
Team: 009 R

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 RESPONDENT

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2. Enjoyment of patents rights in TRIPS Art 27.1 2nd S, and rights conferred in Art. 28.1 must be considered in relation to each other.

3. LPEA is justified under TRIPS and PC exceptions**4. GATT Art III:4 is not applicable****5. LPEA constitutes a subsidy in the sense of GATT Art. III:8(b)****6. Alternatively, the LPEA is in conformity with GATT Article III:4****7. Alternatively, GATT Art XX(b) or (j) exempt Ipland from its GATT obligations****CLAIMS 2 AND 3: TRANSIT RESTRICTIONS AND SEIZURES BASED ON TM & GI INFRINGEMENTS, AS WELL AS PATENT INFRINGEMENTS****8. Ipland complies with TRIPS Article 1.1****9. Ipland complies with TRIPS Art 41.1****10. Ipland complies with TRIPS Art 41.2****11. Ipland complies with TRIPS Art 51****12. Ipland complies with TRIPS Art 53.1****13. Ipland complies with TRIPS Art 53.2****14. Ipland complies with TRIPS Art 58****15. Ipland complies with GATT Art V****16. GATT Art XX(b) exempts Ipland from GATT V obligations****17. Alternatively, GATT Art XX(d) exempts Ipland from GATT V obligations****18. Ipland complies with the chapeau of Article XX GATT****4. REQUEST FOR FINDINGS**

II. LIST OF REFERENCES

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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

Ipland, a WTO member, is a developed country. It borders two developing countries, Midonia and Freeland. An important transit route that connects the population centres of both its neighbours runs through Iplandian territory. Otherwise the border region is dominated by an impassible rain forest. Whereas the transit channel enhances trade flows into the country, it also bestows Ipland with the main responsibility to curb on illegal traffic and to ensure Iplandian IP rights. Recent seizures of illegal traffic such as “Revital” or the HPI drug illustrate this threat to its IP laws. In order to enhance Ipland’s capabilities to address these challenges and to harmonize regional trade, service and IP regulation the MIFFTA was created in 2003. It covers 72% of tariff lines and 87% of trade by volume and entails an extensive chapter on IP rights. To ensure that these MIFFTA provisions are applicable in case of an IP dispute, the MIFFTA DS provides for an exclusive forum clause.

Ipland possesses an underdeveloped pharmaceutical industry. Although its border region host a renown herbal remedy “sambati”, only recently Ipland has decided to exploit its potential. The new industrial policy was motivated by a growing concern for the health and lives of Iplandians. Iplandian rights holders already possess internationally recognized GI and TM on “sambati” and a patent on the process of its extraction. But the recent emergence of the potentially global virus T1R1, that could kill four percent of the world’s population and can be cured by sambati’s anti-viral properties, increased the imperative to protect Ipland’s citizens by further means.

Ipland enacted the LPEA to foster a domestic industry capable of supplying the domestic population with essential medicine. The compulsory licensing scheme based on a local working requirement serves this purpose by increasing technology transfer and employment opportunities. At the same time, Ipland’s government responded to the concern of Iplandian IPR holders that weak IP protection would undermine such efforts by enacting the HRP. The measure enhances protection of Iplandian GIs and TMs by improved government monitoring. However, the statistically significant illegal traffic between Midonia and Freeland that transits through Ipland risks circumventing Iplandian efforts to protect its IPRs. To avoid spillover of pirated and counterfeit products, Ipland enacted the PREA. On the one hand, the Act strengthens the Customs Laws by allowing officials to investigate infringements independently. It also facilitates the procedures for rights holders to apply for suspension of release of infringing goods by decreasing the security payment that previously had deterred recourse. All of Ipland’s measures are in full compliance with all its obligations.

2. SUMMARY OF ARGUMENTS

Preliminary Issues -The Panel does not have jurisdiction to hear the claims, since Freeland abused its DSU rights by bringing the dispute to the WTO, ignoring Ipland's invocation of the MIFFTA dispute settlement. The Panel should adopt special Working Procedures and suspend the proceedings in order to allow for dispute settlement under MIFFTA.

Claim I: The LPEA

Ipland's LPEA is in compliance with TRIPS Art. 27.1 and 28.1- Ipland's application of CLs does not limit the availability of patent protection. By failing to locally work a patent, patent holders exercise their right in Art. 28.2 to conclude a licensing contract.

Alternatively, the LPEA is justified under Art. 30 and 31 - Ipland's CLs are justified under two TRIPS provisions. First, Art. 30 in connection to PC Art. 5A(2) where a CL is applied in response to an abuse of patent rights by the failure to locally work the patent. Second, Art. 31 justifies Iplandian CLs to counter the threat to public health posed by the spat of pandemic influenza. They fulfil all the provision's requirements in reaction to the national emergency.

GATT Art. III:4 is not applicable and even if it were, the LPEA does not violate the provision TRIPS is the more specific agreement and its provisions would be nullified if GATT obligations applied simultaneously. If GATT is applicable, the LPEA constitutes a government subsidy that falls under GATT Art. III:8b) and not Art. III:4. In any event, the LPEA fully complies with the national treatment obligation.

Even if the LPEA violated GATT Art. III:4, it is justified under Art. XX:b) and j) - The LPEA protects human life and health by fostering a domestic industry capable of addressing the threat of pandemic influenza. Furthermore, it is necessary for it contributes to the achievement of its goal with minor impact on trade flows. Finally, the measure is consistent with the chapeau by treating all imported products equally.

Claim II&III: The Transit Restrictions and Seizures Based on IPR Infringements

The CMLs, the PREA and the seizures are consistent with TRIPS Art. 1.1 - It does not contain an obligation limiting IPR protection and consequently cannot be violated independently of other provisions in TRIPS.

The CMLs, the PREA and the seizures are consistent with TRIPS Art. 41.1 - The CMLs cannot be challenged as such, since they only give customs discretion to enforce IP law and do not mandate WTO-inconsistent action. Goods within the territory of Ipland that infringe national law are not legitimate and thus there is no obligation to prevent barriers to this trade. Ipland provides safeguards against abuse through the judicial system and by requiring *prima*

facie evidence of IP infringement to initiate suspensions.

