



Team: 034R

**ELSA MOOT COURT COMPETITION ON WTO LAW
2017 / 2018**

Borginia – Measures Affecting Trade in Textile Products

Syldavia
(Complainant)

vs

Borginia
(Respondent)

SUBMISSION OF THE RESPONDENT

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2. Agreement on Technical Barriers on Trade, 1868 U.N.T.S 186 (1994). [**TBT**]
3. General Agreement on Tariffs and Trade, 1867 U.N.T.S. 187 (1994). [**GATT**]
4. Marrakesh Agreement Establishing the World Trade Organization, 1867 U.N.T.S 154 (1994). [**WTO Agreement**]
5. Harmonized System Convention, 1503 U.N.T.S. 167 (1986). [**HS Convention**]
6. Understanding on Rules and Procedures Concerning the Settlement of Disputes, 1869 U.N.T.S. 401 (1994). [**DSU**]
7. Vienna Convention on the Law of Treaties, 1155 U.N.T.S 331 (1969). [**VLCT**]
8. Paris Agreement, 54113 U.N.T.S (2015). [**Paris Agreement**]

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A. Appellate Body Reports

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<i>Brazil-Aircraft</i>	Appellate Body Report, Brazil-Export Financing Programme for Aircraft, WT/DS46/AB/RW, adopted 21 July 2000, DSR 2000: VIII.
<i>Brazil-Retreaded Tyres</i>	Appellate Body Report, Brazil-Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R, adopted 3 December 2007.
<i>Canada-Aircraft</i>	Appellate Body Report, Canada-Measures Affecting the Export of Civilian Aircraft, WT/DS70/AB/R, adopted 2 August 1999.
<i>Canada-Autos</i>	Appellate Body Report, Canada-Certain Measures Affecting the Automotive Industry, WT/DS139/AB/R, WT/DS142/AB/R, adopted 31 May 2000.
<i>Canada-Periodicals</i>	Appellate Body Report, Canada – Certain Measures Affecting Periodicals, WT/DS31/AB/R, adopted 30 June 1997.

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<i>Canada-Renewable Energy</i>	Appellate Body Reports, Canada-Certain Measures Affecting the Renewable Energy Generation Sector/Canada—Measures Relating to the Feed-In Tariff Program, WT/DS 412/AB/R, WT/DS 426/AB/R, adopted May 2013.
<i>China-Autoparts</i>	Appellate Body Reports, China-Measures Affecting imports of Automobile Parts, WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R, adopted 15 December 2008
<i>China-Rare Earths</i>	Appellate Body Report, China-Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum, WT/DS431/AB/R, WT/DS432/AB/R, WT/DS433/AB/R, adopted 4 August 2014
<i>China-Raw Materials</i>	Panel Reports, China-Measures Related to the Exportation of Various Raw Materials, WT/DS394/R / WT/DS395/R / WT/DS398/R / Add.1 and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R.
<i>EC-Asbestos</i>	Appellate Body Report, European Communities-Measures Affecting Asbestos and Asbestos-Containing Products, WT/DS135/AB/R, adopted 5 April 2001, DSR 2001: VII.
<i>EC-Chicken Cuts</i>	Appellate Body Reports, European communities-Customs Classification of Frozen Boneless Chicken Cuts, WT/DS269/AB/R, WT/DS286/AB/R, adopted 12 September 2005
<i>EC-Sardines</i>	Appellate Body Report, European Communities-Trade Description of Sardines, WT/DS231/AB/R, adopted 23 October 2002, DSR 2002: VIII.
<i>India-Additional Imports</i>	Appellate Body Report, India-Additional and Extra-Additional Duties on Imports from the United States, WT/DS360/AB/R, adopted 17 November 2008.
<i>Japan-Alcoholic Beverages</i>	Appellate Body Report, Japan-Taxes on Alcoholic Beverages, WT/DS8/AB/R, adopted 1 November 1996,
<i>Korea-Beef</i>	Appellate Body Report, Korea-Measures Affecting Imports of Fresh, Chilled and Frozen Beef, WT/DS161/AB/R WT/DS169/AB/R adopted 10 January 2001, DSR 2001: I.
<i>US-Antidumping</i>	Appellate Body Report, United States-Countervailing and Anti-Dumping Measures on Certain Products from China, WTO/DS449/AB/R, adopted 31 July 2014.
<i>US-Clove Cigarettes</i>	Appellate Body Report, United States-Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R, adopted 24 April 2012.
<i>US-COOL</i>	Appellate Body Reports, United States-Certain Country of Origin Labelling (COOL), WT/DS384/AB/R/WT/DS386/AB/R, adopted 23 July 2012.
<i>US-Gasoline</i>	Appellate Body Report, United States—Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted 20 May 1996.
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Short title	Full title and citation
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<i>US-Tuna II (Mexico)</i>	Appellate Body Report, United States-Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS 381/AB/R, adopted 13 June 2012.
<i>US-Wool Shirts and Blouses</i>	Appellate Body Report, United States-Measure Affecting Imports of Woven Wool Shirts and Blouses from India, WT/DS33/AB/R, adopted 25 April 1997.

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<i>Dominican Republic-Import and Sale of Cigarettes</i>	Panel Report, Dominican Republic-Measures-Affecting the Importation and Internal Sale of Cigarettes, WT/DS302/R, adopted 26 November 2004.
<i>EC-Sardines</i>	Panel Report, EC-Trade Description of Sardines, WT/DS231/R, adopted 31 May 2002.
<i>US-Gasoline</i>	Panel Report, United States Standards for Reformulated and Conventional Gasoline, WT/DS2/R, adopted 29 January 1996.

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LIST OF ABBREVIATIONS

AB -Appellate Body	NT -National Treatment
Art./Arts. -Article/Articles	NPR-PPM - Non product related process and production method
B -Borginia	PL -Powerloom
BTA -Border Tax Adjustment	PPM -Process and production method
CO₂ -Carbon Dioxide	S -Syldavia
CTE -Committee on Trade and Environment	SCM -Agreement on Subsidies and Countervailing Measures
DSU -Dispute Settlement Understanding	SOCA -Save Our Climate Act Tax legislation in 2015
GATT -General Agreement on Tariffs and Trade 1994	TBT -Agreement on Technical Barriers to Trade
GHGs -Greenhouse Gases	TEPZs -Textile Export Promotion Zones
GNP -Gross National Product	TR -Technical Regulation
HL -Handloom	TTUFS -Textile Technology Upgrade Fund Scheme
ISO -International Organization for Standardization	UN -United Nations
ISO 14666 -ISO 14666 Standards Related to Cotton Fabric	VCLT -Vienna Convention on the Law of Treaties
LFN -Love For Nature Action Plan	WTO -World Trade Organization
NESI -National Environmental and Sustainability Institute	

SUMMARY OF ARGUMENTS

1. NESI's decision (NESI's D) does not constitute a technical regulation (TR) within the meaning of TBT Annex 1.1. However, if the Panel finds that the measure at issue is a TR, it would be consistent with TBT Art. 2 because of the following reasons.

