are bodies performing a function of the government or acting on behalf of the government.<sup>22</sup> MIET is the ministry of the government responsible for “all matters regarding the EV sector”.<sup>23</sup> MIET issued an open competitive call for a framework purchasing agreement for the installation and the management of public EV charging points.<sup>24</sup> Therefore, the measure at issue involves procurement by governmental agencies of products purchased.

**c. Procurement is for governmental purposes and not for commercial resale**

11. The procurement of EV charging points is in pursuance of governmental purpose [i]; and, not for commercial resale or producing goods for commercial sale [ii].

i. *Procurement is for a governmental purpose*

12. “Governmental purpose” refers to the *intentions or aims* that the government wishes to pursue.<sup>25</sup> The Zycronian Government has announced the Going Electric Plan followed by the GEA.<sup>26</sup> The government intends to reduce air pollution and transport-related carbon emissions

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<sup>17</sup> PR, *Canada – Renewable Energy*, [7.124]; PR, *EC – Selected Customs Matters*, [7.529].

<sup>18</sup> Para. 4.9, Factsheet.

<sup>19</sup> Para. 4.12, Factsheet.

<sup>20</sup> ABR, *Canada – Renewable Energy*, [5.63]; ABR, *India – Solar Cells*, [5.40].

<sup>21</sup> Davies (2015), 550.

<sup>22</sup> ABR, *Canada – Renewable Energy*, [5.60]; Corvaglia (2017), 106.

<sup>23</sup> Para. 4.1, Factsheet.

<sup>24</sup> Para. 4.6, Factsheet.

<sup>25</sup> ABR, *Canada – Renewable Energy*, [5.66].

<sup>26</sup> Paras. 3.2-3.3, Factsheet.



in Zycron through electrifying road transport.<sup>27</sup> The procurement of EV charging points provides a more efficient renewable energy infrastructure through easy access to the electricity network.<sup>28</sup> Thus, the procurement is for governmental purpose.

ii. *Procurement is not for commercial resale or production of goods for commercial sale*

**13.** A transaction is for “commercial resale” or “commercial sale” if it is *profit-oriented*.<sup>29</sup> Post procurement, MIET retains the ownership of the charging station.<sup>30</sup> Hence, there is no resale. *Further*, MIET has procured EV charging points to provide easy access to the electricity network for EV vehicles, as well as to offer free service to its nationals.<sup>31</sup> The government’s intention is to reduce air pollution and not to generate profits.<sup>32</sup> Therefore, the procurement is not for “commercial resale or production of goods for commercial sale”.

#### **IX. PROCUREMENT REQUIREMENTS DO NOT VIOLATE ART. IV:1-2 OF GPA**

**14.** Art. IV embodies the *non-discrimination principle* which includes MFN and national treatment obligation.<sup>33</sup> The non-discrimination principle requires: *first*, procurement at issue to be covered by the GPA [a]; *second*, “no less favourable treatment” be accorded to products, services and suppliers of foreign GPA parties or among parties or against locally-established suppliers [b]; and *third*, extension of such favourable treatment “immediately” and “unconditionally” to all GPA parties.<sup>34</sup> *Additionally*, there is an implied requirement that the products and services at issue should to be “like” [c].<sup>35</sup>

##### **a. GPA does not cover the procurement at issue**

**15.** 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.<sup>36</sup> The procurement of EV charging points by MIET fulfils all requisites under Appendix 1<sup>37</sup> and is

<sup>27</sup> Paras. 3.1-3.3, Factsheet; Clarification No. 22.

<sup>28</sup> Para. 3.4, Factsheet.

<sup>29</sup> ABR, *Canada – Renewable Energy*, [5.71].

<sup>30</sup> Para. 3.4, Factsheet.

<sup>31</sup> Para. 3.4, Factsheet.

<sup>32</sup> Paras. 3.1-3.3, Factsheet; Clarification No. 22.

<sup>33</sup> Anderson (2017), 19; McCrudden (1999), 15; Davies (2011), 434.

<sup>34</sup> Art. IV:1-2, GPA; McCrudden (1999), 15.

<sup>35</sup> Corvaglia (2017), 122.

<sup>36</sup> Art. II:2, GPA; Anderson (2017), 16.

<sup>37</sup> Paras. 4.6-4.7, Factsheet.

not excluded by the General Notes, Annex 7.<sup>38</sup> In the instant case, the procurement of EV charging points is excluded by the General Notes, Annex 7.

**16.** General Notes Annex 7 to the Zycron’s SOC limit the application of GPA.<sup>39</sup> Contracts granted under international economic integration agreements and international peace agreements have been excluded. OTA is an international economic and peace agreement between Tlön and Zycron.<sup>40</sup> It intends to end the conflict between the two countries by means of collective development.<sup>41</sup> The procurement requirements were structured to pursue *gradual* integration of Tlön’s Solaris industry as envisaged by the OTA.<sup>42</sup> Zycron’s local production of Solaris is in no manner enough to meet the increasing demands of its domestic EV industry.<sup>43</sup> Hence, Tlön, the only other OTA party, will get the opportunity to export Solaris. The procurement requirements have and will contribute to the development of both the countries as intended by the OTA. Thus, the procurement is excluded by the General Notes, Annex 7.