The PREA and seizures are consistent with TRIPS Art. 41.2 - Ipland has no obligation to provide fair and equitable treatment during pre-judicial enforcement procedures, nor with respect to defendants. Fair and equitable treatment can only be assessed with reference to costs, complication, time-limits and delays. The PREA does not entail unnecessary costs and complications, unreasonable time-limits or unwarranted delays.

The CMLs and seizures are consistent with TRIPS Art 51 - Ipland has no obligation under Art. 51 to limit border enforcement measures. Ipland complies with the requirements of Section 4. Moreover, under ft. 13, Ipland has a right to apply border IP enforcement to goods in transit, according to its national laws as the country of importation.

The PREA and seizure of Revitall are consistent with TRIPS Art. 53.1 - Ipland is not required to demand a security from rights holders applying for border enforcement. Moreover, it has an *obligation* to not deter recourse to these measures.

The PREA and seizure of HPI products are consistent with TRIPS Art. 53.2 - Ipland provides means for defendants to secure the release of goods suspended at the border on suspicion of patent infringement upon the deposit a security.

The CLs, PREA and seizure of HPI products are consistent with TRIPS Art. 58 - The PREA favours the defendant by notifying them more promptly of the suspension. Even so, the rights holders are notified within 10 days, which qualifies as promptly. Ipland has the right to determine the specific definition of prompt notification.

Ipland cannot bring a claim under GATT V - Border enforcement of IP on goods in transit is specifically addressed in TRIPS and claims should be brought solely under that Agreement.

The CMLs, PREA and seizures are consistent with GATT V - Legitimate trade has freedom of transit through Ipland through the most convenient route. Goods that infringe Iplandian IP law cannot be considered like legal goods, and thus there is no obligation to treat them as favourably as others. Moreover, Ipland has the right to require traffic in transit to comply with customs laws and regulations.

Alternatively the CMLs, PREA or seizures are justified under Art. XX(b) and (d) - The CMLs and PREA, as such and as applied to Revitall and HPI products, are necessary to reduce risks to human health from fraudulent medicines and inadequate domestic pharmaceutical manufacturing. These measures have very limited impact on trade. The measure is consistent with the chapeau, as it treats all imported products equally, decisions on restrictions or seizures are based on objective criteria that are just and transparent.

3. IDENTIFICATION OF THE MEASURES AT ISSUE

Measure 1: The LPEA stimulates technology transfer and health protection through a compulsory licensing (CL) system based on a local working requirement. It is consistent with TRIPS Arts 27.1, 28.1, or *alternatively* justified under Arts 31 or 30, and consistent with GATT Art III:4, or *alternatively* justified under XX (b) or (j).

Measure 2: The transit restrictions and seizures enforce national trademark and GI rights against infringements and combats illegitimate traffic.

Measure 3: The transit restrictions and seizures are necessary means to strengthen Iplandian Custom authorities and to enforce national patent rights against infringement. Measures 2 and 3 are consistent with TRIPS Arts 1.1, 41.1, 41.2, 51, 53.1, 53.2, 58; GATT Art V, or *alternatively* justified under XX (b) or (d).

VII. LEGAL PLEADINGS

PRELIMINARY ISSUES

1. APPLICABLE LAW AND INTERPRETATION: *The WTO Agreements do not exist in “clinic isolation from public international law.”*¹ The Panel must consider applicable law beyond WTO Agreements to determine its jurisdiction,² including principles of general international law the WTO Agreements have not explicitly “contracted out”³ of, and agreements cited by the parties to the dispute.⁴ MIFFTA provisions, agreed on by both Ipland and Freeland, may be applied by the Panel and used in interpreting WTO Agreements as they apply between these members, not third parties.⁵

2. JURISDICTION: *The Panel has no jurisdiction due to Freeland’s violation of DSU rights.* Freeland violated its good faith obligation in DSU Art 3.10 by bringing its claim under WTO dispute settlement (DS), consciously ignoring Ipland’s invocation of MIFFTA Art 23.9(2); its recourse to the DSU without prior consultation constitutes a “contentious act” pursuant to DSU Art 3.10. Mutually agreed solutions are “clearly to be preferred,”⁶ and by ignoring Ipland’s invocation, Freeland precluded the possibility of finding a solution based on the MIFFTA DS mechanism, abused its DSU rights, and violated its good faith obligation.

¹ ABR, *United States – Gasoline*, p. 17; Trachtman (2006), 624; Sacerdoti (2006), 51; ILC Fragmentation Report (2006), [251], 407; ILC Koskenniemi Report (2006), [165], 87.

² DSU Art 11 obligation to “an objective assessment of the matter”; Pauwelyn (2001), 562.

³ PR, *Korea—Government Procurement*, [7.96].

⁴ DSU Art 7.2; Pauwelyn, (2001), 540-50; Pauwelyn (2003), 1000-2.

⁵ VCLT Art 31.3(c), Marceau (1999), 123; ILC Koskenniemi Report (2006), [472], 238.

⁶ DSU Art 3.7.

Raising claims based on violation or abuse of rights is an invalid principle of international law,⁷ and the Panel shall not accept jurisdiction on claims resulting from such abuse.

3. ADMISSIBILITY: *Legal Impediments.* *Even if* the Panel has jurisdiction, “legal impediments”⁸ make Freeland’s claims inadmissible, precluding the Panel from proceeding to the merits.⁹ MIFFTA Art 23.9(2) constitutes an exclusive forum clause referring any dispute over IP-related measures concerning the protection of health to the MIFFTA DS, creating legitimate expectations and good faith obligations.¹⁰ This dispute fulfils the requirement and Ipland has invoked MIFFTA Art 23.9(2) in writing; Freeland now has the obligation to take its claim to MIFFTA. GATT Art XXIV recognizes the right to engage in Regional Trade Agreements (RTA). The Panel would undermine these rights if it failed to give “meaning and effect to all terms of a treaty,”¹¹ including GATT Art XXIV. By giving effect to GATT and MIFFTA, Art 23.9(2) serves as an impediment to examination of merits.