1.1. It would be consistent with TBT Art. 2.1 since NESI's D is applied to domestic and foreign cotton fabrics producers without making a distinction based in the origin of the product.

1.2. It would be consistent with TBT Art. 2.2 since NESI's D is not more trade-restrictive than necessary in order to effectively protect the environment, which is a legitimate objective under TBT Art. 2.2.

1.3. It would be consistent with TBT Art. 2.4 since ISO 14666 Standards Related to Cotton Fabric, by allowing the production of cotton fabrics by machine, is an ineffective means for the fulfillment of the legitimate objectives pursued.

2. NESI's D is consistent with GATT Art. III:4.

2.1. NESI's D is out of the scope of GATT Art. III:4 since it contains a non-product related process and production method (NPR-PPM).

2.2. In case the Panel finds otherwise, the measure at issue would be consistent with GATT Art. III:4 since it is applied to domestic and foreign cotton fabrics producers without making a distinction based in the origin of the product.

3. The SOCA tax is consistent with GATT Art.s II:1(a) and (b), II:2(a) and III:2.

3.1. The SOCA tax is not subject to analysis under GATT Art. II:1(a) and (b), and II:2(a) as it is an internal tax that is not triggered by importation but because of the CO2 emissions in textile production.

3.2. The SOCA tax is consistent with GATT Art. III:2 as it is eligible for Border Tax Adjustment (BTA) and complies with the NT Principle. Imported cotton fabrics are not taxed in excess nor dissimilarly.

4. The allocation of funds is consistent with SCM Art.s 3.1(a), 27.4 and 27.5.

4.1. Allocating funds to enterprises which already exported their products does not constitute, on its own, an export subsidy. Thus, B's allocation of funds is not a prohibited subsidy under Art. 3.1(a).

4.2. Art. 27.4 must be understood in accordance with Art. 27.2. The latter establishes that developing Ms shall have an eight-year period to phase out their export subsidies, which for graduating countries must count since the date in which they reached the *threshold*.

4.3. B has not reached export competitiveness in regard to "Overall Textiles". Therefore, B is

not in breach of its obligations under SCM Art. 27.5.

5. B's measures can be justified under GATT Art. XX paras. (b) and (g).

5.1. In case NESI's D and SOCA tax are found to be inconsistent with WTO law, they are justified under GATT Art. XX. Said measures are designed and necessary to protect human, animal or plant life or health, since they are directed to reduce CO₂ emissions that influence coastal erosion, which threatens those values that have the highest importance.

5.2. Moreover, by incentivizing a carbon-neutral PMM in cotton textiles, B aims to protect clean air and productive soil, as they are exhaustible natural resources. In that sense, the implemented measures are made effective within B's territory and apply to both domestic and imported textile production.

5.3. After being justified under paras. (b) and (g), B is within its legitimate right to invoke the exception in pursuit of the preservation of essential values. This, since the measures are justified under B's compliance with the object and purpose of the WTO and Paris Agreement. Therefore, B's measures are not "capricious or random" and do not constitute an arbitrary or unjustifiable discrimination, nor a disguised restriction on international trade.

STATEMENT OF FACTS

1. The Republic of B is a Member (M) of the World Trade Organization (WTO), a founding member of the International Organization for Standardization (ISO) and a State party to the 2015 Paris Agreement (PA) under the United Nations Framework Convention on Climate Change (UNFCCC).
2. Geographically, B is a collection of approximately 1000 tiny islands with one of the largest population in the world (roughly 350 million) which is one of the reasons why the country is ecologically vulnerable because of the unexpected storm surges, rising sea levels and coastal erosion that endangers life along the coastal areas.
3. Attending B's vulnerability, the National Environmental and Suitability Institute (NESI), a governmental agency tasked with environmental planning and enforcement, had to implement the Love for Nature Action Plan (LFN): an institutional gear designed to affront the critical environmental situation through effective measures. Additionally, B passed a tax legislation entitled Save Our Climate Act (SOCA) in 2015, encouraging the reduction of CO₂ emissions in several industries.
4. B's Ministry of Textiles decided to allocate the funds collected from the SOCA tax entirely to the textile units situated in the Textile Export Promotion Zones (TEPZs). This, to promote the installation of modern eco-technology and practices in the textile industry.
5. Recently, S submitted a request for the establishment of a Panel to the DSB under the basis of an alleged inconsistency of B's actions towards the establishment and implementation of its environmental policy. In response to S's claims, B contests each of the claims of violation and submits that, in any event, NESI's D and the SOCA tax are justified under Art. XX of the GATT 1994.

IDENTIFICATION OF THE MEASURES AT ISSUE

1. NESI's D issued in 2015.
2. SOCA legislation enacted in early 2015.
3. The subsidy to the textile units situated in the TEPZS.

LEGAL PLEADINGS**I. Opening Statement**

1. The traditional approach to economics has changed due to an imminent alert brought because of human activities and its adverse effects in environmental matters.¹ In that sense, State policies shall be directed towards sustainable development: a concept that even WTO Ms acknowledged on the Preamble of the WTO Agreement.²

2. B is vulnerable to said environmental issues, since it is composed by a collection of islands³ that suffer from coastal erosion, aggravated by storm surges and rising sea levels.⁴ These factors are increased by the CO₂ derived from fossil fuel combustion.⁵

3. Cooperation between countries is needed to effectively reduce CO₂ emissions.⁶ Therefore B became party to the PA⁷ and subscribed Nationally Determined Contributions (NDCs) to mitigate climate change and diminish CO₂ emissions below pre-industrial levels.⁸ Such purpose is obtained by the commitment to mitigate, adapt, finance and improve technology, taking into consideration the country's capacity.⁹

4. Precisely, B's measures are efficiently designed to achieve sustainable development,¹⁰ bearing in mind its condition as an island State. Thus, it is a necessary response to mitigate the disastrous effects of climate change that otherwise would threaten life in Earth as we know it. B will now proceed to its submissions.

II. NESI's D is consistent with TBT Arts. 2.1, 2.2 and 2.4.

5. For a measure to fall under the scope of TBT Art. 2, it must be a TR.¹¹ Since NESI's D is not a TR, it falls outside of the Art.'s scope.

A. NESI's D is not a TR.

6. TBT Annex 1.1 defines TR as a mandatory document that lays down certain product characteristics or their related Processes and Production Methods (PPM). The AB¹² requires a TR to lay down products characteristics or PPMs related to the product or an identifiable group

¹ UN (1987), 6-10.

² WTO Agreement, Preamble.

³ EMC2, [1.1].

⁴ EMC2, [1.4].

⁵ *Simon Albert et al.* (2016), [53-55].

⁶ un.org.

⁷ EMC2, [Annex 1].