**17.** Therefore, the GPA does not cover the procurement at issue.

**b. Treatment no less favourable**

**18.** The jurisprudence on GPA standard “treatment no less favourable” is extremely limited.<sup>44</sup> 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.<sup>45</sup> In the instant case, as established above, March 2018 Guideline does not accord a “less favourable treatment” to the imports.<sup>46</sup>

**c. The products are not like**

**19.** GPA is silent on issue of “likeness”. However, the notion of “likeness” is implicit in the GPA.<sup>47</sup> In the instant case, as has been pleaded above, the products are not like as per the GATT “likeness” standard.<sup>48</sup> *Furthermore*, the “likeness” standard under GPA must be given a more flexible interpretation it is merely an implied requirement.<sup>49</sup> Thus, the standard should include PPMs as a ground of differentiating like goods, services and suppliers.<sup>50</sup> The process

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<sup>38</sup> PR, *Korea – Procurement*, [7.12].

<sup>39</sup> Para. 4.7, Factsheet.

<sup>40</sup> Para. 2.1, Factsheet.

<sup>41</sup> Para. 2.1, Factsheet.

<sup>42</sup> Para. 2.2, Factsheet.

<sup>43</sup> Para. 3.5, Factsheet.

<sup>44</sup> Cottier (2012), 305; Corvaglia (2017), 121.

<sup>45</sup> McCrudden (2007), 469-506.

<sup>46</sup> Legal Pleadings [4].

<sup>47</sup> Lester (2012), 714.

<sup>48</sup> Legal Pleadings [2]-[3].

<sup>49</sup> Corvaglia (2016), 607.

<sup>50</sup> Howse (2000), 249.

of Solaris extraction followed by CQ is different from the Zycronian process in terms of labour standards.<sup>51</sup> Hence, domestic Solaris and Solaris from mines of CQ is not “like”.

**20.** Therefore, procurement requirements do not violate Art. IV:1-2 GPA.

**X. THE PROCUREMENT REQUIREMENTS ARE JUSTIFIED UNDER ART. XX OF GATT AND ART. III:2 OF GPA**

**21.** 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**].<sup>52</sup> March 2018 Guideline rejecting tender award for non-compliance of international and domestic obligation under labour, social and environmental law is justified under Art. XX.

**a. Procurement requirements fall under Art. XX(a) and Art. III:2(a)**

**22.** The term “public morals” denotes the standards of right and wrong conduct maintained by a community or a nation.<sup>53</sup> A measure is justifiable if it is *designed* to protect public morals and is *necessary* for the same.<sup>54</sup>

**23.** The March 2018 Guideline is designed to protect public moral concerns. This includes health of labourers, promoting sustainable growth and combating climate change.<sup>55</sup> The Guideline relates to this objective by excluding the supplier which fails to meet domestic and international standards in field of social, labour and environmental law.

**24.** The necessity test involves “weighing and balancing” of three factors. *First*, the importance of the legitimate objective claimed; *second*, its degree of contribution; and *third*, its degree of trade-restrictiveness.<sup>56</sup> Following this analysis, the measure has to be compared with possible alternatives.<sup>57</sup> *First*, the objectives of March 2018 Guidelines are *internationally recognized* as important policy objectives, as well as targets of the UN SDGs.<sup>58</sup> *Second*, the measure has contributed to the objective by reducing the demand for goods that fail to meet stipulated threshold requirements.<sup>59</sup> This encourages suppliers to adopt a sustainable and healthy process of extracting and manufacturing Solaris and related products. *Third*, there is no less trade restrictive alternative which is reasonably available and provides an equivalent

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<sup>51</sup> Para. 1.5, Factsheet.

<sup>52</sup> ABR, *EC – Seal Products*, [5.169]; ABR, *Brazil – Retreaded Tyres*, [139].

<sup>53</sup> ABR, *US – Gambling*, [296]; PR, *China – Publication and Audiovisual Products*, [7.759].

<sup>54</sup> ABR, *US – Gambling*, [296]; ABR, *Colombia – Textiles*, [5.67]-[5.70].

<sup>55</sup> Para. 3.5, Factsheet.

<sup>56</sup> ABR, *US – Gambling*, [306]; ABR, *EC – Asbestos*, [172]; ABR, *EC – Seals Products*, [5.169]; ABR, *Korea – Various measures on Beef*, [164].

<sup>57</sup> ABR, *US – Gambling*, [307]; ABR, *Korea – Various measures on Beef*, [166].

<sup>58</sup> PR, *Brazil – Taxation*, [7.592]; Trade and SDGs (2018); Marceau (2002).