4. *Suspension of Proceedings.* *Even if* the Panel finds no legal impediment, it should use discretionary power to adopt special Working Procedures “after consulting the parties,” suspending proceedings to allow for DS under MIFFTA,¹² the *forum conveniens* best suited for solving the dispute. Not only does MIFFTA incorporate extensive parts of the WTO Agreements and comply with GATT Art XXIV, but it goes further than these Agreements, addressing issues of local relevance, *eg* the “Sambati” plant, and is more specific regarding compulsory licenses (CLs). Recognizing the principle of subsidiarity,¹³ the dispute should first be addressed at the regional level; if it cannot be solved, the multilateral DS mechanism should take over. The Panel should exercise judicial comity towards MIFFTA, “seek information and technical advice” pursuant to DSU Art 13, and suspend the proceedings to allow for a regional dispute resolution.¹⁴ Should the panel accept jurisdiction on this matter and receive Freeland’s claims as admissible, Ipland fully complies with its WTO obligations.

CLAIM 1: LOCAL PRODUCTION ENCOURAGEMENT ACT (LPEA)

1. Patents are available in accordance with TRIPS Art 27.1

5. The LPEA neither limits nor discriminates against patentable subject matter. In compliance with Art 27.1 1st S., any invention in all fields of technology fulfilling the requirements will

⁷ According to the “Clean Hands Doctrine”; White (2004), 113-4.

⁸ ABR, *Mexico – Softdrinks*, [54].

⁹ U.S. action regarding NAFTA Art. 2005, under *U.S.-Tuna*, [ongoing]; Pauwelyn, Salles (2009), 112.

¹⁰ VCLT Art 26.

¹¹ ABR, *US – Gasoline*, 23.

¹² DSU Art 12.1; Pauwelyn (2003), 1011-2.

¹³ Trachtman, (2006), 637-9.

¹⁴ MOX Plant Case, *Perm. Ct. Arb.* (2003). Graewert (2008), 318-20; Pauwelyn (2004), 911-2.

receive a patent in Ipland. In accordance with the Art 27.1 2nd S., the measure neither limits *de jure* nor *de facto* the availability of patents.

6. *Alternatively*, Ipland may exercise its right under TRIPS Art 27.3(b) to exclude plants and essentially biological processes from patentability.

2. Enjoyment of patents rights in TRIPS Art 27.1 2nd S, and rights conferred in Art. 28.1 must be considered in relation to each other

7. “Patent rights enjoyable” in Art 27.1 refers to the exclusive rights conferred in Art 28.1,¹⁵ which can only be enjoyed in congruity with Art 27.1 when exercised without discrimination.

2.1 Patent Rights are enjoyable in accordance with Art. 27.1

8. Art 27.1 does not prohibit the LPEA’s requirement to locally work a patent.¹⁶ Patent holders’ rights are characterized as both exclusive and negative rights¹⁷; as such, they can only be exercised “to *prevent third parties* not having the owner’s consent”¹⁸ of making, using or selling the patent. Member states are obliged under the non-discrimination requirement of Art 27.1 to provide protection against *third party* infringement on patent rights for imported and locally produced goods.¹⁹ The CLs only require rights holders to locally work their patent without diminishing from the protection of both domestic and imported patented products against third party infringements of the patent holder’s rights.

9. Additionally, Art 28.1 confers patent holders exclusive right to prevent third parties from “making, using... *importing*” patented products.²⁰ Art 27.1, on the contrary, deals with *already imported* products that the CLs do not regulate.²¹ Therefore, Art 27.1 prohibits measures discriminating between *already imported* and locally produced goods. The LPEA does not provide such differential treatment and is thus consistent with Art 27.1.

2.2 Patent Rights are conferred in accordance with Art 28.2

10. Freeland does not challenge Art 28.2; it is not contested that under the LPEA patent holders may assign, transfer or license their exclusive patent rights.

11. Once an Iplandian patent is issued, holders enjoy both categories of rights under Art 28. The CLs come into effect only when a patent holder decides not to locally produce. In doing

¹⁵ Champ, Attaran (2002), 386; Nowak (2005), 935; Correa, Yusuf (2008), 240.

¹⁶ Correa (2001), 87, See MAS, *Brazil — Patent Protection*; Champ, Attaran (2002), 367, 368, 386. This interpretation is in line with Brazil’s Arguments in the dispute with the US over the Brazilian compulsory license system that was settled without a Panel ruling by a mutually agreed solution.

¹⁷ Correa/Yusuf (2008), 240, 241.

¹⁸ TRIPS Art. 28.1a) (emphasis added)

¹⁹ Correa/Yusuf (2008), 240.

²⁰ TRIPS Art. 28.1(a) (emphasis added), Correa (1994), 330, 331

²¹ Ridder (2004), 86

so, the owner exercises his right under Art 28.2 to license his patent to Ipland, allowing an Iplandian producer to enjoy the otherwise exclusive rights of Art 28.1. As such, the LPEA is consistent with Art 28.

3. LPEA is justified under TRIPS and PC exceptions

3.1 The TRIPS Agreement contains two regimes allowing for compulsory licenses.²²

12. TRIPS provides a regime whereby CLs are issued based on principles, in TRIPS Art 8.1, designed to promote the public interest of socio-economic or technological development and public health. Pursuant to these objectives, a CL violating TRIPS Arts 27.1 and 28.1 may be justified under Art 31, provided it fulfils the requirements.

13. The regime of the Paris Convention (PC) Art 5A(2) was incorporated by TRIPS Arts 2.1 and 8.2 to allow members to issue CLs in response to abuses of exclusive patent rights by the rights holder, *inter alia* “failure to work” a patent. CLs may thus be seen under Art 30 as exceptions to rights conferred in Arts 27.1 and 28.1.

3.2 The LPEA is justified under Art 31

14. The LPEA, introduced in response to “pandemic influenza viruses”, aims to stimulate a local industry. This danger can only be addressed effectively by developing a domestic health industry capable of satisfying demand at short notice. The measure was authorized in accordance with TRIPS Art 31(a) and pursuant to the objectives and principles of Art 8.1.

15. The pandemic character of the viruses constitutes a circumstance of extreme urgency pursuant to TRIPS Art 31(b) 2nd S. WTO members have the right to take measures to protect public health²³ and discretion to determine what are “circumstances of extreme urgency”.²⁴ CLs may be granted under any necessary grounds,²⁵ *eg* failure to locally work a patent.²⁶

16. Ipland’s measure fulfils the conditions of TRIPS Art 31 providing for limited scope and duration. The LPEA was designed to encourage the development of Ipland’s industries, not for protectionism but to enable higher standards of health protection: the CLs supply only the domestic market and ensure non-exclusivity of patent use as well as adequate remuneration. *Even if* the LPEA were to result in differential treatment, the CLs do not discriminate in the sense of TRIPS Art 27.1 2nd S.²⁷ The LPEA is thus justified under TRIPS Art 31.