⁸ Paris Agreement, Arts. 2, 4.19.

⁹ *ibid.*, Art. 4, 8, 9, 10, 11, 13.

¹⁰ oecd.org, 11.

¹¹ ABR, US-Tuna II (Mexico), [178].

¹² *ibid.*, [183].

of products, in a mandatory fashion.

7. NESI's D does not comply with the referred test since it contemplates a NPR-PPM, which is a zero-emission production of cotton fabrics that is not reflected in the final product.¹³ Moreover, it is not mandatory since producers that refuse to implement the suggested PPM are still allowed to sell cotton fabrics in B.¹⁴ Thus, the measure falls out of the scope of TBT Art.2. Yet, if the measure is regarded as a TR, B sustains that it is consistent with the TBT.

B. NESI's D is consistent with TBT Art. 2.1.

8. TBT Art. 2.1 contains the National Treatment (NT) Principle. As the AB¹⁵ stated, to determine a measure's inconsistency: (i) the measure must be a TR, (ii) that involves imported and domestic products that are like products, which (iii) accords a less favorable treatment (LFT) to imported products.

1. Handloom (HL) and powerloom (PL) cotton fabrics are not given a LFT under Art. 2.1.

9. B is not giving a LFT to imported products. The AB¹⁶ requires two cumulative situations to affirm that a LFT is being accorded: (i) a detrimental impact on competitive opportunities for the imported products, that (ii) does not stem exclusively from a legitimate regulatory distinction.

a. There is no detrimental impact on competitive opportunities for imported products.

10. To consider that a measure accords a LFT, it must cause a detrimental impact on competitive opportunities for an identified group of imported products. In the case under study, PL exports dropped 40% from 2014 to 2015, while they only dropped 18.3% from 2015 to 2016.¹⁷ In that sense, it is not possible to assert that there is a detrimental impact for imported cotton fabrics because of NESI's D.

b. The detrimental impact stems exclusively from a legitimate regulatory distinction.

11. If the Panel finds that there has been a detrimental impact, it would stem exclusively from a legitimate regulatory distinction. The objective of the measure is to achieve a zero-emission cotton fabrics production.¹⁸ Thus, the measure is designed in an even-handed manner¹⁹ since it applies in an identical way, regardless of the origin of the producer.

12. All in all, even if NESI's D is considered as a TR, it would be consistent with TBT Art. 2.1 since there is no LFT accorded to imported cotton fabrics.

C. NESI's D is consistent with TBT Art. 2.2.

13. TBT Art. 2.2 prohibits TRs that are more trade-restrictive than necessary in order to fulfill

¹³ecampus.org, 21.

¹⁴Jasper Stain (2009), [292].

¹⁵ ABR, US-Clove Cigarettes [87].

¹⁶ ibid., [182].

¹⁷ EMC2 Case [Annex 2].

¹⁸ EMC2 Case [2.2].

¹⁹ ABR, US-Clove Cigarettes [215].

a legitimate objective²⁰. In that sense, a measure complies with the Art. if:²¹ (i) it has an objective, that is (ii) a *legitimate* one, (iii) fulfills it, and (iv) is necessary.

1. NESI's D fulfills a legitimate objective.

14. NESI's D accomplishes with the first three tiers of the test, since it suitable to fulfill the objectives of protecting the environment and human, animal and plant life, which are legitimate in accordance with TBT Art. 2.2.

15. As it was already established in the Opening Statement, NESI's D -as one of the measures adopted within the LFN- seeks to protect the environment and human, animal and plant life, through a zero CO₂ emission cotton fabrics production.²² In fact, said objectives are specifically included in TBT Art. 2.2 as legitimate ones that Ms shall achieve, even if that implies certain degree of restriction.

16. Moreover, NESI's D is an eco-labeling scheme designed to pursue environmental-friendly cotton fabrics production. It encourages a non-product related PPM for cotton fabrics with a negligible amount of CO₂ emissions, knowing that over the last century the burning of fossil fuels has increased the concentration of atmospheric CO₂.²³

17. Consequently, NESI's D adequately fulfils said objectives. It boosts the consumption of eco-friendly produces textiles labeled as "Cotton Fabrics". Moreover, it encourages polluting industries to shift and acquire the label as an eco-marketing strategy.

2. It is a necessary objective.

18. Three factors are required to determine the necessity of a measure within the meaning of TBT Art. 2.2:²⁴ (i) its degree of contribution to the legitimate objective, (ii) its trade-restrictiveness and (iii) the risks of non-fulfillment of the legitimate objective perused.

a. NESI's contribution to the environmental protection.

19. According to the Opening Statement, NESI's D is essential to handle the critical environmental situation,²⁵ since it encourages a carbon-neutral PPM for cotton fabrics. Cotton fabrics HL PPM helps to reduce CO₂ emissions as a major contributor to climate change,²⁶ as it increases temperature causing thermal expansion of the oceans²⁷.

20. In light of the above, high CO₂ emissions rise sea levels. This has a great impact on coastal erosion, through the waves that progressively reach the coast with hydraulic action and corrosion/abrasion²⁸ deepening near shore-waters.²⁹ Hydraulic action involves waves

²⁰ *Lukasz Gruszczynski* (2013), [121].

²¹ ABR, US-COOL [370-374].

²² EMC2 Case [2.2].

²³ climate.nasa.gov.

²⁴ ABR, US-Tuna II, [322].

²⁵ EMC2 Case, [1.4].

²⁶ *Ellen W. Cohill* (1990), [6].

²⁷ *Ronald J. Rychlak*, (1990) [97].

²⁸ geographyas.info.

²⁹ *Eric Bird* (1996), [87].

impacting cliff faces with high pressure, causing cliff and rock fragments to fall from it.³⁰ Corrosion/abrasion implicates atmospheric CO₂ dissolution into the sea waters, turning it into carbonic acid that dissolves coastal rocks.³¹ Thus, NESI's D tackles coastal erosion by reducing CO₂ emissions.

b. Trade restrictiveness of NESI's D.

21. NESI's D gives access to an eco-label that can be voluntarily adopted by the producers that use a carbon-neutral PPM.³² Thus, it does not restrict the access to the cotton fabrics market. If producers consider that it is profitable to adopt NESI's D to acquire the "Cotton Fabric" label and its benefits, there is no deterrent to do so.

22. Therefore, NESI's D's restrictiveness is negligible, since it only incentivizes the carbon-neutral production of cotton fabrics³³, without any origin discrimination.

c. Risks of non-fulfillment of the legitimate objective pursued.

23. Bearing in mind that coastal erosion has become a serious problem in B, the risk of non-fulfillment of NESI's D's objective is the existence of the country as such and the human, animal and plant life. In fact, five islands part of the Solomon Islands submerged due to this natural phenomenon.³⁴ Such calamity is just one example of the effects that climate change has had in the biota and the communities who inhabit them.³⁵

24. B -like the Solomon Islands- is a collection of approximately 1000 tiny islands³⁶ that suffers from coastal erosion and rising sea levels.³⁷ These circumstances endanger the life of its population, fauna and flora. Hence, NESI's D is essential to confront B's serious environmental concerns.³⁸ Thus, if considered a TR, it would comply with TBT Art. 2.2.

