
Team: 009 C

ELSA MOOT COURT COMPETITION ON WTO LAW

2009-2010

**Ipland – Measures Affecting the Protection and
Enforcement of Intellectual Property Rights**

**Freeland
(Complainant)**

VS

**Ipland
(Respondent)**

SUBMISSION FOR THE COMPLAINANT

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V. REQUEST FOR FINDINGS

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2. Convention on International Civil Aviation of 7 December 1944, Doc 7300/9.
3. General Agreement on Tariffs and Trade of 15 April 1994, WTO Doc. LT/UR/A-1A/1/GATT/2.
4. North American Free Trade Agreement of 1 January 1994
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III. LIST OF ABBREVIATIONS

ABR	Appellate Body Report
Art	Article
ASCM	Agreement on Subsidies and Countervailing Measures
CL	Compulsory License
CLM	Custom's Laws
DD	Doha Declaration on the TRIPS Agreement and Public Health
DS	Dispute Settlement
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
FN	Foot Note
GATT	General Agreement on Tariffs and Trade
GI	Geographical Indication
GIA	Geographical Indications Act (Ipland 1994)
HPI	Herb Plus Inc (Midonian Company)
ie	For example
IIA	International Investment Agreement
IP	Intellectual Property
IPR	Intellectual Property Rights
LPEA	Local Production Encouragement Act
MIFFTA	Midonia-Ipland-Freeland Free Trade Agreement
NAFTA	North American Free Trade Agreement
PC	Paris Convention for the Protection of Industrial Property
PR	Panel Report
PREA	Protection of Rights Encouragement Act
RTA	Regional Trade Agreements
S	Sentence
SCM	Agreement on Subsidies and Countervailing Measures
TM	Trade Marks
TMA	Trade Mark Act (Ipland 1992)
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organisation
WTO Agreements	The Marrakesh Agreement and the documents contained in its four Annexes

1. STATEMENT OF FACTS

Freeland is a developing country and a WTO member. The impenetrable jungle that covers vast parts of the Freelandian territory and its border regions has limited the country's trade routes with the outside world to a small corridor in its southwestern corner. From there traffic can pass through a small strip of Iplandian land to reach foreign markets, especially nearby Midonia. The rain forest, however, constitutes also an important resource for the Freelandian economy for it yields the renown herbal remedy "sambati". Currently, its export prospects are very advantageous. It promises to be a remedy against the potentially dangerous T1R1 virus. To secure the export opportunities and free transit through Ipland, Freeland negotiated the MIFFTA in March 2003.

The MIFFTA covers 72% of tariff lines and 87% of trade by volume between Freeland, Ipland and Midonia. Furthermore, it includes a provision stipulating the freedom of transit. Finally, in its IP provisions, it specifically excluded "sambati" as to ensure that every member country may harvest and export this resource without limitation. Freeland showed its commitment to the free access to "sambati" by refusing Iplandian authorities to register such a GI or TM or the process patent for its extraction in Freeland. "Sambati" promised to become a motor for Freelandian development.

Ipland's government thwarted these efforts beginning in 2007. First, it enacted the LPEA. Accompanied by a number of subsidies, this protectionist measure was designed to build up Ipland's local industry, including the pharmaceutical sector. This occurs at the expense of Freelandian patent holders that are forced by a compulsory license to produce in Ipland. Simultaneously to fostering the domestic industry, Ipland severely limited Freeland's export capabilities. On the one hand, more stringent IP regulation was enacted such as the HRPAA together with the prior existing TA and GIA, that prohibit the use of the term "sambati" as GI and TM other than by Iplandian sambati. Thereby, the Iplandian market was de facto shut off for Freelandian sambati products, contrary to the spirit of MIFFTA. On the other hand, Ipland diminished the remaining export opportunities for Freeland in Midonia and vice versa by passing the PREA. The act undermines the freedom of transit provision in GATT and MIFFTA by stipulating enhanced border enforcement measures against alleged IP infringement of traffic that is not even destined for the Iplandian market. A shipment of life saving "Revital" drugs to Freeland was thus recently confiscated. As a result, Ipland's WTO inconsistent policies have severely undercut Freeland development efforts.

2. SUMMARY OF ARGUMENTS

Preliminary Issues - The Panel has jurisdiction and a legal obligation under the DSU to address Freeland's claims. MIFFTA cannot add to or diminish WTO rights and obligations.

Claim I: The LPEA

The LPEA violates TRIPS Art. 27.1 - Ipland's CL scheme undermines patentability of new inventions by de-incentivising the application for protection. Furthermore, patent rights are not enjoyable because the LPEA discriminates, as such, against imported products and, as applied, against the pharmaceutical industry.

The LPEA violates TRIPS Art. 28.1 -The LPEA violates the exclusive rights conferred to Freelandian patent holders not working their patent in Ipland. As a result, they cannot prevent unsolicited third parties from making, using, or selling their patented product.

The LPEA is not justified under PC Art.5A(2) nor under TRIPS Art.30 or 31 - Art.30 cannot justify a CL, because Art. 31 is *lex specialis*, and Ipland fails to comply with its conditions.

The LPEA violates GATT Art. III:4 and cannot be justified under GATT Art XX (b) or (j) - The LPEA is an internal regulation, which treats imported Freelandian products less favourably than like domestic products resulting in unequal competitive conditions.

It was designed with the purpose of promoting the domestic industry and does not protect human life or health. It is unnecessary because it is highly trade distortive and yields little health protection. The measure is too broad to be justified as essential to address a product's short supply on the local market. The LPEA constitutes a disguised restriction on trade.

Claim II: The Transit Restrictions and Seizures Based on TM and GI Infringement

The CMLs, PREA and seizure of Revitall violate TRIPS Art. 41.1 - Trade in Revitall between Midonia and Freeland is legitimate, and CMLs and PREA constitute trade barriers. They do not provide safeguards against abuse of enforcement measures by rights holders.

The PREA and seizure of Revitall violate TRIPS Art. 41.2 -The PREA, as such and as applied to Revitall, is biased towards holders of TMs and GIs and thus does not provide fair and equitable treatment for the party accused of infringement. Moreover, the defendant is subject to unnecessary costs, unwarranted delays and unreasonable time limits.

The CLs and seizure of Revitall violate TRIPS Art. 51 -The CMLs, as such and as applied to Revitall, apply Iplandian TM and GI law to goods in transit, despite Ipland's obligation to apply only the law of the country of importation, which is solely Freeland in this case.