3.3 LPEA is justified under TRIPS Art. 30 in connection with PC 5 A(2)

²² Halewood (1997), 263; Shanker (2002), 769.

²³ DD Public Health, [4].

²⁴ *Ibid*, [5(c)].

²⁵ *Ibid*, [5(b)]. See Mercurio (2004), 226-7.

²⁶ Correa (2002), 15.

²⁷ PR, *Canada – Pharmaceuticals*, [7.91].

17. *Alternatively*, Art 30 provides exceptions to rights conferred, justifying an impairment of patent rights enjoyment in Art 27.1 and a violation of the exclusive patent rights in Art 28.1.

18. The CL is limited, does not unreasonably conflict with normal exploitation of the patent, and does not unreasonably prejudice legitimate interests of the patent owner.²⁸ By relating to the failure to locally work a patent, the LPEA is narrowly construed and thus limited.

19. The ordinary meanings of “unreasonably conflict with the normal exploitation” and “unreasonably prejudice the legitimate interests” must be established according to the rules of interpretation outlined in VCLT Art 31(1). Thus, exceptions to patent rights²⁹ must be read in the context of the PC.³⁰

20. Granting a patent entails monopoly rights and the obligation to work a patent³¹ through local production or manufacturing.³² According to PC Art 5A(2), a CL may be issued if rights are abused by not working a patent.

21. The “normal exploitation of the patent” and the “legitimate interests of the patent holder” are subject to the obligation to work a patent. Failure to work is an abuse of patent rights and, as such, cannot be judged under “normal exploitation” or the “legitimate interest” of patent holders. The CL prevents “the abuse of intellectual property rights” in TRIPS Art 8.2, and does not “unreasonably conflict with the normal exploitation” or “unreasonably prejudice the “legitimate interests” of patent holders.³³ Fulfillment of the requirements of Art 30 justifies a violation against the enjoyment of patents (Art 27.1) and their exclusive rights (Art 28.1).

4. GATT Art III:4 is not applicable

22. The LPEA allows CLs for patents if they are not locally worked. It concerns exclusively intellectual property rights (IPRs). Under the scope of the WTO, this issue falls under TRIPS, not GATT. The fact that products may contain patented components or processes does not automatically lead to an applicability of both GATT and TRIPS. Contrarily, TRIPS constitutes *lex specialis* to the GATT.³⁴

23. Applying both GATT and TRIPS may undermine the latter agreement. General GATT provisions cannot nullify measures based on either rights or exceptions permitted under

²⁸ PR, *Canada – Pharmaceuticals*, [7.20].

²⁹ Panel referred to Berne Convention to interpret TRIPS Art 13; PR, *US – Copyright*, [6.97], fn 105.

³⁰ The relevant part of the PC is incorporated through TRIPS Art 2.1, and Art 2.2 affirms that nothing in TRIPS shall be read as a derogation from the provisions of the PC.

³¹ Correa (1994), 332.

³² Bodenhausen (1968), 71.

³³ Shanker (2002), 769, 770.

³⁴ ABR, *EC-Bananas*, [202-204], PR, *US-Cotton Art 21.5*, [14.153-154], ABR, *US-FSC*, [117]. ABR, *Chile-Agricultural Products*, [178-191].

TRIPS. In addition, the LPEA does not fall within the specific scope of GATT Art III:4, concerning internal regulations affecting, *inter alia*, the sale, distribution or use of *products*. The LPEA creates obligations for *producers* related to an element not physically reflected in the product itself (namely, IP), and does not fall within the scope of Art. III:4.

5. LPEA constitutes a subsidy in the sense of GATT Art. III:8(b)

24. *Even if* GATT were applicable, the LPEA falls under GATT Art III:8(b) and the ASCM.

25. There is no exhaustive list of measures exempted from the national treatment obligation under GATT Art III:8(b).³⁵ The wording “payment of subsidies exclusively to domestic producers” exists to ensure that subsidies provided to *producers*, not taxes or other forms of discrimination on *products*, are considered subsidies under Art III:8(b).³⁶ The “payment” must involve “the expenditure of revenue by a government”.³⁷ The CL is a subsidy provided to *producers*, not *products*, and provides for adequate remuneration for the patent holder. Ipland thus spends government revenue to provide domestic producers with the technology of patented products or processes. The CL is a subsidy within the scope of GATT Art III:8(b). Thus, the *LPEA* is carved out from the national treatment obligation in GATT Art III:4.

26. Since Freeland has not raised claims under ASCM in the Panel’s terms of reference, the Panel has no jurisdiction to assess if the LPEA is a subsidy consistent with ASCM.³⁸

6. Alternatively, the LPEA is in conformity with GATT Article III:4

27. The LPEA does not constitute a regulation within the meaning of GATT Art. III:4. Although it is an Iplandian governmental measure, it neither *de jure* nor *de facto* regulates trade in goods. Instead, the application of the measure relates to patents.

28. The LPEA affects an undefined range of goods varying in characteristics, end uses, consumer preferences and tariff classification. Particularly consumer preferences differ based on health³⁹ and security concerns. Consumers prefer locally manufactured products, the supply and quality of which can be guaranteed during crises, making the products unlike.⁴⁰

29. Should the panel find that the products at issue are *like*, the LPEA does not treat imported products less favorably than domestic products. Patent holders subject to CL may import into

³⁵ ABR, *Canda – Periodicals*, [33].

³⁶ PR, *Indonesia – Autos*, [14.43].

³⁷ ABR, *Canda- Periodicals*, 34.

³⁸ PR, *Korea – Paper AD Duties*, [7.257].

³⁹ ABR, *EC-Asbestos*, [92-154].

⁴⁰ ABR, *EC-Asbestos*, [101].