D. NESI's D is consistent with TBT Art. 2.4.

25. In case NESI's D is found to be a TR, it is consistent with TBT Art. 2.4. According to the PR in *US-Tuna II*,³⁹ said Art. establishes the obligation for Ms to use relevant international standards as a basis for their own TRs, unless it turns in ineffective or inappropriate means for the fulfilment of the legitimate objectives perused.

1. ISO 14666 is ineffective for the legitimate objectives pursued.

26. ISO 14666 is not in line with the objective pursued by NESI's D. Allowing machine cotton fabrics production results ineffective regarding the measure's objective. Ms are not obliged to use as basis for their TRs an ineffective or inappropriate relevant international standard for the

³⁰ geographyas.info.

³¹ *ibid.*

³² EMC2 Case, [2.2].

³³ EMC2 Case, [2.2].

³⁴ *Simon Albert et al.* (2016).

³⁵ *ibid.*

³⁶ EMC2 Case, [1.1].

³⁷ EMC2 Case, [1.4].

³⁸ EMC2 Case, [1.6].

³⁹ PR, *US-Tuna II* (Mexico), [7.627].

fulfilment of any legitimate objective pursued.⁴⁰

27. In this case, ISO 14666 includes ginning, knitting, weaving and spinning; allowing its performance either by hand or machine.⁴¹ Thus, it is ineffective since the machine production does not accomplish the objective pursued⁴² of environmental protection. Hence, if the Panel considers that NESI's D is a TR, it would be consistent with TBT Art. 2.4 since ISO 14666 is ineffective for the fulfilment of the pursued objective.

III. NESI's D is not under the scope of GATT Art. III:4.

28. NESI's D does not fall under the scope of GATT Art. III:4 since it does not set a product related PPM. GATT Art. III:4 enshrines the NT Principle "applied to laws, regulations and requirements affecting the internal sale...of products."⁴³, which means that "Article III covers only measures affecting products as such."⁴⁴

29. Considering that NESI's D establishes a NPR-PPM -as explained in para. 7-, it does not fall under the scope of GATT Art. III:4. Thus, since NESI's D does not fall under the scope of GATT Art. III:4, it cannot be inconsistent with it. Nonetheless, if the Panel finds that NESI's D does fall under the scope of GATT Art. III:4, it would still be consistent with said Art. The AB⁴⁵ established that for an inconsistency to be found there must be a (i) law, regulation or requirement, (ii) applied to like products, that (iii) accords a LFT to the imported products.

30. NESI's D does not accord a LFT to imported products. Due to the recognized similarity on the LFT analysis of GATT Art. III:4 and TBT Art. 2.1,⁴⁶ the explanation contained in paras. 9-12 applies to justify the absence of a LFT and enshrines the consistency with Art. III:4.

IV. The SOCA tax complies with GATT Arts.II:1(a) and (b), II:2(a) and III:2.

31. B implemented the SOCA tax seeking to incentive the reduction of CO₂ emissions in textile production. B will now proceed to explain why it complies with WTO law.

A. The SOCA tax is not subject to analysis under GATT Art.II:1(a) and (b).

32. Art.II:1(a) and (b) prohibits all Ms from imposing border taxes exceeding the bound rates established for the products in each M's SC. Thus, the prohibition applies only to border taxes and not to internal taxes.

33. Note Ad on GATT Art.III defines the scope of GATT Arts.II and III. It states that the time in which a tax is collected does not determine its nature. The moment in which the obligation to pay accrues determines whether it is an internal or a border tax.

⁴⁰ ABR, EC-Sardines, [284].

⁴¹ EMC2 Case, [Annex 3].

⁴² PR, EC-Sardines, [7.116].

⁴³ GATT PR, US-Tuna [5.11].

⁴⁴ *ibid.*

⁴⁵ ABR, Korea-Beef, [113]

⁴⁶ ABR, US-Clove Cigarettes, [180]

34. The AB⁴⁷ stated that if the obligation to pay a charge does not accrue based on the product at the moment of importation, it will not be a border tax under Art.II:1(b), but an internal charge under Art. III:2. The Panel in *Dominican Republic-Import and Sale of Cigarettes* stated that a charge was not an internal tax “...since it [did] not apply to domestic products”⁴⁸. Thus, a charge is an internal tax if it applies to domestic products.

35. The SOCA tax is applied to both domestic and imported cotton fabrics. Moreover, the obligation to pay it accrues based on internal factors for domestic and imported fabrics: the CO₂ emissions in its production. Thus, the SOCA tax is not a border charge and the prohibition under GATT Art.II:1(a) and (b) does not apply. The analysis of compliance for this measure must be developed under Art. III:2.

B. The SOCA tax is not subject to analysis under GATT Art. II:2(a).

36. As noted previously, the SOCA tax is an internal tax. Art. II:2(a) is a provision aimed exclusively for border taxes that justifies exceeding the bound rate of a M’s SC. Since there is no border tax in the present case, the analysis must not be developed.

C. The SOCA tax is consistent with the NT Principle under GATT Art. III:2.

37. The consistency of a tax under GATT Art. III:2 requires it to be eligible for BTA⁴⁹ and consistent with the NT three-tier test.⁵⁰

1. The SOCA is a *tax occultes* eligible for BTA.

38. The SOCA tax is a *tax occultes* eligible for BTA, enabling imported products to be charged with the tax charged in the importing country.⁵¹ Art.III:2 allows BTA for certain taxes if they comply with the NT Principle. The eligible taxes are those “... applied, directly or indirectly to ... products”.⁵² The Working Party on BTA of 1970 stated that there were divergent views regarding *tax occultes*’ eligibility such as “... taxes on advertising, energy, machinery and transportation”⁵³. The WTO Committee on Trade and Environment (CTE) explained that *tax occultes* were eligible because “the word ‘indirectly’ would cover even a tax not on a product as such, but on the processing of the product”.⁵⁴

39. This statement was shared by the Panel in *US-Superfund*,⁵⁵ which is the only decision that has covered this topic, permitting BTA for a *tax occultes* imposed by the United States on some chemicals. Thus, the SOCA tax, as a *tax occultes*, is subject to BTA.

2. The SOCA tax complies with the NT Principle of GATT Art. III:2.

⁴⁷ ABR, China-Autoparts, [158].

⁴⁸ PR, Dominican Republic-Import and Sale of Cigarettes, [7.25].

⁴⁹ GATT BTA (1970), 4.

⁵⁰ ABR, Japan-Alcoholic Beverages, [24].

⁵¹ OECD (1968), [69].