The PREA and seizure of Revitall violate TRIPS Art. 53.1 -Under the PREA, as such and as applied to Revitall, the customs authorities are not granted the necessary authority to demand

a security from holders of TMs and GIs in order to protect the interests of the defendant and authorities, and to prevent abuse of enforcement measures by rights holders.

The CMLs, PREA and seizure of Revitall violate TRIPS Art. 1.1 - Ipland's aggressive protection of TMs and GIs under the CMLs and PREA contravenes the spirit of the TRIPS Agreement as a whole, as expressed in Arts. 7 and 8.

The CMLs, PREA and seizures of Revitall violate GATT Art. V - The CMLs and PREA, as such and as applied to Revitall, limit freedom of transit, make distinctions based on origin, and result in unnecessary delays and restrictions and unreasonable regulations.

Claim III: The Transit Restrictions and Seizures Based on Patent Infringement

The CMLs, PREA and seizure of HPI products violate TRIPS Art. 41.1 - Trade in HPI products between Midonia and Freeland is legitimate, and the CMLs and PREA, as such and as applied, constitute trade barriers. The CMLs and PREA also do not provide safeguards against the abuse of IP enforcement measures by patent holders.

The PREA and seizure of HPI products violate TRIPS Art. 41.2 - The PREA, as such, is biased towards patent holders, and does not provide fair and equitable treatment for the party accused of infringement. Moreover, under the PREA, the defendant is subject to unnecessary costs and complications, unwarranted delays and unreasonable time limits.

CMLs and seizure of HPI products violate TRIPS Art. 51 - The CMLs apply Iplandian law to goods in transit despite Ipland's obligation to apply the law of the country of importation.

The PREA violates TRIPS Art. 53 - Under the PREA, as such, the customs authorities are not granted the necessary authority to demand a security from patent holders. Furthermore, parties accused of patent infringement are not given the opportunity to secure the release of their goods with the deposit of a security.

The CMLs, PREA and seizure of HPI products violate TRIPS Art. 58 - Under the PREA, patent holders are not promptly notified of *ex officio* suspensions, resulting in unnecessary delays for the defendant. Furthermore, when seizing HPI products, customs officials did not have *prima facie* evidence of patent infringement.

The CMLs, PREA and seizure of HPI products violate TRIPS Art. 1.1, similar to the seizure of Revitall.

The CMLs, PREA and seizures of HPI products violate GATT Art. V, similar to the seizure of Revitall.

The CMLs, PREA and seizures of Revitall and HPI products are not justified under GATT XX(d).

3. IDENTIFICATION OF THE MEASURES AT ISSUE

Measure 1: The LPEA, which curtails the availability and enjoyment of patent protection and unjustifiably discriminates against imported products, is inconsistent with TRIPS Art 27.1 and 28.1 and cannot be justified under Arts 31 or 30; it is also inconsistent with GATT Art III:4 and cannot be justified under Art XX(b) or (j).

Measure 2: The transit restrictions and seizures of medicines on the alleged basis of TM and GI infringements violate the right of free transit of legitimate trade and enforce Iplandian trademarks and GIs extraterritorially.

Measure 3: The transit restrictions and seizures of medicines on the alleged basis of patent infringement erode freedom of transit and constitute an abuse of *ex officio* action. Measures 2 and 3 are inconsistent with TRIPS Arts 1.1, 41.1, 41.2, 51, 53.1, 53.2, 58; GATT Art V, and cannot be justified under GATT Art XX.

4. LEGAL PLEADINGS

PRELIMINARY ISSUES

1. **JURISDICTION: *The Panel has jurisdiction.*** According to DSU Arts 1.1, 7.1 and 7.2, the Panel has jurisdiction solely under the covered agreements. The Panel's examination is limited to its terms of reference pertaining to the provisions in GATT and TRIPS cited by Freeland (DSU Art 7.1). The Panel has a legal obligation to address these claims and cannot diminish the rights of WTO members by rejecting the exercise of its jurisdiction.¹

2. ***Claimants are entitled to a DSB ruling.*** WTO members may seek the redress of a violation of WTO obligation solely under the DSU according to DSU Arts 23.1 and 23.2. Hence, recourse to fora outside the DSU pursuing a WTO-related dispute is explicitly prohibited.² In turn, members are "entitled to a ruling by a WTO panel"³ and a prompt settlement of disputes as provided for in DSU Art 3.3. Any deviation from these DSU obligations would severely undermine the integrity and predictability of the multilateral trading system put forward in DSU Art 3.2.

3. **APPLICABLE LAW: *WTO Panel cannot apply MIFFTA.*** Panels may only apply WTO Agreements.⁴ Furthermore, MIFFTA and WTO represent distinct treaties with separate rights and obligations. WTO Panels may not "adjudicate non-WTO disputes"⁵ and other dispute

¹ ABR, *Mexico - Softdrinks*, [53]; Iwasawa (2002), 288-9.

² Marceau (2001), 1101.

³ ABR, *Mexico - Softdrinks*, [52].

⁴ Trachtman (2006), 139.

⁵ ABR, *Mexico - Softdrinks*, [56].

settlement mechanisms may not affect WTO rights and obligations. If Ipland seeks redress of a MIFFTA violation, it is free to have recourse to the MIFFTA dispute settlement.⁶

4. **INTERPRETATION: *MIFFTA cannot be used to inform or interpret provisions of the WTO-Agreements.*** VCLT Art 31.3(c) on “rules of international law applicable in the relations between the parties” refers only to agreements to which all WTO-members are party.⁷ MIFFTA membership is limited, however, to Freeland, Midonia and Ipland.

5. ***Freeland acts in accordance with MIFFTA Art 23.9(1).*** Even if the Panel found MIFFTA relevant in determining its jurisdiction, Freeland complies with DSU and MIFFTA. Art 23.9(1) gives Freeland full discretion to choose the forum should a dispute arise under both Agreements. The exclusive forum clause of MIFFTA Art 23.9(2) does not apply: the dispute neither concerns measures protecting health,⁸ nor were the procedural requirements of the provision fulfilled since Ipland failed to submit a written request to consider the dispute under MIFFTA. *Alternatively*, the exclusive forum clause does not prevent a WTO panel from examining a claim of *WTO violation*, even if it results in violation of the MIFFTA provision.⁹ Ipland should file complaints of MIFFTA violation under MIFFTA, not before the WTO.