Ipland;⁴¹ both imported and domestic products are exposed to an “equal competitive relationship”⁴² within the Iplandian market, and thus the LPEA does not violate Art III:4.⁴³

7. Alternatively, GATT Art XX(b) or (j) exempt Ipland from its GATT obligations

30. Should the panel find violation of Art III:4, the LPEA is justified under GATT Art XX(b) by protecting human life and health. The CL aims to protect both objectives by providing incentives for the development of a local industry facing the threat of “pandemic viruses”. The LPEA is necessary, weighing and balancing the importance of the value the measure aims to protect, its contribution, and its impact on trade. First, the CL protects human life and health, both vital in the highest degree.⁴⁴ Second, the CL contributes strongly to the achievement of its objective: the LPEA facilitates technology transfer by making new medicines available and overcomes risks from supplying domestic health needs solely through importation. Third, the measure does not impact trade flows: the requirement to locally work is satisfied by manufacturing a *share* of patented products or processes in Ipland.⁴⁵ Also, the CL allows imports to enter. Finally, there is no less trade restrictive alternative ensuring “equivalent contribution to the achievement of the objective”⁴⁶. Only a domestic industry with the necessary technology can function on a scale large enough to ensure medicine for *all* citizens, as was recently confirmed during the swine flue crisis.⁴⁷ Some countries struggled to obtain vaccines; others prioritized domestic demand. The WTO rules allow export duties and export restrictions in the face of short supply. Ipland’s access is not guaranteed and importation is not a viable alternative. It is not a question of price, but of access to essential medicines.

31. *Alternatively*, GATT Art XX(j) justifies a violation. The CL is essential for acquiring products to combat pandemic viruses and it is limited in time until this shortage is addressed.

32. The LPEA complies with the Art XX chapeau. First, the CLs do not discriminate unjustifiably or arbitrarily between countries where the same conditions prevail. All products without a locally worked patent are subject to a CL. Second, there is no disguised trade restriction.⁴⁸

⁴¹ Reichman (1995), 356.

⁴² ABR, *Japan-Alcohol*, 16.

⁴³ PR, *EC-Biotech*, [7.2514].

⁴⁴ ABR, *EC-Asbestos*, [172]; ABR, *Brazil – Tyres*, [144].

⁴⁵ Halewood (1997), 252-253.

⁴⁶ ABR, *Brazil – Tyres*, [156].

⁴⁷ Similar situations also occurred during the 2008 food crisis and in respect of valuable raw materials.

⁴⁸ ABR, *US – Gasoline*, p. 25

**CLAIMS 2 AND 3: TRANSIT RESTRICTIONS AND SEIZURES BASED ON TM & GI
INFRINGEMENTS, AS WELL AS PATENT INFRINGEMENTS**

33. This section includes arguments applying to all relevant IPRs (GIs, TMs and patents), along with separate arguments regarding Claims 2 (GIs and TMs) and 3 (patents only) when WTO law discerns IPRs or when the relevant measure concerns a particular subset of IPRs.

8. Ipland complies with TRIPS Article 1.1

8.1 There is no obligatory limit on IPR protection levels in TRIPS Article 1.1

34. Art 1.1 does not entail an obligation that can be violated independently; its only limit protecting IPRs relates to whether protection levels contravene the TRIPS provisions. Contravene, synonymous with “infringe”⁴⁹, means that any violation of Art 1.1 can only result from an independent infringement of other TRIPS provisions. Art. 1.1 cannot be used to argue for an infringement of TRIPS objectives and principles (Art. 7 and 8), since these provisions contain only permissive, not mandatory language. They are meant for interpretive context only and do not include specific obligations that can be violated independently.⁵⁰ Since Freeland has not proven any violation of subsequent TRIPS provisions, the Customs Laws (CMLs) and the PREA, as such and as applied, are consistent with Art 1.1.

8.2 Ipland has the right to implement more extensive protection and is free to determine the appropriate method of implementing TRIPS

35. Ipland is within its right to implement more extensive border protection. According to TRIPS Art 1.1, 3rd S., Ipland is free to determine implementation of TRIPS within its legal system. Ipland is allowed to undertake effective methods of implementation suiting its national goals, including the potential seizure of IP-infringing goods in its territory.

9. Ipland complies with TRIPS Art 41.1

9.1 The CMLs are not disputable as such

36. Since the CMLs give customs authorities “discretion” to enforce IP law and does not “mandate” any WTO-inconsistent action, they cannot be challenged as such.⁵¹ Art 41.1, 2nd S. states that obligation to prevent barriers to legitimate trade applies solely to the *application* of enforcement procedures, not to the laws relating to the procedures themselves.

9.2 Goods infringing Iplandian IPRs are not legitimate trade (Art 41.1 1st S.)

⁴⁹ Concise Oxford English Dictionary (2006).

⁵⁰ Grosse Ruse-Khan (2009), 70.

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

37. IP-infringing goods are illegal under Ipland's national laws and are not supported by Iplandian public policies and other social norms.⁵² Ipland has exclusive control over activities taking place in its territory⁵³, eg international trade, and has an international obligation⁵⁴ to seize imports of goods using *false indications* regarding their source, regardless of the country of final destination. Even though Revitall's packaging indicates that its Sambati (subject to Iplandian TM and GI) originates from Midonia, the prominence of "contains Sambati" falsely represents to the public that it originates from Ipland.⁵⁵ International trade in counterfeit medicines is highly dangerous⁵⁶ and criminalized by TRIPS Art 61.

38. Regarding the seizure of Herb Plus, Inc (HPI) products on the grounds of patent infringement (Claim 3), neither Midonia nor Freeland has gone through the procedures,⁵⁷ including CMLs, necessary to legitimize trade in generic medicines through Ipland. Both from a national and international perspective, the cross-border trade of products like Revitall and HPI products cannot be legitimate, and the obligation to prevent barriers does not apply.

9.3 Ipland provides safeguards against abuse of enforcement measures (Art 41.1 2nd S)

39. Iplandian IP law provides judicial proceedings allowing the defendant to ensure the validity of claims made by IPR holders. Moreover, Iplandian customs require *prima facie* evidence of infringement for suspension. TRIPS does not require rights holders to pay a security when applying for suspension. Ipland has freedom to determine the method of implementing its obligation to provide these safeguards.⁵⁸

10. Ipland complies with TRIPS Art 41.2

10.1 Article 41.2 applies only to judicial procedures

40. The obligation to provide for fair and equitable treatment, limited costs and complications, reasonable time limits, and the absence of unwarranted delays, should be interpreted in the context of Arts 41.3, 41.4, 41.5, and the entirety of Art 42 on *Fair and Equitable Procedures*, all of which relate to judicial proceedings available to rights holders and defendants. Art 41.2 does not apply to the initial mandate by which rights holders can trigger an investigation or customs action. Neither the Protection of Rights Encouragement Act (PREA) nor any seizure based on patent infringement relates to judicial procedures.