<sup>59</sup> Para. 4.14, Factsheet.

contribution to the achievement of the objective.<sup>60</sup> Imposition of labelling requirement may be an alternative, but it fails to fulfil the objective of protecting public morals. The essence of labelling requirement is that the discretion to make a choice is given to the consumer, instead of the government. However, in the instant case, the contract will be given only to one supplier effectively leaving the consumer without any choice.

25. Therefore, the procurement requirements fall under Art. XX(a) and Art. III:2(a).

**b. Procurement requirements fall under Art. XX(g)**

26. To receive an exemption under Art. XX(g), the measure must: *first*, relate to the “conservation of exhaustible natural resources”; and *second*, be “made in effective conjunction with” the restrictions imposed on domestic production or consumption.<sup>61</sup> Both the requirements have been met in the present case.

27. *First*, a measure must be “primarily aimed at” conservation of exhaustible natural resource.<sup>62</sup> “Conservation” objective, in the context of an exhaustible mineral resource, means preservation, protection, or restoration of the resource.<sup>63</sup> In the instant case, March 2018 Guideline directly contributes to a more sustainable and efficient use of Solaris and other mineral resources by excluding suppliers who fail to meet environmental obligations.

28. *Second*, for a measure to be “in conjunction” with domestic restrictions, it has to applied in an even-handed manner.<sup>64</sup> The measure should not impose significantly more onerous burden on foreign producers.<sup>65</sup> In the instant case, under the March 2018 Guideline, the same obligations have been placed on domestic and foreign suppliers. Thus, the procurement requirements fall under Art. XX(g).

**c. Procurement requirements are consistent with the chapeau**

29. A measure violates the chapeau if its application results in arbitrary and unfair discrimination between countries with the same conditions, or is a disguised restriction of trade.<sup>66</sup>

30. A measure may be unfair and arbitrary if respondent has not made efforts to carry out serious negotiations to achieve the objective,<sup>67</sup> or when the measure is inflexible.<sup>68</sup> However,

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<sup>60</sup> ABR, *Brazil – Retreaded Tyres*, [178].

<sup>61</sup> ABR, *US – Shrimp*, [126]; Van den Bossche & Zdouc (2013), 565.

<sup>62</sup> PR, *Canada – Salmon and Herring*, [4.6]; ABR, *US – Gasoline*, [15].

<sup>63</sup> Art. 31, VCLT.

<sup>64</sup> ABR, *US – Gasoline*, [20-21].

<sup>65</sup> ABR, *China – Rare Earths*, [5.134].

<sup>66</sup> 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].

<sup>67</sup> ABR, *US – Shrimp (Article 21.5)*, [122]; Conrad (2011), 363.

<sup>68</sup> ABR, *US – Shrimp (Article 21.5)*, [145]-[149].

unilateral measures that condition market access based on the policies of the exporting countries are justifiable under Art. XX.<sup>69</sup> In the instant case, Zycron’s policy aims at curtailing the market access of goods that fail to comply with labour, social and environmental standards. This policy has a legitimate objective and is not unfair merely because it has been adopted unilaterally.

**31.** Two main criteria to determine disguised restriction are the “publicity test” and examining the “design, architecture and revealing structure”.<sup>70</sup> All the procurement requirements were *publicly announced* and hence were known to the public.<sup>71</sup> The design of the March 2018 Guideline reveals even-handed treatment of imports and domestic products.<sup>72</sup> Both domestic and foreign suppliers have to comply with the stipulated standards.<sup>73</sup>

**32.** *Furthermore*, it may be argued that the measure is inflexible because it fails to account for differential labour conditions which may constitute “comparative advantage” for some countries.<sup>74</sup> However, violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage.<sup>75</sup> Thus, chapeau requirements have been met.

**33.** Therefore, the procurement requirements are justified under Art. XX of GATT and Art. III:2 of GPA.

**XI. THE IMPLEMENTATION OF THE ACCUMULATION OF ORIGIN RULE DOES NOT VIOLATE ART. 3.1(B) SCM**

**34.** Art. 3 of the OTA provides for a tariff exemption under the “Accumulation of Origin” Rule.<sup>76</sup> While there shall be no contention with regard to the tariff exemption being a subsidy under Art. 1.1 of SCM, this alone is not enough to result in a violation of SCM. The implementation of the “Accumulation of Origin” Rule does not violate Zycron’s obligations under SCM since it is not a *prohibited subsidy* under Art. 3.1(b).

**35.** Art. 3.1(b) prohibits subsidies that are contingent on the use of domestic over imported goods.<sup>77</sup> Art. 3.1(b) covers both *de facto* and *de jure* contingency.<sup>78</sup> The existence of *de facto*

<sup>69</sup> ABR, *US – Shrimp*, [121]; Howse (2002), 498.

<sup>70</sup> PR, *US – Canadian Tuna*, [4.8]; PR, *US – Shrimp (Article 21.5)*, [5.142].