⁵² GATT, Art. III:2.

⁵³ GATT BTA (1970), [98]

⁵⁴ WTO 1997 Report, [98].

⁵⁵ GATT PR, US-Superfund, [5.2.4].

40. Art. III:2 has two sentences that Ms must comply with in order to follow the NT Principle. The first one answers whether (i) imported and domestic products are like products; and (ii) imported products are taxed in excess.⁵⁶ According to the AB,⁵⁷ if the answer to any of them is negative, the measure must be analyzed under the second sentence. Said sentence examines whether (i) products are directly competitive or substitutable; (ii) not similarly taxed, and (iii) the dissimilar taxation is applied so as to afford protection to domestic production.⁵⁸

a. The SOCA tax is consistent with Art. III:2, first sentence.

41. Regarding the second question, imported products are not charged in excess. In this case, the tax's burden is the same since the tax rates are equal for domestic and imported products.⁵⁹ HL fabrics marketed as "Cotton Fabric" are exempt because the CO₂ emissions in the product are negligible.⁶⁰ Yet, PL products that cannot be marketed as "Cotton Fabric", whose emissions are negligible (i.e. with a CO₂ content of < 1,000 gms per. sq. mt.) are not charged.⁶¹ Thus, the burden is the same for HL and PL.

b. The SOCA tax is consistent with Art. III:2, second sentence.

42. Regarding the second question, the SOCA tax is consistent with the NT obligation since imported fabrics are not taxed dissimilarly. First, the tax rate is exactly the same for both products. Second, the moment at which the tax is collected for imported products corresponds to a procedural reason that does not make the tax dissimilar. For example, the Value Added Tax -which is another BTA tax- is normally collected at the time of customs clearance for importers,⁶² and that *per se* does not make it discriminatory.

43. Even if the Panel finds that imported products are dissimilarly taxed, the latter is not to afford protection to domestic production. As it has been established in the Opening Statement, the SOCA tax is part of a cohesive policy that seeks to protect the environment and not B's national industry. Thus, the SOCA tax complies with Art. III:2, second sentence.

44. With all, the SOCA tax is an internal tax adjusted at the border that does not charge in excess nor dissimilarly imported products over domestic products. Thus, it is not subject to Art. II:1(a) and (b), Art. II:2, and is consistent with the NT in Art. III:2.

V. B's allocation of funds is consistent with SCM Arts.3.1(a), 27.4 and 27.5.

45. The Ministry of Textiles allocated funds from the TTUFS to the textile units located in the TEPZs in order to achieve cleaner textile production. As stated in the Opening Statement, this

⁵⁶ ABR, Canada-Periodicals, [22-23].

⁵⁷ *ibid.*

⁵⁸ ABR, Japan-Alcoholic Beverages, [24].

⁵⁹ EMC2 Case [3.1].

⁶⁰ EMC2, Clarification [32].

⁶¹ EMC2, Clarification, [33].

⁶² OECD (2015), [13].

measure is part of an environmental policy that complies with WTO law.

A. The allocation of funds is consistent with SCM Art.3.1(a).

46. The AB stated that *contingent* means “depending for its existence on something else”.⁶³ For a subsidy to be an export subsidy, there must be a clear relationship “between the granting of the subsidy and actual or anticipated exportation”.⁶⁴ The second sentence of SCM footnote 4 establishes that the fact that a subsidy is granted to enterprises which already export is not enough for it to be an export subsidy. As well, knowing that a recipient’s sales are export-oriented does not demonstrate on its own an export subsidy.⁶⁵

47. In this case, the textile units situated in the TEPZs already exported their products when the Ministry of Textiles decided to allocate the funds. These units have always had an export-oriented business model and even before the allocation of funds, were one of the major recipients of export earnings in B.⁶⁶ That, on its own, does not mean that the granting of the subsidy is contingent upon export performance.

48. Moreover, the AB⁶⁷ stated that the granting authority must anticipate exports for a subsidy to be an export one. Exports are anticipated when the authority expects them to *ensure* or *arise* out of the granting,⁶⁸ and the latter must be gleaned from objective evidence.⁶⁹ Here, Table D⁷⁰ shows the variation in B’s share in world trade regarding “Overall Textiles” after the allocation of funds, which is minimum in comparison to the usual variation of other countries.⁷¹ B’s measure is aimed to incentivize the installation of eco-friendly technology and practices⁷² rather than exports..⁷³ Thus, since there is no export subsidy, the measure is consistent with Art. 3.1(a).

B. The allocation of funds is consistent with SCM Art. 27.4.

49. In case the Panel finds that there is a subsidy, B will present why it is consistent with SCM Art. 27.4. This Art. recognizes the importance of subsidies and the role they play in a country’s economic development. The SCM gives a special and differential treatment to countries with a per capita Gross National Product (GNP) under \$1.000 per annum listed in Annex VII(b), among others. B has been historically listed in SCM Annex VII(b).

50. Ms listed in Annex VII(b) are not compelled under Art. 3.1 as long as they comply with Art. 27.4.⁷⁴ Thus, a M referred as part of it can maintain its subsidies even if those are

⁶³ ABR, Canada-Autos, [98].

⁶⁴ *ibid* [107].

⁶⁵ ABR, Canada-Aircraft, [173].

⁶⁶ EMC2 Case, [1.3].

⁶⁷ ABR, Canada-Aircraft, [169].

⁶⁸ ABR, US-Aircraft, [7.1533].

⁶⁹ ABR, Canada-Aircraft, [172].

⁷⁰ EMC2 Case, [3.6].

⁷¹ worldbank.org.

⁷² EMC2, Clarifications [16].

⁷³ Paris Agreement, Art. 11.1.

⁷⁴ ABR, Brazil-Aircraft, [139].

prohibited. When a M reaches the *threshold* of \$1.000 per capita GNP for three consecutive years at constant 1990 USD⁷⁵, it becomes a graduating country and is subject to the applicable provisions to other developing Ms.

51. Art. 27.2(b) establishes that the prohibition contained in Art. 3.1(a) will not apply to other developing Ms for a period of eight years from the date of entry into force of the Agreement. Thus, any alleged breach of Arts. 3.1(a) and 27.4 must be analyzed in accordance with the content of Art. 27.2(b).

52. Art. 27.2(b) refers to the *entry into force* of the Agreement. As it has been suggested before by multiple WTO Ms⁷⁶, this cannot be understood in the same way for graduating countries since they join Art.27.2(b) later in time than the rest of WTO Ms. Thus, the eight-year period shall start at the moment of graduation for said countries.

53. Dispute Settlement Understanding (DSU) Art. 3.2 leads panels to clarify WTO provisions in accordance with customary rules of public international law. The AB⁷⁷ stated that Vienna Convention on the Law of Treaties (VCLT) Arts. 31 and 32 have attained said status. Art.31 established four interpretation criteria: (i) the ordinary meaning to be given to the terms of the treaty, (ii) in good faith, (iii) in the light of the treaty's object and purpose and; (iv) its context. Thus, B will proceed to interpret Art. 27.2 according to the criteria set out under the VCLT.