⁵²PR, *Canada-Pharmaceuticals*, [7.69].

⁵³ United Nations Charter, Art. 2.

⁵⁴ Paris Convention, Art. 10.1.

⁵⁵ TRIPS Art. 22.4.

⁵⁶ WHO (2006), Aldous (2005), 132.

⁵⁷ DD Public Health (2001). Para 6 on DD (2003).

⁵⁸ TRIPS Art 1.1, 1st S.

41. As applied, there is no evidence that the current Revitall case in Ipland results in unfair or inequitable treatment, or that there are unnecessary costs or complications, unreasonable time-limits or unreasonable delays.

10.2 Costs, complications, etc., are relevant to assess fairness and equity of treatment

42. *Alternatively*, the obligation under TRIPS Art 41.2 is limited to providing fair and equitable treatment. According to customary international law, “fair and equitable” entails an obligation to grant “minimum standards” of treatment to foreigners.⁵⁹ Ipland grants such minimal standard, since the treatment does not amount to an outrage, as “every reasonable and impartial man would readily recognize”.⁶⁰ Moreover, costs, complications, time-limits and delays are merely “concrete elements to be considered to assess whether enforcement procedures are fair and equitable,”⁶¹ and do not entail an obligation in themselves.

10.3 The PREA, as such, does not entail unnecessary costs, complications, etc.

43. *Alternatively*, TRIPS Art 41.2 must be read with Art 1.1, 3rd S.’s flexibility, resulting in a higher burden of proof for Freeland.

44. There are no monetary costs in securing the release of goods suspended by customs, and the PREA requires filing one application, implying an uncomplicated process. *Even if* the 10-day minimum suspension period can be considered a cost, it is warranted in the context of Ipland’s enforcement of IP laws: authorities require time to prepare detailed notification allowing rights holders to make an informed decision whether to pursue legal proceedings.

45. The time limit on the effective duration of suspensions prior to legal proceedings is reasonable, since it is even more favorable than the time limit in TRIPS Art 47. In accordance with Art 55, Ipland establishes a 10-day limit for rights holders to initiate legal proceedings. *Even if* the 10-day delay in notification is taken into account, the maximum time a trader may have his goods suspended without legal procedure is still shorter than 20 working days.

11. Ipland complies with TRIPS Art 51

11.1 There is no independent obligation in Art 51 limiting border enforcement measures

46. Obligations in Art 51 ensure a *minimum* level of border enforcement, especially regarding suspected TM and copyrights infringements (1st S.). Ipland meets these obligations, as demonstrated by the seizure of the TM-infringing Revitall. *Even if* the 2nd S. includes an

⁵⁹ Sacerdoti (1997), 347; Leben (1999), 7-28; Paterson (1991), 373-90; Juillard (1994), 132-4; Yannaca-Small (2004), 8-20; Notes to OECD Draft Convention on Foreign Property Art 1, 13-15; NAFTA FTC Interpretation on Art 1105(1); 2004 Canadian Model BIT Art 5(1); *AMT v. Zaire*, [6.10]; *Loewen v. US*, [128]; and *ADF v. US*, [183].

⁶⁰ *Neer v. Mexico*, [61-62]

⁶¹ Correa (2007), 413.

obligation to limit border enforcement, this only applies to suspected infringements of IPRs beyond TMs and copyrights, and is merely to “meet the requirements...[of] Section [4].” As shown below, Ipland complies with Section 4 and therefore complies with Art. 51 2nd S.

11.2 Ipland has a right to apply national IP law to goods in transit

47. TRIPS Art 51, 1st S., footnote (fn) 13 states Ipland has “no obligation” to apply border enforcement to goods in transit suspected of TM and copyright infringement. *A contrario sensu*, fn 13 implies that Ipland has the right⁶² to suspend goods in transit suspected of TM infringement (*ie*, Revitall suspension), as well as parallel imports (*ie*, HPI suspension). According to 2nd S., permitting Ipland to apply Section 4 to cases of “other infringements” of IPRs, the suspensions of Revitall on the basis of GI infringement and HPI products on the basis of patent infringement, are justified. Art 41.1, 1st S. supports the application of all forms of IP law to goods in transit, whereby procedures shall be available to ensure “effective action against any act of infringement of [IPRs] covered by this Agreement.”⁶³

48. Any interpretation of Art 51, that Ipland can only provide border enforcement procedures when a good in transit infringes on the IP law of the country of final importation, nullifies the right under fn 13. Ipland’s customs officials have no authority to interpret foreign IP law and thus would *de facto* be prohibited from enforcing measures to goods in transit.⁶⁴ By diminishing Ipland’s rights, nullifying its benefits under TRIPS, and impeding the attainment of stronger IP protection, this interpretation is inconsistent with DSU Arts 3.2 and 3.5.

49. Finally, Freeland’s importation of medicines infringing Iplandian IPRs, including Revitall and HPI products, undermines the competitiveness of Iplandian rights holders also exporting to the same market. This trade has a direct and substantial effect within Iplandian territory, justifying the application of Iplandian IP law to these products.⁶⁵

50. Alternatively, Ipland is the “country of importation”, justifying the application of its national law to goods in transit, *ie* imported goods. Many Members adopt a broad definition of *import*, including any inflow of goods, meant for the local market or not, into a country.⁶⁶ Given the flexibilities in implementing TRIPS obligations⁶⁷, countries should be given discretion to determine the meaning of “import”.

11.3 Ipland risks being the “country of importation”

⁶² Stoll et al. (2009), 758.

⁶³ Stoll et al. (2009), 757.

⁶⁴ Kumar (2009).

⁶⁵ Abbott (2009), 45.

⁶⁶ See, *eg*, *Gramophone Company of India Ltd. – Appellants vs. Birendra Bahadur Pandey and Ors.*

⁶⁷ TRIPS Art. 1.1, S. 3.

51. *Alternatively*, there is risk, evidenced by widespread IP-infringing trade entering Ipland, that Midonian exports may end up in the channels of Iplandian commerce. Midonian goods “in transit” to Freeland may in fact be destined for Ipland. *Even if* the goods are legitimately destined for Freeland, they could leak into Ipland’s market through *eg* theft. Even under a narrower definition of *import*, the goods would still be considered *de facto* imports. The suspicion of IP infringement justifies the CML and the seizures of Revitall and HPI products.