<sup>71</sup> PR, *US – Springs Assemblies*, [56]; PR, *US – Canadian Tuna*, [4.8].

<sup>72</sup> Committee on Trade and Development- Dispute Settlement Practices related to Art. XX.

<sup>73</sup> Para. 4.12, Factsheet.

<sup>74</sup> Singapore Declaration, Para. 4.

<sup>75</sup> Para. I. A. (iv), ILO Declaration on Social Justice for a Fair Globalization; Kaufmann (2011), 323–358.

<sup>76</sup> Para. 2.4, Factsheet.

<sup>77</sup> PR, *Brazil – Taxation*, [7.822]; PR, *US – Large Civil Aircraft (2<sup>nd</sup> complaint) (Article 21.5 – EU)*, [10.38]; ABR, *Canada – Autos*, [123].

<sup>78</sup> ABR, *Canada – Autos*, [143].

contingency must be inferred from the “total configuration of the facts constituting and surrounding the granting of the subsidy”.<sup>79</sup> The test in ascertaining the contingency under Art. 3.1(b) is not whether the subsidy may result in the use of more domestic and fewer imported goods.<sup>80</sup> The assessment depends on whether the contingency can be discerned from the terms of the measure itself, or from its design, structure, modalities of operation, and the relevant factual circumstances.<sup>81</sup>

**36.** The term “over” in Art. 3.1(b) expresses a preference between two things.<sup>82</sup> It refers to the use of domestic goods in preference to imported goods.<sup>83</sup> In the instant case, while there is a preference prescribed under the subsidy, it is qualified by exceptions.<sup>84</sup> *Consequently*, the subsidy shall be provided regardless of whether domestic products from Zycron are used or not, for the further processing of imported Solaris from Tlön. For instance, Solaris imported from Tlön might be made into a finished product using materials that are not Zycronian, but have been imported into Zycron from other countries. Such Solaris would still avail the tariff exemption. Hence, the tariff exemption is not contingent on the use of domestic over imported goods.

**37.** *Admittedly*, the factual circumstances are such that it is probable that the Solaris imported from Tlön will use domestic Zycronian products for further processing. This is primarily because Tlön does not have a processing industry of its own.<sup>85</sup> However, there is no *requirement* for the use of Zycronian products. As stated earlier, it is probable that products imported from other countries may be used for the subsequent processing. Thus, there is no contingency on the use of domestic products over imported products for the availability of the import tariff exemption.

**38.** Therefore, the subsidy is consistent with Art. 3.1(b) of the SCM agreement.

## **XII. THE IMPLEMENTATION OF THE OUF MECHANISM DOES NOT VIOLATE THE SCM AGREEMENT**

**39.** The OUF mechanism is not in violation of SCM because: *first*, the OUF mechanism is not a subsidy within the definition of Art. 1.1 of SCM [a]; and *second*, in any case, the OUF mechanism is not in violation of Art. 3.1(b) of SCM [b].

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<sup>79</sup> ABR, *Canada – Aircraft*, [167].

<sup>80</sup> ABR, *US – Tax Incentives*, [5.40].

<sup>81</sup> ABR, *US – Tax Incentives*, [5.63]; ABR, *EC and certain member States – Large Civil Aircraft*, [1046].

<sup>82</sup> ABR, *US – Tax Incentives*, [5.11]; ABR, *EC and certain member States – Large Civil Aircraft (Article 21.5 – US)*, [5.57].

<sup>83</sup> ABR, *US – Tax Incentives*, [5.11].

<sup>84</sup> Para. 4.10, Factsheet.

<sup>85</sup> Para. 1.3, Factsheet.

**a. The OUF mechanism is not a subsidy under Art. 1.1 of SCM**

**40.** Art. 1.1 of SCM lays down conditions for a measure to qualify as a subsidy.<sup>86</sup> The OUF mechanism is not a subsidy under Art. 1.1 because: *first*, OUF is not a financial contribution [i], and *second*, in any case, no benefit is conferred [ii].

*i. OUF is not a financial contribution*

**41.** It may be argued that the OUF mechanism is a “purchase of goods by the government”. In order to constitute a financial contribution by way of “purchase of goods”, *possession* is a necessary precondition.<sup>87</sup> In *Canada – Renewable Energy*, the relevant factual circumstances were examined to characterise the measure as a “purchase of goods”.<sup>88</sup> 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.<sup>89</sup>

**42.** In the instant case, OUF is paid by the government.<sup>90</sup> *Moreover*, the challenged measures have been referred to as a procurement/purchase of electricity under the GEA and the MIET.<sup>91</sup> However, the government does not take possession of electricity. The charging station operators are private entities, that provide electricity directly to the consumers.<sup>92</sup> Thus, the government does not “purchase” electricity. Therefore, the OUF mechanism cannot be properly characterized as a *purchase of goods*.