54. Regarding the first criterion, Art. 27.2(a) establishes that the prohibition of Art. 3.1(a) shall not apply to developing Ms included in Annex VII. Moreover, Art. 27.2(b) states that said prohibition shall not apply to other developing Ms for a period of eight years since the entry into force of the WTO Agreement. The analysis of the raw text includes a particular temporal element, which will determine if a M is under the scope of Art. 3.1(a).

55. For Ms listed in Annex VII, the content of Art. 3.1(a) never entered into force, because they were not under its scope. The above means that, for Ms that were included in Annex VII but have reached its *threshold* –graduating countries-, the temporal element of Art. 27.2 must count since the date in which they graduated.

56. Regarding the second criterion, the AB⁷⁸ stated that *in good faith* means that the terms are not to be interpreted based on the assumption that one party is seeking to evade its obligations and cause injury to another party. Thus, this Art. must be read looking for its meaning and not under the assumption that a M might take advantage of another one.

⁷⁵ Doha (2001), [10.1].

⁷⁶ *Arpita Mukherjee et al* (2016), [180].

⁷⁷ ABR, Japan-Alcoholic Beverages, [10].

⁷⁸ ABR, US-Anti-Dumping and Countervailing Duties, [326].

57. Art. 27 recognizes the importance of subsidies in any country's economic development. Consequently, Art. 27.2 established a phase out period, acknowledging the difficulty that implies removing subsidies from a specific economy. Thus, the good faith analysis suggests that, developing countries that were listed in Annex VII(b) and have reached the *threshold*, must have an eight-year period to phase out export subsidies, as the rest of the Ms had in order to achieve WTO compliance.

58. Regarding the third criterion, the preamble of the WTO Agreement establishes that there is need to ensure that developing Ms "...secure a share in the growth in international trade commensurate with the needs of their economic development".⁷⁹ Additionally, Art. 27.2 itself enshrines the importance of subsidies within a M's economy. Moreover, the SCM contains a section with several provisions in regard to a special and differential treatment that must be given to Ms with development needs.

59. The Covered Agreements and the SCM in particular established as part of their object and purpose the need to give a preferential treatment to developing Ms. Thus, the analysis suggests that, graduating countries must have an eight-year period to phase out export subsidies since they reach the *threshold*.

60. Regarding the fourth criterion, subsidies have been part of the multilateral trading system since its beginning. The GATT 1947 included some general rules on subsidies.⁸⁰ In response to the needs at the time, the Tokyo Round created more complex and specific rules on this matter.⁸¹ Finally, in the Uruguay Round, subsidies became an important part of the negotiation agenda which had, as a final result, the SCM.⁸²

61. Through all those stages of negotiation, economic development has always been of fundamental importance.⁸³ Moreover, the negotiation resulted in an Agreement that contains multiple provisions that take into account the special economic needs of developing Ms. It also gives them a preferential treatment in order for them to reach, *inter alia*, export competitiveness, economic growth and development. Thus, the context suggests that graduating Ms must have an eight-year period to phase out export subsidies.

62. In conclusion, according to the interpretation of SCM Art. 27.2 under the VCLT rules, the content of the mentioned provision establishes a temporal element that must be understood considering the special situation in which graduating Ms are. Since B reached the *threshold* of \$1.000 GNP per capita for three consecutive years in 2014, it must have eight years from the

⁷⁹ WTO Agreement, [Third Recital].

⁸⁰ Andrew Stoler (2009), [1-10]

⁸¹ *ibid*.

⁸² *ibid*.

⁸³ Alexander Keck (2004), [3-6].

mentioned date to gradually phase out its export subsidies.

C. The allocation of funds is consistent with SCM Art. 27.5.

63. Under Art. 27.5, Ms listed in Annex VII that have reached export competitiveness in any given product shall have eight years to phase out its export subsidies for that product. Developing Ms facing that situation shall phase out its export subsidies over a two-year period. Since B is now a developing M it would have two years to gradually phase out its export subsidies for such products.

64. SCM Art. 27.6 establishes that when a developing M reaches a share of at least 3.5% in world trade in a given product, export competitiveness exists regarding that product. Under those terms, B has not reached export competitiveness in textile products.

65. The funds are being allocated to the textile units situated in the TEPZs⁸⁴ and the vast majority of B's textile industry is based within them.⁸⁵ Under those terms, all kinds of textiles are being produced in said zones, regardless of their cotton content. Thus, "Overall Textiles" describes the production subject of the textile units located in the TEPZs.⁸⁶

66. As it is shown in Table D⁸⁷, B has not achieved export competitiveness in regard to "Overall Textiles". For the mentioned product, B's share in world trade constituted a 2% in 2014 and a 2.75% in 2015. Therefore, B does not satisfy the requirements contained in Art. 27.6 and the allocation of funds is not inconsistent with Art. 27.5.

VI. B's measures are justified under GATT Art. XX.

67. If NESI's D and the SOCA tax are found to be inconsistent with WTO law, they are justified by GATT Art. XX since they are covered by its subparas. and the Chapeau.⁸⁸

A. B's measures are justified under GATT Art. XX(b).

68. GATT Art. XX(b) requires that the measures are (i) designed to protect human, animal, or plant life or health and (ii) *necessary* to fulfil such objective.⁸⁹

1. B's measures are designed to protect human, animal or plant life.

69. B's measures are designed to protect human, animal and plant life. This, since (i) there is a risk for the listed values, and (ii) the measures are directed to reduce said risk.⁹⁰

a. There is a risk for human, animal and plant life.

70. Due to B's ecological vulnerability and geography, there is a risk for human life along the coastal areas, as well as, the country's rich fauna and flora, as explained in paras. 23-24.

⁸⁴ EMC2 case, [3.2].

⁸⁵ EMC2 case, [1.3].

⁸⁶ EMC2 case, [3.6].

⁸⁷ *ibid.*

⁸⁸ ABR, US-Shrimp, [119]-[120].

⁸⁹ PR, US-Gasoline, [6.20]

⁹⁰ PR, Brazil-Retreaded Tyres, [7.42].

b. B's environmental policy is directed to reduce those risks.

71. As established in paras. 19-20, NESI's D is directed towards a mitigation of climate change's effects on human, animal and plant life. Moreover, the SOCA tax aims to correct the externalities arising from the excessive use of CO₂⁹¹ in the PPM of cotton textiles. Thus, both measures are designed to reduce the risks created by high levels of atmospheric CO₂, which directly impacts human, animal and plant life in B.

2. B's measures are necessary to fulfill the values listed in para.(b).

72. To determine that the measures are necessary, the AB⁹² established three requisites: (i) the importance of the interests or values at stake, (ii) the extent of contribution to the objective; and (iii) its restrictiveness.

a.Importance of interests or values at stake.