12. Ipland complies with TRIPS Art 53.1

12.1 Ipland is not required to demand a security from rights holders

52. Art. 53.1 1st S. outlines Ipland’s *right* –not *obligation*– to ask for a security upon applying for suspension of suspected IP-infringing goods. *Even if* there is an obligation in Art. 53.1 1st S., it requires the competent authorities, *ie* Iplandian customs officials, to have the authority to demand the security. It does not require Ipland to exercise authority by demanding a security. Thus the PREA, as such, complies with Art 53.1.

12.2 Ipland has an obligation to “not deter recourse” to border enforcement procedures

53. Art 53.1 2nd S. obliges Ipland not to deter rights holders from using enforcement measures. *Even if* Art 53.1 2nd S. requires a security from rights holders, the security requirement was reduced to zero to prevent deterring rights holders from filing applications.

13. Ipland complies with TRIPS Art 53.2

Means are available for the release of goods

54. There is no evidence that Ipland has not provided an opportunity for defendants to secure the release of their goods after paying a deposit.

14. Ipland complies with TRIPS Art 58

14.1 Enforcement measures favor the defendant

55. The defendant is notified of the suspension 10 days before the rights holder; if treatment is unbalanced, it is towards the defendant. Ipland thus fulfils its obligation to the defendant. Since Freeland is arguing on behalf of the defendant, Ipland’s obligation towards Freeland is limited to promptly notifying any suspension to the defendant, which is clearly fulfilled here.

14.2 A 10-day period qualifies as “prompt notification of rights holder”

56. *Even if* Ipland has an obligation to Freeland to promptly notify the rights holder as well, the 10-day period stipulated in the PREA is consistent with the Ipland’s obligation. This period is clearly within the 10 working day limit under Art 55 and there is no requirement that notice be given to both the rights holder and the defendant at the same time.

14.3 Ipland has the right to determine the specifics of “prompt notification”

57. In accordance with TRIPS Art 1.1, Ipland has the right to determine the best method of implementation according to local context. As rights holders are notified only if a defendant applies for the release of the goods, authorities avoid needless notifications if the defendant decides not to apply for their release. Moreover, when rights holders are notified, customs authorities will have had sufficient time to prepare necessary information to allow rights holders to take an informed decision,⁶⁸ which is also in the interest of defendants.

14.4 Customs officials can seize goods *ex officio* based on suspected patent infringement

58. Art 51 allows border enforcement to apply to “other infringements” of IPRs, including patents, and nothing in TRIPS distinguishes between situations of *ex officio* enforcement and procedures initiated by rights holders. *Even if* it were more difficult to acquire *prima facie* evidence regarding *patents*, this evidence was present in the seizure of HPI *medicines*.

15. Ipland complies with GATT Art V

15.1 Freeland cannot make a GATT claim regarding border enforcement of IPRs

59. TRIPS addresses IP border enforcement, particularly regarding goods in transit⁶⁹. *Lex specialis*⁷⁰ requires that claims be treated exclusively under TRIPS as a carve out from the general rules of GATT. Therefore, Freeland cannot bring a claim under GATT Art V.

15.2 Alternatively, Ipland complies with its obligations under GATT Art V

60. Goods going from Midonia to Freeland, as long as they comply with Iplandian laws, are awarded freedom of transit. Ipland does not have any measure preventing traders from using the route that suits them best,⁷¹ on the sole condition that the trade is legitimate. The distinction between legal and illegal trade is consistent with GATT Art V:2, and is supported by Art V:3, highlighting the need to “comply with applicable customs laws and regulations.”

61. Due to the IP aspect of Freeland’s claims, TRIPS must inform the interpretation of GATT Art V to ensure there is no conflict between the two treaties.⁷² TRIPS *preamble* and Art 41.1 stipulate an obligation to prevent barriers to legitimate trade. The requirement that trade is legitimate and supported by public policy and social norms shapes the GATT V obligation.⁷³

15.3 IP-infringing medicines cannot be considered “like” IP consistent medicines

⁶⁸ See § 44 above.

⁶⁹ TRIPS Art. 51, fn 13.

⁷⁰ Generally understood as part of customary international law. *Inter alia*, Pauwelyn (2003), 385; DSU Art. 3.2.

⁷¹ As opposed to *Colombia-Ports of Entry*: see PR, *Colombia-Ports of Entry*. [7.423].

⁷² PR, *Brazil – Coconut*, [232-281]; PR, *US – 1916 Act*, [6.97], ABR, *Argentina – Footwear*, [81]; PR, *India – Quantitative Restrictions*, [5.18-5.19] (findings not modified by the ABR).

⁷³ PR, *Canada-Pharmaceuticals*. [7.69].

62. The no less favorable treatment test contained in GATT Art V:5⁷⁴ and V:6 assumes that the two products compared are like and IP-infringing and IP-consistent goods are not like. While end uses may be similar, consumers prefer IP-consistent medicines, demonstrated by their willingness to pay higher prices and their lack of confidence in authenticity, source or quality of infringing medicines in absence of an official trademark or GI. One set of goods breaks the law and the other does not. Since the products are not like, Ipland may apply differential and less favorable treatment to goods in transit infringing Iplandian IP law.

15.4 Ipland has the right to require that goods in transit comply with customs laws

63. *Even if* Ipland were to prevent freedom of transit and the goods in question were like, GATT V:3 permits Members to require goods in transit to “comply with applicable customs laws and regulations.” Read in light of TRIPS fn 13, these laws should be understood to include IP laws enforced at the border. When goods in transit are inconsistent with Iplandian law, Ipland no longer has an obligation to ensure they are not subject to delays or restrictions.

15.5 GATT Art V and TRIPS fn 13 are in conflict and TRIPS should prevail

64. *Even if* GATT V were violated, GATT and TRIPS conflict regarding goods in transit. GATT V stipulates freedom of transit, while TRIPS fn 13 allows for border enforcement of IP law on such goods. Conflict rules of public international law⁷⁵ answer that TRIPS should prevail and, as fn 13 implies, Ipland may apply IP enforcement procedures to goods in transit.