**43.** *Furthermore*, in *Canada – Renewable Energy*, it was rejected that the payment in consideration of the electricity was a “direct transfer of funds”.<sup>93</sup> The AB stated that there was a composite transaction where the government entered into long term contracts with the FIT suppliers.<sup>94</sup> The facts demonstrated that the government obtained possession of electricity through certain payments.<sup>95</sup> A contract price was paid as consideration for the electricity delivered.<sup>96</sup> This could not be characterized as a “direct transfer of funds” as there were no such characteristics that could distinguish the measure from a mere “purchase of goods”.<sup>97</sup>

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<sup>86</sup> Art. 1.1, SCM.

<sup>87</sup> PR, *Canada – Renewable Energy*, [7.227].

<sup>88</sup> ABR, *Canada – Renewable Energy*, [5.128].

<sup>89</sup> ABR, *Canada – Renewable Energy*, [5.127].

<sup>90</sup> Para. 4.6, Factsheet; Clarification No. 36.

<sup>91</sup> Paras. 4.2, 4.3, 4.6, 4.7, 4.8, 4.9, 4.11, 4.13, Factsheet.

<sup>92</sup> Para. 4.6, Factsheet.

<sup>93</sup> ABR, *Canada – Renewable Energy*, [5.132].

<sup>94</sup> ABR, *Canada – Renewable Energy*, [5.131].

<sup>95</sup> ABR, *Canada – Renewable Energy*, [7.223]-[7.241]; Shadikhodjaev (2013), 871.

<sup>96</sup> ABR, *Canada – Renewable Energy*, [5.131].

<sup>97</sup> ABR, *Canada – Renewable Energy*, [5.131].

*Similarly*, in the instant case, the OUF is simply in return for the electricity.<sup>98</sup> There is nothing which suggests that the measure could be a “direct transfer of funds”. *Furthermore*, the fact that the OUF is given in return for provision of free charging to the Zycronian EV owners is indicative of how this cannot be a “direct transfer of funds” in the sense of a grant.<sup>99</sup>

**44.** Therefore, it can be concluded that the OUF mechanism is a financial contribution.

*ii. In any case, no benefit is conferred*

**45.** Assuming that the measure constitutes a financial contribution in the form of “purchase of goods”, determination of benefit under Art. 1.1(a)(1)(iii) depends on a market benchmark comparison as provided for under Art. 14(d) of SCM.<sup>100</sup> This involves determining the relevant market for the product at issue.<sup>101</sup>

**46.** In *Canada – Renewable Energy*, the renewable energy production market was held to be the relevant benchmark for comparison, as the case was related to purchase of renewable energy by the government.<sup>102</sup> In the instant case, the contention is with regard to provision of electricity to EV owners in Zycron,<sup>103</sup> generated from renewable sources.<sup>104</sup> Thus, the comparison must be with the companies that are already in the EV charging station market. Following this, the comparison is between companies availing the subsidy and market competitors in the form of charging station operators that do not receive OUF.

**47.** *Further*, Art. 1.1(b) is concerned with a “benefit to the recipient”, and not a “cost to the government”.<sup>105</sup> Measures merely compensating enterprises at a cost to the government for providing renewable energy do not constitute a benefit. Such measures simply reimburse the enterprise for taking actions and do not offer it with a competitive advantage.<sup>106</sup> In the instant case, the non-OUF charging station operators are free to charge from the consumers, whereas charging stations operating under the MIET agreement are not.<sup>107</sup> They require aid from government to cover their operation costs and earn a certain profit to ensure sustainability. Therefore, the financial contribution in the instant case is only compensatory in nature so to ensure adequate remuneration. It does not confer a benefit on the operators.

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<sup>98</sup> Paras. 3.4, 4.6, Factsheet.

<sup>99</sup> Para. 4.6, Factsheet.

<sup>100</sup> ABR, *Canada – Renewable Energy*, [5.165].

<sup>101</sup> ABR, *Canada – Renewable Energy*, [5.178]; ABR, *EC and certain member States – Large Civil Aircraft*, [1121].

<sup>102</sup> ABR, *Canada – Renewable Energy*, [5.190].

<sup>103</sup> Para. 4.6, Factsheet.

<sup>104</sup> Para. 1.2, Factsheet.

<sup>105</sup> ABR, *Canada – Aircraft*, [155].

<sup>106</sup> Rubini (2011), 21; Rubini (2012), 547; Howse (2010), 13.

<sup>107</sup> Para. 4.6, Factsheet.



48. Hence, OUF is not a subsidy under Art. 1.1 of SCM.

**b. In any case, the OUF mechanism is not in violation of Art. 3.1(b) of SCM**

49. A subsidy violates Art. 3.1(b) when it is contingent upon the use of domestic over imported goods.<sup>108</sup> As stated earlier, an assessment of *de facto* contingency requires consideration of the “total configuration of the facts”.<sup>109</sup> In the instant case, even though Directive n.12 requires the use of domestic Solaris, it allows for the use of imported Solaris under certain circumstances.<sup>110</sup> This means that the subsidy, in the form of OUF, will be provided to the charging station operators, even if they use Solaris not sourced from within Zycron.