73. As explained in the Opening Statement, B is seeking to protect human life and the country's rich fauna and flora. The Panel in *Brazil-Retreaded Tyres* stated that "... the preservation of human life and health... was vital and important in the highest degree".⁹³ Consequently, life - in all of its forms- is being at stake and as such, B needs to protect it.

b.Extent of the contribution.

74. B's measures have a material contribution to the protection of human, animal and plant life by incentivizing a carbon-neutral textile industry.⁹⁴ The AB⁹⁵ stated that the contribution must have a material character to achieve the objective. Moreover, it does not need to be immediately observable.⁹⁶ Hence, long term goals in environmental matters can be pursued and the best way to achieve them is through international cooperation.⁹⁷

75. NESI's D's material contribution is shown by the quantity of HL fabric sales that increased after its implementation.⁹⁸ HL textile sales incremented in 9.225 million sq. mt. after the measure's implementation,⁹⁹ reducing B's CO₂ emissions.¹⁰⁰

76. On the other hand, the SOCA tax has had an impact in B's PL textile imports.¹⁰¹ In fact, there has been an increase in HL fabrics exports from S to B,¹⁰² which demonstrates strengthening of an eco-friendly PPM that is rewarded with a tax exemption. The increase has been of 2.610 million sq. mt., which is superior to any other accounted.¹⁰³

77. In fact, the international community gathered at the UNFCCC's COP 21 and raised the PA.

⁹¹ *David Pearce* (1991), [938-948].

⁹² ABR, US-Gambling, [306].

⁹³ PR, Brazil- Retreaded Tyres, [7.111].

⁹⁴ EMC2, Clarifications [23].

⁹⁵ ABR, Brazil- Retreaded Tyres [210].

⁹⁶ *ibid.*

⁹⁷ UNFCCC (2015), [4].

⁹⁸ EMC2 [Annex 2]; EMC2 Clarifications [24-25].

⁹⁹ EMC2 [Annex2].

¹⁰⁰ EMC2 Clarification [10].

¹⁰¹ EMC2 [Annex 2].

¹⁰² EMC2 Case [Annex 2].

¹⁰³ *ibid.*

This treaty acknowledges the need to reduce GHGs emissions towards tackling climate change in a cooperative way.¹⁰⁴ Said goal involves two main elements: mitigation and adaptation.¹⁰⁵ Evidence shows a positive decrease on CO₂ emissions since PA's implementation.¹⁰⁶ There has also been an important decrease because of B's NDC.¹⁰⁷

78. Thus, by complying with its NDC through the measures, along with other 165 Parties that have submitted their own,¹⁰⁸ B is materially contributing to reduce CO₂ emissions. This leads to a scale effect in the treaty's global ambition.¹⁰⁹ In this manner, B is tackling the effects that climate change has on the values listed in para.(b) of GATT Art.XX.

c. Restrictiveness

79. B's measures comply with this requirement, since in all cases where there is a threat to human, animal or plant life, this concern outweighs the trade restrictiveness element.¹¹⁰ Particularly, NESI's D is not restrictive to trade since it gives domestic and imported producers the possibility to market their products as "Cotton Fabric". Moreover, the SOCA tax does not restrict trade, since textile products are not charged if they provide a negligible CO₂ content.

80. Thus, the restrictiveness of B's measures is outweighed by the interests they pursue. Furthermore, in case there are lesser restrictive alternatives, the Complainant would have to be able to prove them over NESI's D and the SOCA tax.¹¹¹

81. In conclusion, enough scientific evidence¹¹² supports B's necessity to implement these measures and reduce CO₂ to protect human, animal and plant life. Hence, NESI's D and the SOCA tax comply with the requirements to be justifiable under para.(b).

B. B's measures are justified under para.(g) of GATT Art. XX.

82. For a measure to be justified under para.(g), there (i) shall exist a nexus between its objective and the goal to conserve exhaustible natural resources, that (ii) was "made effective in conjunction with restrictions on domestic production or consumption."¹¹³

1. B's measures relate to the conservation of clean air and productive soil.

83. Conservation has been understood by the AB as "the preservation of the environment, especially of natural resources."¹¹⁴ For a measure to relate to conservation under para.(g), there must be "a close and genuine relationship of ends and means".¹¹⁵

a. "Relating to ... conservation".

¹⁰⁴ UNFCCC (2015), [4].

¹⁰⁵ *ibid.*

¹⁰⁶ *Jan Burck, et al* (2017), [11-19].

¹⁰⁷ EMC2, [Annex1]; EMC2 Clarifications [10].

¹⁰⁸ unfccc.int.

¹⁰⁹ Paris Agreement, Arts. 2, 4.19.

¹¹⁰ ABR, Brazil-Retreaded Tyres, [179].

¹¹¹ ABR, US-Gambling, [309].

¹¹² EMC2, [1.4]; EMC2, Clarifications [9].

¹¹³ ABR, China-Rare Earths, [5.88].

¹¹⁴ *ibid.*, [5.89]

¹¹⁵ *ibid.*, [5.90]

84. B's measures are primarily aimed to conserve clean air and productive soil as exhaustible natural resources, which are being threatened by CO₂ emissions. To comply with this requirement, such conservation aim must involve a "relationship between the measure at stake and the legitimate policy".¹¹⁶

85. According to the Opening Statement, NESI's D and the SOCA tax are directed to reduce CO₂ emissions. Based on the above, B's measures are primarily aimed to the conservation of clean air and productive soil.

b. Exhaustible natural resources.

86. Both clean air and productive soil are exhaustible natural resources under para.(g). Particularly, soil is a finite resource since "its loss and degradation are not recoverable within a human lifespan".¹¹⁷ Moreover, the natural area of productive soils is limited and seriously affected by CO₂ concentration.¹¹⁸ Thus, the productive capacities of soils need protection due to their contribution to food security and the maintenance of ecosystems.¹¹⁹

87. Regarding clean air, the Panel in *US-Gasoline*¹²⁰ stated that this specific resource has a natural value that could be depleted and measures that protect its conservation fall within Art. XX(g). Since the aim of both measures is to encourage the reduction of CO₂ emissions, B is protecting clean air and productive soil as natural resources that can be seriously depleted by PL textile production and the burn of fossil fuels it involves.

2. B's policy is made effective in conjunction with restrictions on domestic production.

88. A measure aiming to protect exhaustible natural resources must be made effective in conjunction with restrictions on domestic production.

89. To interpret the *made effective* term, the AB stated that its "ordinary meaning...refer to such measure being 'operative', as 'in force, or as having 'come into effect'".¹²¹ In this case, NESI issued an executive decision,¹²² which came into effect, since its implementation has encouraged HL textile industry.¹²³

90. Moreover, the SOCA tax became operative from the moment in which it was enacted in the aftermath of the PA¹²⁴ by collecting and assigning funds.