16. GATT Art XX(b) exempts Ipland from GATT V obligations

65. The CML and PREA, as such and as applied, protect humans from health risks. The quality and safety of medicines infringing Iplandian IPRs, particularly counterfeit (Revitall) and patent-infringing (HPI) ones,⁷⁶ are unclear, and Ipland must protect its population from such questionable substances. Infringement on IPRs of Iplandian Sambati-based medicines producers harms the domestic pharmaceutical industry’s capacity to deal with the T1R1 epidemic. The CML and PREA aim at protecting humans from “health risks”.

66. The CML and the PREA, as such and as applied, ensure all medicines shipped through Ipland are authentic. Thus they are necessary⁷⁷ to reduce risks to human health and are “apt to

⁷⁴ GATT Ad Article V.5.

⁷⁵ Principle of *lex specialis derogate lege generali* not only as specific supplementary law, but as rule to solve conflict in applicable law. Pauwelyn (2003), 386-9; Michaels, Pauwelyn (2010 forthcoming), 17. *Eg*, ILC Draft Articles on State Responsibility Art 55. See also PR, *EC-Trademarks/GIs*, [7.36].

⁷⁶ WHO (2006); Aldous (2005), 132.

⁷⁷ ABR, *Korea-Beef*, [164]; PR, *Colombia-Ports of Entry*, [7.550]; PR, *Brazil-Tyres*, [7.104].

produce a material contribution”⁷⁸ to eliminate dangerous medicines from the market and to improve domestic pharmaceutical manufacturing capacity, reducing risks to public health.

There are no less trade restrictive alternatives to reduce the risks to human health

67. The CML and the PREA, as such and as applied, are the most “reasonable” and least trade restrictive⁷⁹ ways of limiting health risks. Ipland has unsuccessfully tried to register the relevant patent, TM and GI for Sambati-based medicine in Midonia and Freeland. This way, Ipland could be certain that medicines traveling from Midonia to Freeland were safe for consumption, and would not harm the Iplandian pharmaceutical industry. Other alternatives are prohibitively costly, or allow IP-infringing goods to potentially leak into the Iplandian market. In addition, the impact on overall trade flows is small since they only apply to goods suspected of violating Iplandian IPRs, and not to legitimate trade. Since public health is one of the most “vital...[and] important...common interests...and values”⁸⁰, it is inconceivable that Freeland will present a reasonable alternative to pursue this objective.

17. Alternatively, GATT Art XX(d) exempts Ipland from GATT V obligations

68. Ipland’s enforcement procedures secure compliance with WTO-consistent laws. The CML and PREA are designed to “enforce compliance”⁸¹ with Ipland’s national IP law, (*ie* 1992 TMA, 1994 GIA, and patent laws),⁸² which are part of Ipland’s domestic legal system⁸³ and WTO-consistent⁸⁴. Its IP laws are in accordance with TRIPS obligations.

69. The PREA and CML are “necessary”⁸⁵ to secure compliance with WTO-consistent laws. First, ensuring compliance with domestic IP law is important as confirmed by TRIPS and by the reference to the protection of IPRs in GATT Art XX. Second, the measures contribute to ensuring compliance with Ipland’s IP law, as they prevent IP-infringing goods from leaking to the Iplandian market. Finally, there are no less trade restrictive alternatives.⁸⁶

18. Ipland complies with the chapeau of Article XX GATT

70. Ipland’s enforcement procedures do not “arbitrarily or unjustifiably discriminate” between countries where the same conditions prevail. Arbitrary or unjustifiable

⁷⁸ ABR, *Brazil-Tyres*. [151].

⁷⁹ PR, *Thailand-Cigarettes*, [75]; PR, *US-Section 337*, [5.26].

⁸⁰ ABR, *Korea-Beef*, [162]; ABR, *EC-Asbestos*, [172].

⁸¹ PR, *Mexico-Soft Drinks*, [8.175]; PR, *US-Gasoline*, [6.33].

⁸² ABR, *Korea – Beef*, [157].

⁸³ ABR, *Mexico – Soft Drinks*, [68-9].

⁸⁴ PR, *Colombia-Ports of Entry*, [7.513-4].

⁸⁵ ABR, *Korea-Beef*, [164]; PR, *Colombia-Ports of Entry*, [7.550].

⁸⁶ ABR, *Korea-Beef*, [164-6].

discrimination are determined according to identical factors.⁸⁷ Ipland introduced the enforcement procedures to comply with its domestic laws based on its TRIPS obligations. First, the application for suspension occurs regardless of the origin of the product; Ipland holds domestic producers to the same standards. All products crossing Iplandian territory are subject to the same inspection; the procedures extend to enforcement of goods *crossing* Ipland's border. Second, decisions to restrict transit or to seize goods are based on just, reasonable and transparent criteria.⁸⁸ Third, Ipland negotiated under the MIFFTA Agreement on sambati, thereby fulfilling its good faith duty to engage in negotiations.⁸⁹

71. *Even if* Ipland's procedures were to discriminate, they do not discriminate where the *same conditions prevail*. Ipland aims to protect infringing products from countries not recognizing Ipland's IP laws.⁹⁰ Thus it is justified to investigate products from those countries.

72. Ipland's enforcement procedures do not constitute a disguised restriction on international trade. The Iplandian measures are enacted to enforce its IPRs within its own territory, as the design, architecture and revealing structure indicate. Ipland's procedures only prevent IP-infringing products from entering the market, and does not restrict legitimate trade.

⁸⁷ PR, *Brazil – Tyres*, [7.225].

⁸⁸ PR, *Brazil – Tyres*, [7.257-9].

⁸⁹ ABR, *US-Shrimp*, Article 21.5, [158].

⁹⁰ ABR, *US-Shrimp*. [434-5].

4. REQUEST FOR FINDINGS

For the above stated reasons, Ipland requests the Panel to:

- (1) Find that the LPEA is in compliance with TRIPS Art 27.1 and 28.1 in addition to GATT Art. III:4, and in the event this is not to be the case, the violation is fully justified under TRIPS Art. 30 or 31 and GATT Art. XX, respectively.
- (2) Find that the transit restrictions and seizure on the basis of GI and trademark infringement is consistent with TRIPS Art. 1.1, 41.1, 41.2, 51, 53.1 and GATT Art. V. If there were to be a violation, it is fully justified under GATT Art. XX.
- (3) Find that the transit restrictions and seizure on the basis of patent infringement complies with TRIPS Art. 1.1, 41.1, 41.2, 51, 53, 58 and GATT Art. V. Even if a violation were to be found, it is fully justified under GATT Art. XX.