50. Hence, the OUF mechanism is consistent with Art. 3.1(b) of SCM.

**XIII. THE MEASURE DOES NOT VIOLATE ART. XI:1 OF GATT**

51. 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 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.<sup>111</sup> The first requirement is not met because: *first*, the import licensing system is non-discretionary and automatic [a]; and *second*, it does not have a “limiting” effect [b].

**a. The import licensing system is non-discretionary and automatic**

52. Discretionary or non-automatic import licensing systems are a restriction under Art. XI:1.<sup>112</sup> Unfettered or undefined discretion with licensing agencies to reject a license application violates Art. XI:1.<sup>113</sup> A licensing system is “discretionary” if the administering authority enjoys the freedom to choose, based on its own preference, whether or not such licences are granted.<sup>114</sup>

53. In the instant case, the concerned Ministries of Defence of the exporting OTA party have to validate the certification, confirming that the importer is not listed as a military provider or contractor.<sup>115</sup> This process does not vest any discretion with the ministry. Instead, it is a mere factual inquiry to determine if the importer is listed as a military provider or contractor.

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<sup>108</sup> PR, *US – Large Civil Aircraft (2<sup>nd</sup> complaint) (Article 21.5 – EU)*, [10.38]; ABR, *Canada – Autos*, [123]; PR, *Brazil – Taxation*, [7.822].

<sup>109</sup> ABR, *US – Tax Incentives*, [5.12].

<sup>110</sup> Para. 4.10, Factsheet.

<sup>111</sup> Art. XI, GATT.

<sup>112</sup> PR, *India – Quantitative Restrictions*, [5.130], PR, *Korea – Various Measures on Beef*, [782].

<sup>113</sup> PR, *China – Raw Materials*, [7.957].

<sup>114</sup> PR, *China – Publications and Audiovisual Products*, [7.324].

<sup>115</sup> Para. 2.3, Factsheet.

*Further*, all certifications till date have ultimately been validated,<sup>116</sup> indicating that the process is non-discretionary. Thus, the import licensing system is non-discretionary and automatic.

**b. It does not have a “limiting” effect**

**54.** A measure should not have a “limiting” effect on the quantity of a product being imported or exported.<sup>117</sup> The limiting effects can be demonstrated through the design, architecture and revealing structure of the measure.<sup>118</sup> Evidence on the observable effects of the measure can be considered.<sup>119</sup> All certifications till date have ultimately been validated.<sup>120</sup> Thus, there has been no “limiting” effect on the quantities of Solaris being imported to the non-OTA countries. *Further*, the purpose of this system is to ensure the peaceful use of Solaris and not to limit the quantity of exports to the non-OTA countries. The design and architecture of the import licensing system is such that the “official certification” is validated after a mere factual inquiry. Therefore, it does not have a “limiting” effect.

**XIV. THE MEASURE DOES NOT VIOLATE ART. 2(B) AND (C) OF THE ARO**

**55.** Art. 2(b) and (c) do not apply if the ROO are preferential [a].<sup>121</sup> Art. 2(b) is violated if ROO are used as instruments to pursue trade objectives [b].<sup>122</sup> Art. 2(c) is violated if: *first*, the ROO do create restrictive, distorting or disruptive effects on international trade [c];<sup>123</sup> and *second*, they pose unduly strict requirements [d].<sup>124</sup>

**a. The ROO are preferential**

**56.** Preferential ROO apply in reciprocal trade preferences like regional trade agreements or customs unions.<sup>125</sup> The OTA Agreement qualifies as a free trade area.<sup>126</sup> The ROO in the OTA, thus being preferential in nature, are not governed by Art. 2(b) and (c).

**b. The ROO are not used as instruments to pursue trade objectives**

**57.** Art. 2(b) precludes WTO members from using ROO “to substitute or supplement the intended effect of trade policy instruments”.<sup>127</sup> To assess the objective of ROO, the design, the

<sup>116</sup> Clarification No. 45.

<sup>117</sup> ABR, *China – Raw Materials*, [319]-[320]; PR, *India – Quantitative Restrictions*, [5.129].

<sup>118</sup> ABR, *Argentina – Import Measures*, [5.217]; ABR, *China – Raw Materials*, [319]-[320].

<sup>119</sup> PR, *Indonesia – Import Licensing Regimes*, [7.50]; ABR, *Peru – Agricultural Products*, [5.56].

<sup>120</sup> Clarification No. 45.

<sup>121</sup> Art. 1 and Annex II, ARO; Singh (2017), 234.

<sup>122</sup> Art. 2(b), ARO; PR, *US – Textiles Rules of Origin*, [6.36]; Mavroidis (2018), 3.