91. On the other hand, the AB stated that the phrase *in conjunction with* means "jointly with".¹²⁵ This requirement implies that the measures impose restrictions, not just for imported textiles,

¹¹⁶ ABR, US-Shrimp, [135].

¹¹⁷ fao.org.

¹¹⁸ *Eric Davidson* (2006), [1-9].

¹¹⁹ fao.org.

¹²⁰ PR, US-Gasoline, [6.37].

¹²¹ ABR, US-Gasoline, [20].

¹²² EMC2 Case, [2.1].

¹²³ EMC2 Case, [Annex 2].

¹²⁴ EMC2 Case, [3.1].

¹²⁵ ABR, China-Rare Earths, [5.92].

but also with respect to domestic textiles.¹²⁶ Since the SOCA tax and NESI's D are applied to domestic and imported products,¹²⁷ they are applied in an even-handed manner without considering the products' origin.

92. Consequently, B's measures seek to protect clean air and productive soil and comply with the requisites under para.(g). Thus, the measures are justified under paras.(b) and (g).

C. B's measures comply with the requirements of the Chapeau.

93. The Chapeau shall be interpreted to safeguard the equilibrium between the right of a M to invoke an exception and its obligations under WTO law.¹²⁸ Accordingly, measures shall not constitute an (i) arbitrary or unjustified discrimination between countries where the same conditions prevail or a (ii) disguised restriction on international trade.¹²⁹

1. B's measures do not constitute an arbitrary and unjustifiable discrimination where the same condition prevails.

94. According to the AB,¹³⁰ to determine an arbitrary or unjustifiable discrimination where the same conditions prevail (i) the application of the measures must result in discrimination, different from the one embodied in GATT Arts. I, III or XI, (ii) such discrimination must be arbitrary or unjustifiable in character and (iii) this discrimination must occur between countries where the same conditions prevail.

95. In this case, even if a discrimination between countries where the same conditions prevail is to be found, B's measures are not arbitrary nor unjustifiable since the cause behind it is the protection of the environment.¹³¹

96. As the AB established, this analysis focuses on the cause of the discrimination to avoid "capricious" or "random" measures in the light of the objectives listed in the paras. of Art. XX, rather than on its effects.¹³²

97. NESI's D is part of the LFN,¹³³ which was implemented to mitigate several environmental concerns.¹³⁴ The protection of the environment is justified under the objectives pursued by the WTO without compromising economic development and including cooperation¹³⁵. Thus, B ratified the PA and submitted its NDC.¹³⁶ The PA contains provisions that establish precise obligations for each party as to the preparation, communication, maintenance, and implementation of NDCs.¹³⁷ These shall be understood as *obligations of conduct*, towards

¹²⁶ *ibid.*

¹²⁷ EMC2 Case, [3.1], [2.2].

¹²⁸ ABR, US-Gasoline, [22].

¹²⁹ ABR, US-Shrimp, [115]; ABR, Brazil-Retreaded Tyres, [215].

¹³⁰ ABR, US-Shrimp, [150].

¹³¹ ABR, Brazil-Retreaded Tyres, [227].

¹³² *ibid.*, [224-247].

¹³³ EMC2 Case, [2.2].

¹³⁴ *ibid.*, [1.5].

¹³⁵ WTO Agreement, [Preamble].

¹³⁶ EMC2 Case, [1.2], [Annex 1].

¹³⁷ Paris Agreement Arts 4.2, 4.8, 4.9.

achieving the treaty's object and purpose.¹³⁸

98. B's SOCA tax was implemented in the immediate aftermath of the PA¹³⁹ seeking to comply with its NDC, which includes reducing 20% of its GHGs emissions by 2030.¹⁴⁰ Hence, this measure has its cause on the protection of the environment, as NESI's D does by encouraging the accomplishment of WTO environmental purposes.

99. In light of the above, B's measures are supported by a well-founded and rational cause: the protection of the environment, which is embodied in WTO's purposes and reinforced by complying with the PA.¹⁴¹ Thus, it is not "capricious" or "random" and its environmental causes and purposes bear direct connection with the Opening Statement and the goals listed in paras. (b) and (g).

2. The decision is not a disguised restriction on international trade.

100. Finally, B's measures are not a disguised restriction in international trade. This, since they are not trade restrictions under the appearance of a justified measure.¹⁴²

101. In this case, B's measures were taken as a systematic and comprehensive strategy to deal with climate change, its impact on coastal erosion and the risks that it implies for human life, fauna and flora.¹⁴³ Furthermore, they are justified under the Preamble of the WTO Agreement and the obligations contained within its NDCs.¹⁴⁴ Moreover they are designed and applied to ensure sustainable development, which safeguards the environment without compromising economic development.

102. In fact, B's government addressed such concerns publicly and the need of a "Zero-Waste, Zero-Effect" policy,¹⁴⁵ which provides evidence of B's transparency about its policy objective. Thus, they do not constitute a disguised trade restriction.

103. In conclusion, B's measures are necessary to protect human, animal, plant life or health. To achieve said purpose, the measures relate to the conservation of clean air and productive soil -as exhaustible natural resources- and are not applied as an arbitrary or unjustifiable discrimination nor they constitute a disguised restriction on trade. As such, B is within its legitimate right to invoke the exceptions contained in GATT Art. XX in pursuit of the preservation of these essential values at a national and international scale.

¹³⁸ *ibid.*, Art.2.

¹³⁹ EMC2 Case, [3.1].

¹⁴⁰ EMC2 Case, [Annex 1].

¹⁴¹ *Antonio Gutierrez* (2017).

¹⁴² ABR, US-Gasoline, [25].

¹⁴³ EMC2, Case [1.4].

¹⁴⁴ EMC2 Case, [Annex1].

¹⁴⁵ EMC2 Case, [1.4].

REQUEST FOR FINDINGS

For the above stated reasons, the country of B respectfully requests the Panel to:

1. Find that NESI's D is not a TR within the meaning of Annex 1.1 of the TBT.
2. Alternatively, find that NESI's D is consistent with Arts. 2.1, 2.2 and 2.4 of the TBT
3. Find that NESI's D is consistent with Art. III:4 of the GATT.
4. Alternatively, find that NESI's D is consistent with Art. III:4 of the GATT.
4. Find that the SOCA tax is not under the scope of GATT Arts. II:1 (a) and (b), and II:2(a).
5. Find that the SOCA tax is consistent with GATT Art. III:2.
6. Find that B's allocation of funds is consistent with SCM Arts. 3.1(a), 27.4 And 27.5.
7. If the Panel finds that the measures at issue are inconsistent with TBT Arts. 2.1, 2.2, 2.4, GATT Arts. II:1 (a) and (b), II:2 (a), III:2, III:4, SCM Arts. 3.1(a), 27.4 and 27.5, find that the contested measures are justified under paragraph Art. XX of the GATT.