CLAIM 1: LOCAL PRODUCTION ENCOURAGEMENT ACT (LPEA)

1. The LPEA is inconsistent with the TRIPS Agreement

1.1 The LPEA violates TRIPS Art 27.1 as such and as applied

1.1.1 The LPEA is an as such violation of availability and enjoyability of patents

6. The LPEA violates Art 27.1, 1st S., since patents are not *de facto* available. A Freelandian applicant knows he must disclose the method of production for his product.¹⁰ If a patent is not locally worked, the resulting compulsory licensee, under standard procedure, is given full knowledge to replicate the patented good. A Freelandian applicant not producing in Ipland anticipates the future loss in monopoly rents from a compulsory license (CL) and has two options: (i) not export to Ipland, hurting trade flows, or (ii) sell the product in Ipland without patent protection, signaling that it is more profitable to produce in Freeland and sell products in Ipland without a patent than to invest in a patent and be subject to CL. Due to this legal architecture, patents are *de facto* unavailable; new Freelandian products involving an inventive step and having industrial application will not receive patent protection in Ipland.¹¹

⁶ See *eg*, U.S. action regarding NAFTA Art 2005, under *U.S.-Tuna*, [ongoing].

⁷ PR, *EC-Biotech*, [768].

⁸ See §31 below.

⁹ Marceau, Kwak (2006), 483.

¹⁰ TRIPS Art 29.1; Correa (1994), 330.

¹¹ TRIPS Art 27.1.

7. Additionally, the LPEA violates Art 27.1 2nd S. because patents are not enjoyable without discrimination. The LPEA explicitly states that a CL will be automatically issued if the patent owner *fails to locally work* the patent, constituting *de jure* “discrimination as to ... whether products are imported or locally produced.”

1.1.2 The LPEA is also an as applied violation of pharmaceutical patents

8. Because the LPEA, as applied, affects only the pharmaceuticals industry, the Act discriminates based on field of technology, violating Art 27.1, 2nd S. The LPEA differentiates treatment granted to patent owners in one field of technology by negating the enjoyability of foreign pharmaceutical patents in Ipland; other fields are not subject to the same treatment.¹²

1.2 The LPEA is not justified under TRIPS Art 27.3 (a) or (b)

9. The LPEA cannot be justified to exclude legitimate products from patentability because it, as such, does not unequivocally affirm what products are subject to CL. The wording of the Act is ambiguous with respect to affected patents and fields of technology; Ipland’s failure to specify the target of its CLs does not afford the country free reign to determine what it excludes from patentability *ex post*.

1.3 The LPEA is inconsistent with TRIPS Art 28.1

10. The LPEA violates the exclusive rights conferred to Freelandian patent owners unable to produce in Ipland. The act states a CL ‘*must*’ be issued to patents failing to locally produce. A patent that is not locally worked will *necessarily* be subject to a CL and thus will not have *full* intellectual property (IP) protection. The authorization for certain Iplandian firms to perform the above actions diminishes the IP holder’s right to prevent unsolicited 3rd parties from making, using, or selling their product or products resulting from their patented process.

1.4 The LPEA does not fulfill the conditions for CLs in TRIPS Art 31

11. The authorization for CLs under the LPEA is not explicitly individual because it constitutes a broad range of indeterminable products, and the decision to grant CLs is neither made on a case-by-case basis,¹³ nor is it considered “on its individual merits”.¹⁴

12. The purpose of the LPEA neither constitutes an emergency, as it aims to bolster domestic economic growth, nor does it require potential Iplandian licensees to seek a negotiated voluntary license with the patent holder prior to issuing a CL.¹⁵

13. Ipland has not specified the scope of or a closing date for the period of CL, as its

¹² Pires de Carvalho (2005), 310; PR, *Canada–Pharmaceuticals*, [7.88-91].

¹³ Correa (1999), 16.

¹⁴ Contrary to TRIPS Art 31 (a); Stoll, *et al.*, (2009), 567.

¹⁵ Contrary to TRIPS Art 31 (b); Reichman (1995), 356.

objective is to further the goal of local production. Ipland can issue CLs *ad infinitum* on all foreign-produced patents until it reaches its goal. No one can determine when the disadvantageous circumstances leading to the LPEA cease to exist or Ipland's desired level of local economic activity; it is thus likely that the CLs will always be in place.¹⁶

14. The LPEA does not guarantee that "the right holder shall be paid adequate remuneration",¹⁷ or that the use of the CL "shall be non-exclusive"¹⁸ and non-assignable.¹⁹

1.5 Art 5A(2) of the Paris Convention is not a viable defense for Ipland

15. According to TRIPS Art 2.2, its provisions "shall not derogate from existing obligations" under the Paris Convention (PC). PC Art 5A(2) provides a *right* to take legislative measures, not an *obligation*, and therefore cannot be invoked to derogate from TRIPS.²⁰ Rather, not only TRIPS and PC impose cumulative obligations on CL,²¹ but TRIPS Art 27.1 and 31 amended the rights granted by the PC, providing for a special regime prohibiting local working requirements for patents.

16. *Even if* PC Art 5A(2) is found to apply, it is not a viable defense for Ipland. With no reference to local production, the provision refers to "failure to work" a patent in order to "prevent the abuses" of an exclusive rights owner that did not allow *any* production of his good. Additionally, TRIPS Art 27.1 implies that a patent may be worked either through importation or through local production.²² Therefore, the TRIPS agreement specifically precluded the imposition of a *local* working requirement as legitimate grounds for CLs.

17. PC Art 2.2, an *obligation*, does not permit derogation and reinforces TRIPS Art 27.1 stating no local working requirement can be imposed "for the enjoyment of any industrial property rights". So, the PC prohibits CL based on failure to locally work a patent.

1.6 The LPEA is not justified under TRIPS Art 30

18. Art 30 cannot be invoked to justify the violation with a CL of rights conferred, since TRIPS Art 31 is *lex specialis*, and deals explicitly with CLs as exception to rights conferred. Moreover, the scope of application of Art 31 expressly excludes the application of Art 30.²³

19. *Even if* Art 30 applies to CLs, it does not justify violations of TRIPS Arts 27.1 or 28.1.

¹⁶ Contrary to TRIPS Art 31 (c) and (g); Stoll, *et al.*, (2009) 571, 574.

¹⁷ Contrary to TRIPS Art 31 (h).

¹⁸ Contrary to TRIPS Art 31 (d).

¹⁹ Contrary to TRIPS Art 31 (e).

²⁰ Pires de Carvalho (2005), 196.

²¹ Similar to AB interpretation of GATT and GATS obligations: see ABR, *EC-Bananas*, [221]; ABR, *Canada-Periodicals*, 19. Also equivalent to PR, *Canada-Periodicals*, [5.17-9].