<sup>123</sup> Art. 2(c), ARO; PR, *US – Textiles Rules of Origin*, [6.141]; Mavroidis (2018), 3; Singh (2017), 229.

<sup>124</sup> Art. 2(c), ARO; PR, *US – Textiles Rules of Origin*, [6.206]; Mavroidis (2018), 3.

<sup>125</sup> Singh (2017), 232.

<sup>126</sup> Legal Pleadings [61]-[64] and [66]-[69].

<sup>127</sup> PR, *US – Textiles Rules of Origin*, [6.43].

architecture and the revealing structure has to be examined.<sup>128</sup> ROO cannot be used to pursue “trade objectives” like favouring imports from one Member over another.<sup>129</sup>

**58.** In the instant case, the ROO are stated in clear language, which simplifies and provides certainty in origin determination. Thus, ROO are not being used to pursue “trade objectives”.

**c. The ROO do not create restrictive or distorting effects on international trade**

**59.** ROO must not “create restrictive, distorting or disruptive effects on international trade”.<sup>130</sup> Restrictive effects are those that create the effect of limiting the level of international trade.<sup>131</sup> A result-oriented approach should be adopted so as to determine the effects these ROO *actually* create in the market.<sup>132</sup> There is no evidence to suggest the existence of a restrictive effect. In any case, a restrictive effect on the trade of a single Member is not sufficient to establish restrictive effects “on international trade”.<sup>133</sup> Thus, it does not qualify as a restrictive effect on international trade.

**d. The ROO do not pose unduly strict requirements**

**60.** “Strict” requirements are those in which origin conferral depends on conformity with an exacting or rigorous standard.<sup>134</sup> “Unduly” in the context of Art. 2(c) means *excessively*.<sup>135</sup> The result-oriented approach should be adopted to determine whether a requirement is “unduly strict”. In the instant case, the facts are silent about the effects that these ROO have on international trade. *Further*, the requirements of the ROO are straightforward and simple. Thus, the ROO do not pose “unduly strict” requirements.

**XV. THE MEASURE CAN BE JUSTIFIED UNDER ART. XXIV OF GATT**

**61.** Even if the measure is inconsistent with Art. I:1, they are justified under Art. XXIV.<sup>136</sup> In the instant case, the measure is justified under Art. XXIV because: *first*, Art. XXIV is applicable to the OTA Agreement [**a**]; *second*, Art. XXIV covers ROO [**b**]; and *third*, the requirements to justify an inconsistent measure under Art. XXIV are met [**c**].

**a. The provisions of Art. XXIV apply to the OTA Agreement**

**62.** Art. XXIV applies to the OTA Agreement because: *first*, the OTA Agreement and the OTA Protocol are not distinct [**i**]; and *second*, the OTA Agreement was validly notified [**ii**].

*i. OTA Agreement and the OTA Protocol are not distinct*

<sup>128</sup> PR, *US – Textiles Rules of Origin*, [6.37]-[6.38].

<sup>129</sup> PR, *US – Textiles Rules of Origin*, [6.44].

<sup>130</sup> Art. 2(c), ARO; PR, *US – Textiles Rules of Origin*, [6.136]; Singh (2017), 229; Mavroidis (2018), 3.

<sup>131</sup> PR, *US – Textiles Rules of Origin*, [6.141].

<sup>132</sup> PR, *US – Textiles Rules of Origin*, [3.125] and [3.223]-[3.224]; Singh (2017), 231.

<sup>133</sup> PR, *US – Textiles Rules of Origin*, [6.159].

<sup>134</sup> PR, *US – Textiles Rules of Origin*, [6.205].

<sup>135</sup> PR, *US – Textiles Rules of Origin*, [6.206].

<sup>136</sup> ABR, *Turkey – Textiles*, [58].

**63.** The OTA Protocol is an additional protocol for the formation of a free trade area.<sup>137</sup> *Protocol* is “an amendment or addition to a treaty or convention”.<sup>138</sup> All the provisions of the OTA Agreement are also a part of the OTA Protocol.<sup>139</sup> Thus, the OTA Agreement can be understood to be incorporated within the OTA Protocol. *Further*, the OTA Protocol is open to those countries which have acceded to the OTA Agreement. Thus, the two instruments are closely interlinked.<sup>140</sup> Therefore, the OTA Agreement and the OTA Protocol are not distinct.

*ii. The OTA Agreement was validly notified*

**64.** An FTA needs to be notified.<sup>141</sup> In the instant case, the OTA Agreement has not been notified to the WTO under Art. XXIV, nor under the Enabling Clause.<sup>142</sup> However, the OTA Protocol, which led to the formation of the free trade area, was notified to the WTO on 1 July 2018.<sup>143</sup> It is reasonable to assume that this notification was made under Art. XXIV.<sup>144</sup> Even assuming that it was not under Art. XXIV, there are numerous FTAs in force without notification.<sup>145</sup> The object of a notification requirement is to inform other Members of arrangements that are WTO-inconsistent, though considered by the adopting Member to be justified.<sup>146</sup> Given that the OTA Agreement and the OTA Protocol are not distinct in nature, a notification of the OTA Protocol would inform members of the arrangements of the OTA Agreement as well. Hence, this notification is sufficient.