²² Correa (1994), 331; Reichman (1995), 352.

²³ TRIPS Art 31, fn 7; *Canada-Pharmaceuticals*, [7.91].

1.6.1 TRIPS Art 30 cannot justify Art 27.1 violation

20. Art 30, which refers specifically to “exceptions to rights conferred” under Art 28,²⁴ can solely justify a violation of Art 28, but not of Art 27.²⁵

1.6.2 TRIPS Art 30 does not justify Art 28.1 violation

21. The LPEA does not meet the three cumulative criteria for an exception in TRIPS Art 30.²⁶

22. *CLs under the LPEA are not limited*: The CLs have a greater than ‘narrow’ limiting effect on the enjoyability and availability of the rights of Freelandian patent owners.²⁷ As there is no specification to the product, process, or field of technology in granting CLs, Iplandian officials can nullify patents from an extensive range of owners, resulting in an extensive limiting effect.

23. *CLs do ‘unreasonably conflict with the normal exploitation’*²⁸: As patents are no longer available,²⁹ the ‘extraction of commercial value’ is rendered impossible, thus conflicting with the normal exercise of a patent.³⁰

24. *CLs do ‘unreasonably prejudice the legitimate interests of patent owners’*: Freelandian patent owners must change their manufacturing decisions by producing in Ipland to secure full patent rights. The deviation from a potentially optimal decision of producing in any other country compromises the legitimate interests of these owners.

1.7 Alternatively, non-discrimination requirement for TRIPS Arts 30, 31 and PC Art 5A(2) is not fulfilled

25. These exceptions are subject to the non-discrimination obligation in Art 27.1 2nd S.³¹ *Even if* Ipland fulfils all requirements of any exceptions, the LPEA cannot be justified since the CLs still discriminate based on field of technology *and* place of production.

2. The LPEA is inconsistent with the GATT Agreement

2.1 GATT also applies to the LPEA

26. There is no hierarchy between GATT and TRIPS which, as separate pillars, do not have applicable conflict rules; instead, they co-exist and thus both apply cumulatively.³²

²⁴ Reichman (1995), 354.

²⁵ Nowak (2004), 921-3.

²⁶ Correa (1994), 330; PR, *Canada-Pharmaceuticals*, [7.19-20]; Pires de Carvalho (2005), 306.

²⁷ PR, *Canada-Pharmaceuticals*, [7.44].

²⁸ *Ibid*, [7.51].

²⁹ In the case of failure to locally produce; See §6 above.

³⁰ PR, *Canada-Pharmaceuticals*, [7.51].

³¹ PR, *Canada-Pharmaceuticals*, [7.88-91]; Nowak (2004), 921-3; Reichman (1995), 354; Correa (1999), 27; Pires de Carvalho (2005), 196; *Vitamin Technologists* 142 F.2d at 941.

³² ABR, *EC-Bananas*, [217-22]; ABR, *Canada-Periodicals*, [19-20]; PR, *Indonesia-Autos*, [14.28-46].

2.2 LPEA violates GATT Art III.4

2.2.1 The LPEA is an internal regulation affecting the sale of products in Ipland

27. IP regulation clearly affects the sale of products. *Alternatively*, internal measures imposed on inputs into products fall under the scope of GATT Art III.³³ Patents are inputs into products; and a CL affecting such inputs constitutes an internal regulation within the meaning of Art III:4. The issuing of CLs has a direct negative impact on the economic competitiveness—and thus affects the sale—of Freelandian goods in Ipland.³⁴

2.2.2 Imported patented products and products under CL are like products

28. By using the formulae for design and production, the goods resulting from a CL and imported patented goods are the same physically; their end uses and tariff classification are necessarily identical; and consumers cannot differentiate between these identical goods.³⁵ Thus these products are in direct competition in domestic and international markets.³⁶

2.2.3 The LPEA treats like Freelandian products less favorably

29. The unfavorable treatment applies to all foreign products subject to CL. The CLs will give competitive advantage to local pharmaceutical products, which will dominate the Iplandian domestic market. Freelandian goods will be marginalized as they face cheaper substitutes, incur a fall in quantity demanded, and lose their place in the Iplandian market.

2.3 The LPEA is not justified under GATT Art XX

30. Ipland bears the burden of proof in justifying the LPEA under GATT Art XX.³⁷

2.3.1 The LPEA is not provisionally justified under Art XX (b)

31. The LPEA does not “protect human, animal or plant life or health”. The act is aimed at developing a local industry and improving the commercial comparative advantage of Iplandian products sold domestically, not at improving the health of Ipland’s citizens.

32. *Even if* the LPEA is aimed at protecting health, the act is not “necessary”³⁸ to protect human, animal or plant life and health, weighing and balancing the importance of the interests protected, the contribution of the act to the goal pursued and the impact on international trade.³⁹ First, the local production requirement does not contribute to the goal pursued because patented products and processes, which are available to Iplandians through

³³ PR, *Mexico–Softdrinks*, [8.44]; PR, *Japan–Alcohol*, [5.8]; PR, *Canada–Periodicals*, [3.49, 5.29].

³⁴ ABR, *Japan–Alcohol*, [16].

³⁵ *Ibid*, [20-1].

³⁶ ABR, *EC–Asbestos*, [85].

³⁷ PR, *US–Gasoline*, [39]; ABR, *US–Gasoline*, [22]; ABR, *US–Shrimp*, [118-119].

³⁸ ABR, *Korea–Beef*, [164].

³⁹ ABR, *Brazil – Tyres*, [141-14]; ABR, *Korea–Beef*, [164].

importation before the LPEA, achieve the same goal. Moreover, due to lack of sufficient production experience, CLs products may not be of the same quality as original IP-protected goods, which may instead endanger health; and the risk of health-threatening fraudulent products is increased due to the confusion caused by the appearance of new players in the market. Next, because the act de-incentivises patents, products that would normally be available through import risk not being sold by foreign producers at all. Goods contributing to the protection of health, such as medicines, would no longer supply the Iplandian market. So, the measure does not contribute to the protection of life, but rather jeopardizes it. Finally, CLs have an unambiguously negative effect on the trade of goods between Ipland and Freeland,⁴⁰ which may even offset Ipland's objective to provide its population with medicine.

33. *Alternatively*, in the case that the LPEA were to contribute to protect human, animal or plant life, reasonable and less trade restrictive alternatives exist.⁴¹ For example, Ipland can simply import the medicine, or it can restructure and strengthen its own patent system, allowing for more incentives for local growth in the pharmaceuticals industry and thus protection of human life. This would transform the infringing internal measure into a significantly less trade distorting—and GATT consistent—one.

2.3.2 The LPEA is not provisionally justified under Art XX (j)

34. As such, Ipland cannot justify the broad measures of the LPEA—the CLs—with such a specific exception. By claiming that the LPEA was enacted in order to supply the Iplandian domestic market with any and all products unable to produce locally, Ipland offers itself *carte blanche* to remedy any situation it constitutes “short supply”.

35. To the extent CLs are an attempt to curb concerns for the short supply of medicines because Ipland does not have a pharmaceuticals industry, Art XX (j) does not specify that a threat of short supply must be satisfied by domestic production, and Ipland can import medicines to satisfy any short supply.

36. Moreover, there is no shortage of international supply. An eventual shortage of supply in Ipland can be easily met by importing ready products from Midonia or Freeland, constituting a sufficient requirement for ‘working’ a patent.⁴²

2.3.3 Additionally, the LPEA is inconsistent with the Art XX chapeau

⁴⁰ ABR, *Korea-Beef*, [164]; ABR, *Brazil-Tyres*, [141–3].

⁴¹ ABR, *EC-Asbestos*, [170]; ABR, *DR-Cigarettes*, [72].

⁴² Lanoszka (2003), 189.

37. *The LPEA entails ‘arbitrary and unjustifiable discrimination.’* Although ‘arbitrary’ or ‘unjustifiable’ discrimination constitute separate standards, Ipland violates both.⁴³ Ipland does not distinguish between goods on reasonable or objective criteria⁴⁴ when issuing CLs; the Act differentiates treatment solely on the bases of origin and industry in countries where the same conditions prevail, and thus is unjustifiably discriminatory.⁴⁵

38. *The LPEA is a ‘disguised restriction on international trade.’* Ipland enacted the LPEA in order to build a domestic market by limiting the competition with—and hence the trade with—foreign products. Concealing this protectionist agenda by claiming to act in order to protect human life and health or to satisfy short supply amounts to an “abuse or illegitimate use of the exceptions” in Art XX.⁴⁶ Therefore, the LPEA constitutes a disguised restriction on trade.

CLAIM 2: TRANSIT RESTRICTIONS AND SEIZURES BASED ON

ALLEGED TM & GI INFRINGEMENTS ARE INCONSISTENT WITH TRIPS AND GATT

3. Transit restrictions and seizures violate TRIPS Art 41.1

3.1 Trade in Revitall and other Sambati-based products is legitimate

39. No applicable Iplandian TM or GI exists in Midonia or Freeland for sambati. Revitall’s legality and the interests of its importers and consumers are supported by public policies and social norms⁴⁷ in the countries of origin and destination. Cross-border trade in products consistent with Midonian or Freelandian law is “legitimate”. The product’s packaging, clearly indicating Midonian origin, is not misleading. Further, sambati is a *descriptive* term; traders in this herb are entitled to its *fair use*.⁴⁸ Ipland’s laws have no jurisdiction over these goods as the production, consumption and economic effects of trade are limited to Midonia and Freeland. Applying Ipland’s TM and GI law would have extra-territorial effects.⁴⁹

3.2 CMLs, as such and as applied to Revitall, constitute barriers to legitimate trade

40. GATT Art XX(d) and the TRIPS preamble confirm IP enforcement procedures constitute barriers to trade.⁵⁰ Ipland’s strengthened Customs Law (CML) allows *ex officio* seizures,

⁴³ PR, *Brazil-Tyres*, [7.225].

⁴⁴ PR, *EC-Tariff Preferences*, [7.232], PR, *Brazil-Tyres*, [7.257 – 7.259].

⁴⁵ PR, *EC-Tariff Preferences*, [7.232]; Pires de Carvalho (2005), 169 [27.6].

⁴⁶ ABR, *US-Gasoline*, [25].

⁴⁷ Correa (2007), 412. PR, *Canada-Pharmaceutical Products*, [7.69].

⁴⁸ Art 17 TRIPS.

⁴⁹ Seuba (2009), 13.

⁵⁰ Grosse Ruse-Khan (2009), 92.

making it mandatory⁵¹ for Ipland's officials to seize GI and TM infringing goods in transit. The potential for seizures under the CML as such and as applied, constitute barriers to trade.

3.3 CML and PREA, as such and as applied, do not provide proper safeguards

41. TRIPS objectives and principles aim to balance the interests of rights holders and users⁵² and prevent abuse of IPRs⁵³. The CMLs as such and as applied provide no mechanism to guard against abuse of enforcement procedures by TM or GI holders. Allowing Customs officials to seize suspected IP infringing goods *ex officio* favors rights holders.

42. The PREA as such removes the \$25,000 deposit requirement for rights holders requesting seizure of imports. The safeguard allows GI and TM holders to file false applications at no cost and could lead to supply interruptions or high prices in Freeland. The PREA allows Ipland's producers to use seizures as a weapon to abuse foreign competition.⁵⁴

4. The transit restrictions and seizures are inconsistent with TRIPS Art 41.2 obligations

4.1 The PREA, as such and as applied, is neither fair nor equitable (Art 41.2, 1st S.)

43. Fair treatment requires enforcement procedures to evenly balance⁵⁵ the interests of rights holders with those of the defendant.⁵⁶ Iplandian TM or GI holders can apply for suspension of goods without a security deposit, allowing them to impose a cost on the trader without cost to themselves. Regarding goods in transit, rights holders can impose costs on competitors even if the latter's products are legal in the exporting and importing country.

44. Equitable treatment means equal treatment of both parties.⁵⁷ The trader and rights holders are notified at different times of *ex officio* seizures, potentially leading to a longer suspension than had both been notified simultaneously (see below). The two are thus not treated equally.

4.2 The PREA is costly, complicated, entails delays and time limits (Art 41.1, 2nd S.)

45. As such, the PREA determines that when goods suspected of TM and GI infringement are seized *ex officio*, traders must wait 10 days after the notification of suspension before applying for release. This delay imposes unnecessary costs and complications and is unwarranted. It is not "tied to any valid reason"⁵⁸ related to enforcement procedures.

46. The TM or GI holder is "promptly" notified only *after* the trader applies for release and may initiate legal proceedings for a period of 10 additional days. Enforcement procedures

⁵¹ WTO Secretariat (2004), 41; ABR, *US-1916 Act*, [88].