**b. Art. XXIV covers ROO**

**65.** The term “other regulations of commerce” means any regulation having an impact on trade.<sup>147</sup> ROO have been considered to be regulations.<sup>148</sup> It may be argued that the FTA ROO do not constitute “other regulations of commerce” under Art. XXIV:5 because they do not affect third parties. However, the ROO may divert trade,<sup>149</sup> hence refuting this contention. Thus, ROO fall within the scope of Art. XXIV.

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<sup>137</sup> Para. 2.7, Factsheet.

<sup>138</sup> Oxford Online Dictionary, <<https://en.oxforddictionaries.com/definition/protocol>>.

<sup>139</sup> Clarification No. 47.

<sup>140</sup> Para 2.7, Factsheet.

<sup>141</sup> Art. XXIV:7, GATT; Para. 1, Transparency Mechanism for Regional Trade Agreements; Para. 1, Understanding on the Interpretation of Art. XXIV, 1994.

<sup>142</sup> Clarification No. 43.

<sup>143</sup> Correction No. C.

<sup>144</sup> Para. 1.1, Factsheet.

<sup>145</sup> Hilpold (2003), 221.

<sup>146</sup> PR, *Brazil – Taxation*, [7.1077].

<sup>147</sup> PR, *Turkey – Textiles* [9.105] and [9.120]; Arts. 1, 3(c) and Annex II, ARO.

<sup>148</sup> Goode (1998), 237; Komuro (1998), 86; Rivas (2006), 152.

<sup>149</sup> James (2000), 293; Shibata (1967); Vermulst (1990) 55; James (1997), 113-114.

**c. The requirements to justify an inconsistent measure under Art. XXIV are met**

**66.** 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].<sup>150</sup>

*i. The requirements of Art. XXIV:5(b) and XXIV:8(b) are satisfied*

**67.** 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.<sup>151</sup> In the instant case, duties have not risen within the free trade area. The “official certification” requirement does not create a “restrictive” effect as all certifications till date have ultimately been validated.<sup>152</sup>

**68.** Under Art. XXIV:8(b), duties and other restrictive regulations of commerce between constituent members of a free trade area need to be eliminated with respect to substantially all the trade between them.<sup>153</sup> “Substantially all the trade” is not the same as *all the trade* and is something considerably more than merely some of the trade.<sup>154</sup> In the instant case, the OTA Protocol covers 90 per cent of all HS tariff lines at the 6-digit level, which amounts to around 85 per cent of all existing trade between the members.<sup>155</sup> This qualifies as “substantially all the trade”. The facts are silent about there being any other restrictive regulations of commerce between Zycron and Tlön. Thus, this requirement is fulfilled.

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

**69.** An FTA aims to facilitate trade between the constituent members and not to raise trade barriers with third countries.<sup>156</sup> In the instant case, the “official certification” requirement does not raise “barriers to trade” as all certifications till date have ultimately been validated.<sup>157</sup> The OTA Agreement aims to prevent the use of Solaris for military purposes<sup>158</sup> and the measure helps in achieving that objective. In the absence of the measure, the OTA Agreement might not have come into existence. Thus, the measure is necessary for the formation of the free trade area.

**70.** Therefore, the measures can be justified under Art. XXIV.

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<sup>150</sup> ABR, *Turkey – Textiles*, [45]-[46] and [58]; ABR, *Peru – Agricultural Products*, [5.115].

<sup>151</sup> Art. XXIV:5(b), GATT; ABR, *Turkey – Textiles*, [54]; ABR, *Peru – Agricultural Products*, [5.112].

<sup>152</sup> Clarification No. 45; Legal Pleadings [54].

<sup>153</sup> Art. XXIV:8(b), GATT; ABR, *Turkey – Textiles*, [47]-[48].

<sup>154</sup> ABR, *Turkey – Textiles*, [48].

<sup>155</sup> Para. 2.7, Factsheet.

<sup>156</sup> Art. XXIV:4, GATT; ABR, *Turkey – Textiles*, [56]-[57]; ABR, *Peru – Agricultural Products*, [5.116].

<sup>157</sup> Clarification No. 45.

<sup>158</sup> Para. 2.2, Factsheet.

**REQUEST FOR FINDINGS**

For the above reasons, Zycron 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 Articles IV:1-2 of the GPA.
2. The implementation of the OUF mechanism established by Zycron in the GEA, is not a subsidy within the meaning of Art. 1.1 of SCM, and is not in violation of Art. 3.1(b) SCM.
3. The implementation of the Accumulation of Origin Rule in the OTA, is not in violation of Art. 3.1(b) of the SCM Agreement.
4. 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.