⁵² TRIPS Art 7.

⁵³ TRIPS Art 8.

⁵⁴ Stoll, *et al.* (2009), 691.

⁵⁵ *Concise Oxford English Dictionary*, (2006).

⁵⁶ Stoll, *et al.* (2009), 692; Correa (2007), 413; TRIPS Art 7.

⁵⁷ Stoll, *et al.* (2009), 692; *Concise Oxford English Dictionary*, (2006).

⁵⁸ PR, *Canada-Patent Term*, [6.117].

may result in a 20 day suspension plus the time it takes to “promptly notify” the rights holder, exceeding the 20-day maximum.⁵⁹ The time-limit is therefore unreasonable.

5. Ipland violates TRIPS Art 51

47. Rights holders must have “valid grounds for suspecting the importation” of counterfeit TM and GI infringing goods⁶⁰ and *prima facie* evidence of infringement according to the “law of the country of importation.”⁶¹ National IP laws need not apply to traded goods not intended for the national market,⁶² but Ipland subjects goods in transit to its TM law without requiring evidence of infringement according to law of the destination country. As applied, the CML led to the seizure of Revitall based on TM and GI infringement without evidence.

48. Given the territorial nature of IP rights⁶³, Ipland is not the importing country under Art 51 since goods in transit have no economic effect on its territory. There is no evidence that goods risk entering Ipland’s “channels of commerce.”

49. The doctrine of sovereignty cannot defend a seizure.⁶⁴ Ipland may enforce national law on goods in transit or implement higher levels of enforcement, as implied by fn 13, provided that, unlike Revitall, the product is protected under TM and GI in Freeland.

6. Ipland does not have authority to require a security in violation of TRIPS Art 53.1

50. Under the PREA, Ipland’s officials lack the authority they “shall have,” according to Art 53.1 1st S., to require TM and GI holders to provide a “security or equivalent assurance” to prevent abuse and “protect the defendant and competent authorities”. The word “shall” implies an obligation, mirroring Art 50 language.

51. Without a deposit, rights holders will file false applications that impose costs on traders. Read in the light of Art 41.2, “fair and equitable” principle, the Art 8.2 requirement of “measures to prevent abuse,” and balancing rights and obligation throughout TRIPS, Ipland is obliged to deter anti-competitive practices and other abuses.⁶⁵

7. The PREA and seizures based on TM&GI infringement violate TRIPS Art 1.1

7.1 When protecting IP rights more than required, Ipland contravenes TRIPS

⁵⁹ TRIPS Art 55.

⁶⁰ TRIPS Art 51, Sentence 1.

⁶¹ TRIPS Art 52; Art 51, fn14(a), 14(b).

⁶² ECJ, *Montex* (C-281/05) [2006] E.C.R. I-10881; High Court of England and Wales, *Nokia v. UK Customs* [2009] EWHC (Ch) 1903.

⁶³ Seuba (2009), 13.

⁶⁴ Abbott (2009), 45; *The Case of the S.S. “Lotus”*, PCIJ, Judgment No.9, CIJ, Ser. A., No.10, 1927.

⁶⁵ Correa. (2007), 443; Stoll, *et al.* (2009), 762.

52. More extensive protection of TM and GI rights by Ipland must not “contravene”, that is “counter”⁶⁶ TRIPS provisions, going beyond *pacta sunt servanda* to simply be “consistent” with or “not violate”.⁶⁷ This requirement can be read as a condition lowering the obligations “ceiling”⁶⁸ of Arts 41.1, 41.2, 51, 53, and 58 that limit TM and GI enforcement measures. The compliance standards for these provisions are high to ensure a balance of rights and obligations.⁶⁹ Due to the contraventions, Ipland does not comply with Art 1.1 3rd S.

7.2 The transit restrictions and seizures violate TRIPS Art 7

53. *Alternatively*, “not contravene” means to not contradict the “spirit” of TRIPS.⁷⁰ Art 1.1, 2nd S. obliges Members to abide by the objectives and principles of TRIPS Arts 7 and 8. The CML, the PREA, and the seizure of Revitall products limit the “transfer and dissemination of technology” and disadvantage the “users” of the products (Art 7). Freeland, a developing country, uses Midonia’s manufacturing technology to supply domestic users. Ipland enforces IPRs, hurting technological development in Freeland and Midonia. Thus, as such and as applied, the measures do not enforce TMs and GIs in a manner “conducive to social and economic welfare”⁷¹. Restriction of trade in medicines harms public health in Freeland.⁷²

7.3 The transit restrictions and seizures contravene TRIPS Article 8.2

54. As such, Ipland has not provided “appropriate measures” necessary to “prevent the abuse of IPRs by rights holders.”⁷³ Because TM and GI holders are not required to make a security deposit, the PREA could encourage false claims. Additionally, Ipland has not provided measures ensuring IPRs do not unreasonably restrict trade or adversely affect the international transfer of technology. As applied, the enforcement regime and seizures of medicine restrain legitimate trade between the Midonia and Freeland and are unreasonable. Restrictions and seizures prevent the international transfer of technology

8. The transit restrictions and seizures are inconsistent with GATT Art V obligations

55. The goods in question pass through Ipland, constituting part of the complete journey both originating and terminating outside Ipland. These goods are thus in transit (GATT Art V:1).

56. The highway through Ipland is the most convenient route for trade. By encouraging TM and GI holders to apply for seizure of goods in transit and by providing for *ex officio* seizures

⁶⁶ *Concise Oxford English Dictionary*, (2006).

⁶⁷ Grosse Ruse-Khan (2009), 66.

⁶⁸ Grosse Ruse-Khan (2009), 70-1.

⁶⁹ TRIPS Art 8.

⁷⁰ Grosse Ruse- Khan (2009), 67-9.

⁷¹ TRIPS Art 7.

⁷² DD Public Health (2001) [4]; Para 6 DD (2003); VCLT Art 31(3)(a).

⁷³ TRIPS Art 8.

of these goods, Ipland's PREA and CML restrict access and do not provide freedom of transit through the most convenient route as stipulated in GATT Art V:2 1st S.⁷⁴

57. Ipland makes a distinction based on origin, as such and as applied pursuant to GATT Art V:2 2nd S. Thus, freedom of transit is *de facto* limited according to place of origin.⁷⁵

58. The PREA results in unnecessary delays and restrictions. As such, suspension of goods in transit lasts no less than 10 days and possibly over 20 days. This delay and the requirement that goods in transit must comply with Ipland's IPRs are unnecessary because the goods are not entering the Iplandian market and therefore are not infringing local IP law. Given GATT and TRIPS apply cumulatively⁷⁶, the PREA cannot be considered necessary (Art V:3). *Even if* there were concerns that the goods in transit may go into free circulation, there are more appropriate solutions.⁷⁷

59. The CML and PREA are unreasonable. Considering available alternatives and the objective of the measures, the requirement for goods in transit to comply with Ipland's IPRs or be suspended and subject to delay is unreasonable pursuant to GATT Art V:4.

60. Like goods⁷⁸ transiting through Ipland receive more favorable treatment (Art V:5) if they originate in, and are exported to, countries recognizing the IHB's TMs and GIs. Revittal contains sambati, and is thus a like product with respect to comparable Iplandian sambati medicines. They have the same end use, are perceived by consumers in the same way, have the same tariff classification and are physically identical.⁷⁹

61. Goods not transiting through Ipland receive more favorable treatment (Art V:6). If the same medicines were to transit through another Member, they are less likely to be seized and subjected to delays than when in transit through Ipland. Thus, the CML and PREA grant less favorable treatment to these goods than if they had not transited through its territory.⁸⁰

9. Ipland's transit restrictions and seizures are not justified under GATT Art XX

62. Ipland bears the burden of proof⁸¹ in justifying its measures under the GATT Exceptions.

9.1 Ipland's transit restrictions and seizures are not justified under Art XX (d)

9.1.1 Transit restrictions and seizures are not designed to secure compliance

⁷⁴ PR, *Colombia-Ports of Entry*, [7.423].

⁷⁵ PR, *Colombia-Ports of Entry*, [7.427-430].

⁷⁶ ABR, *EC-Bananas*, [217-22]; ABR, *Canada-Periodicals*, [19-20]; PR, *Indonesia-Autos*, [14.28-46].

⁷⁷ See § 65 above.

⁷⁸ GATT Ad Article V:5.

⁷⁹ ABR, *Japan-Alcoholic*, [21-22].

⁸⁰ PR, *Colombia-Ports of Entry*, [7.432-481].

⁸¹ PR, *US-Gasoline*, [39]; ABR, *US-Gasoline*, [22]; ABR, *US-Shrimp*, [118-119].

63. The CML and the PREA do not aim to secure compliance⁸² with Ipland's 1992 TMA or 1994 GIA. As there is no obligation for goods in transit to comply with national laws, Ipland can enforce its IP law consistently with international norms of territoriality without applying border IP enforcement to goods in transit. Pursuant to Art XX(d), the CML and PREA cannot be inconsistent with the TRIPS provisions. The CML and the PREA, as applied, block goods in transit, and are therefore inherently WTO-inconsistent with respect to GATT and TRIPS.

9.1.2 Ipland's transit restrictions and seizures are not necessary

64. The CML, the PREA and the seizures are not "necessary"⁸³ to ensure compliance with laws or regulations, weighing and balancing the importance of the interests protected, the contribution of the act to the goal pursued and the impact on international trade.⁸⁴ There is no material contribution,⁸⁵ since the risk that the goods are released in Ipland is extremely limited. The restrictive impact on imports to Freeland is significant: the restriction reduces incentives to export, which could raise prices in Freeland.

65. There are less trade restrictive measures available to reduce potential leakage of Midonian goods in transit. Ipland could easily (i) monitor highways with video cameras and automated vehicle identification systems to ensure shipments are not redirected to Ipland's market, (ii) register cargo vehicles passing through the Midonia-Ipland border and confirm their registration upon arrival at the Freeland-Ipland border, (iii) keep an inventory of goods in transit upon entry to Ipland, and exit to Freeland, (iv) apply a seal to the holding compartment of transportation vehicles upon entry to Ipland and check upon exit to Freeland, or (v) set time limits within which a shipment must go from Midonia to Freeland.

9.2 The transit restrictions and seizures are inconsistent with the Art XX chapeau

66. Ipland's transit restrictions and seizures do "arbitrarily and unjustifiably discriminate between countries" where the same conditions prevail. The CML and PREA discriminate on the basis of national origin, forcing Midonia and Freeland to adopt Ipland's GI and TM, and in the case of Claim 3 patent regime, in order to be granted rights to freedom of transit.⁸⁶ Given Ipland is a developed country, there is little flexibility for differing economic conditions.⁸⁷ Goods from countries recognizing GIs/TMs do not face the same restrictions on

⁸² PR, *US – Wheat*, [6.248].

⁸³ ABR, *Korea–Beef*, [164].

⁸⁴ ABR, *Brazil – Tyres*, [141-14]; ABR, *Korea–Beef*, [164].

⁸⁵ ABR, *Brazil – Tyres*, [151].

⁸⁶ ABR, *US-Shrimp*, [163-164].

⁸⁷ ABR, *US-Shrimp*, [177].

freedom of transit, resulting in arbitrary and unjustifiable discrimination against Freeland and Midonia.⁸⁸ Ipland's goal can be achieved through less discriminatory means.⁸⁹

67. The CML and PREA constitute disguised restrictions on international trade. The design, architecture and structure⁹⁰ is such that exports of medicine from Midonia, a competitor to Ipland's growing pharmaceutical industry, is restricted. By framing the PREA as an IP measure, Ipland attempts to disguise its trade restrictiveness. Ipland intentionally favors this domestic industry as can be discerned by the subsidies given to it and the CL system to help it compete against other industries like those in Midonia. Thus, the border measures are designed so as to restrict international trade.

**CLAIM 3: TRANSIT RESTRICTIONS AND SEIZURES BASED ON ALLEGED PATENT
INFRINGEMENTS ARE INCONSISTENT WITH TRIPS AND GATT**

10. The transit restrictions and seizures are inconsistent with TRIPS Art 41.1

10.1 International trade in generic medicines is legitimate

68. As argued in Claim 2 with respect to seizures of Revitall on the grounds of TM and GI infringement, there is no Iplandian process patent in Midonia or Freeland for sambati extraction. Thus, trade in these medicines is legitimate. Patent protection has a clear principle of "independence"⁹¹ or "territoriality"⁹², implying patent rights are limited to the country of issuance.⁹³ Iplandian patent law does not apply to, nor does it have jurisdiction over, trade in generic medicines from Midonia to Freeland. Even medicines infringing Iplandian patents cannot be considered illegitimate, as states have the responsibility to ensure access to medicines⁹⁴ and support the legitimacy of trade in generic pharmaceutical products.⁹⁵

10.2 Ipland's CML are barriers to legitimate trade

69. As in Claim 2, the CML constitute barriers to legitimate trade by mandating seizures of goods in transit infringing on Iplandian patent law regardless of the trade's legitimacy; the CML is thus inconsistent with Art 41.1.

10.3 The CML and PREA do not provide for safeguards against abuse

⁸⁸ ABR, *US-Shrimp*. [171-176]

⁸⁹ See § 65 above.

⁹⁰ ABR, *EC-Asbestos*. [8.236].

⁹¹ PC, Art 4bis.

⁹² Abbott (2009), 44; Seuba (2009), 13-14; *Decision on the Interpretation of Para. 6 of the DD*. 2003, [6(i)].

⁹³ Exceptions exist for foreign vehicles with parts that infringe local patents, if presence is temporary. PC, Art 5ter; Convention on International Civil Aviation, 1944, Art 27.

⁹⁴ UNHRC (2009), [10].

⁹⁵ Seuba [2009], vii, 18; DD Public Health (2001); Para 6 DD (2003); VCLT Art 31.3(a), Art 31.3(c).

70. As in Claim 2, the strengthening of CML to allow *ex officio* acts and the PREA's removal of a security requirement for rights holders prevent the existence of safeguards against the abuse of enforcement measures; the lack of safeguards results in the abuse of patent rights.

11. The transit restrictions and seizures are inconsistent with Article 41.2

71. The PREA, as such and as applied, does not comply with the obligations of Art 41.2.⁹⁶ The lack of a security requirement for patent holders, as such, does not provide fair or equitable treatment for the defendant. Delays relating to the release of goods seized *ex officio*, as such and as applied, are not fair or equitable, and result in unnecessary costs and complications, unwarranted delays, and unreasonable time-limits.

12. The transit restrictions and seizures are inconsistent with Article 51

12.1 Ipland is not the country of importation

72. As Claim 2, the CML, with availability of procedures related to patent enforcement and *ex officio* seizure on grounds of patent infringement, are inconsistent with Art 51. The border enforcement of national patent law over goods in transit violates the obligation in fn 14 1st S. ensuring seizures take place under the law of the country of importation, Freeland.

12.2 Ipland has no right to enforce its patent law to goods in transit

73. *Even if* Ipland had permission under Art 51 fn 13 to seize goods in transit on the basis of alleged infringement of national IP law, it is silent on the possibility of seizing goods on the basis of "other IP" infringements.⁹⁷ Patents are a different form of IP;⁹⁸ and customs authorities identify TM/GI-infringing goods easier than patent infringing-goods in the case of sambati extraction. Also, goods infringing on patents do not attempt to mislead the public. It is reasonable to infer that there was no intention⁹⁹ to use fn 13 as authorization to apply national patent law to goods in transit. Without this permission, the CML, as such and as applied, violates Ipland's obligation to ensure border enforcement for patent protection according to the law of the country of importation.

74. *Even if* a good infringes the patent laws of the country of importation, the difficulty of patent assessment and the inability of interpreting foreign law, precludes customs officials from acting *ex officio*, as they did in the case of HPI products.

13. The transit restrictions and seizures are inconsistent with TRIPS Art 53

13.1 Ipland's customs have no authority to require a security from patent holders

⁹⁶ See § 43-45 above.

⁹⁷ Stoll, *et al.* (2009). 758.

⁹⁸ Abbott (2009), 45-48.

⁹⁹ VCLT, Art. 32(a).

75. Similar to Claim 2 under the PREA, Ipland's customs officials do not have authority to demand a security from patent holders applying for suspension based on patent infringement. As such, the PREA encourages false applications, imposing costs on traders and customs officials, and does not prevent abuse by patent holders.

13.2 Defendants are unable to secure the release of suspended products (TRIPS 53.2)

76. HPI products seized *ex officio* on the grounds of patent infringement have not been granted the opportunity of release upon the defendant paying a security. Moreover, the PREA has no mechanism as such to secure this release.

14. The transit restrictions and seizures are inconsistent with TRIPS Article 58

14.1 Under the PREA, rights holders are not promptly notified of *ex officio* suspensions

77. As such, Ipland does not promptly notify rights holders of the suspension when seizing goods *ex officio* on the basis of patent infringement. The rights holder is notified no earlier than 10 days after the trader files an application for the release of the goods, resulting in unnecessary delays that adversely affect the defendant. Art 41.2's obligation to provide fair and equitable treatment, and the objective under Art 7 to balance the rights and obligations of rights holder and users imply that the obligation to promptly notify both parties must be applied without distinction between the rights holder and the defendant.

14.2 Ipland's officials are unable to provide *prima facie* evidence of patent infringement

78. As patent infringements are difficult to assess, customs officials cannot collect necessary *prima facie* evidence to justify a seizure without being notified by patent holders

15. The PREA and seizures are inconsistent with TRIPS Art 1.1

79. As in Claim 2, the CML and PREA, as such and as applied to HPI, violate Art 1.1 3rd S., by "contravening" limits to patent protection and related enforcement provisions implied in Arts 41.1, 41.2, 51, 53, and 58. *Alternatively*, the CML and PREA, as such and as applied on the basis of patent infringement, violate the *spirit* of TRIPS outlined in Arts 7 and 8.

16. The transit restrictions and seizures, as such and as applied, violate GATT Article V

80. As in Claim 2, the CML and PREA, similarly restrict goods in transit suspected of patent infringement, demonstrated by the seizure and delays faced by HPI products to Freeland.

17. GATT Art XX does not justify Ipland's violations

81. As in Claim 2, Ipland cannot justify restrictions and seizures under GATT Art XX (d), or show an application consistent with the chapeau of Art XX.

4. REQUEST FOR FINDINGS

For the above stated reason, Freeland requests the Panel to:

- (1) Find that the LPEA is inconsistent with TRIPS Art. 27.1 as well as 28.1, in addition to GATT Art. III:4 and can neither be justified under TRIPS Art. 30 or 31 nor under GATT Art. XX, respectively.
- (2) Find that the transit restrictions and seizure on the basis of GI and trademark infringement violate TRIPS Art. 1.1, 41.1, 41.2, 51, 53.1 and GATT Art. V and cannot be justified under GATT Art. XX.
- (3) Find that the transit restrictions and seizure on the basis of patent infringement are inconsistent with TRIPS Art. 1.1, 41.1, 41.2, 51, 53, 58 and GATT Art. V and cannot be justified under GATT Art. XX.