AC462R

2024 ASIA CUP INTERNATIONAL LAW MOOT COURT COMPETITION

MEASURES CONCERNING THE IMPORTATION AND SALE OF GARMENT PRODUCTS

THE REPUBLIC OF AVEL

(APPLICANT)

v.

THE KINGDOM OF RESSY

(RESPONDENT)

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

COUNTER-MEMORIAL FOR RESPONDENT

TABLE OF CONTENTS

PLEADINGS

I. THE COURT LACKS JURISDICTION TO ENTERTAIN THE REPUBLIC OF AVEL'S SUBMISSION OR EVEN IF THE COURT HAS JURISDICTION, THE REPUBLIC OF AVEL'S APPLICATION IS INADMISSIBLE.

The International Court of Justice ("Court" or "ICJ") cannot adjudicate the dispute since **[A]** it lacks jurisdiction for being within the Kingdom of Ressy's ("Ressy") reservation in its optional clause declaration; and assuming without conceding that it has jurisdiction, nevertheless **[B]** the Republic of Avel's ("Avel") Application is inadmissible for being inconsistent with the principles of *lis pendens*, *res judicata,* comity, *forum non conveniens*, and abuse of process.

A. The Court lacks jurisdiction to entertain the Republic of Avel's claims as the dispute comes within the reservation made by the Kingdom of Ressy.

Under Article 36(2) of the ICJ Statute, the Court only obtains compulsory jurisdiction if the parties consent through their optional clause declarations,[1] subject to their reservations.[2] In cases with two optional clause declarations, the Court must look to the declaration at issue to determine its jurisdiction to the extent that "the declarations coincide in conferring it."[3] Herein, the Court lacks jurisdiction over the dispute as it comes within Ressy's optional clause declaration reservation.[4] Specifically, **[1]** the parties have referred the current dispute to the World Trade Organization ("WTO") Dispute Settlement Body ("DSB") which has exclusive jurisdiction over disputes on violations of the General Agreement on Tariffs and Trade ("GATT"); **[2]** Ressy's reservation applies despite the absence of a functioning Appellate Body ("AB"); and **[3]** Avel's refusal to submit to the proceedings of the Multi-Party Interim Appeal Arbitration Arrangement ("MPIA") does not bring the dispute outside of Ressy's reservation.

1. The parties have referred the dispute to the DSB which has exclusive jurisdiction over disputes involving GATT violations.

---

[1] Statute of the International Court of Justice, art. 36(2), Oct. 24, 1945, 1 U.N.T.S. XVI [hereinafter "ICJ Statute"]; Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), Judgment, 1984 I.C.J. Rep. 418, ¶ 60 (November 26).
[2] ICJ Statute, art. 36(3).
[3] Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, Judgment, 2017 I.C.J. Rep. 45, ¶ 115 (February 2) [hereinafter, *Somalia v. Kenya*].
[4] Record, ¶ 33.

Ressy's reservation covers disputes referred "exclusively to some other method of peaceful settlement."[5] As original WTO members,[6] Ressy and Avel agreed to seek recourse exclusively to the WTO's DSB for GATT disputes such as what they did in this case.[7] The WTO DSB has exclusive jurisdiction over the dispute. Article 23 of the WTO's Understanding on Rules and Procedures for the Settlement of Disputes ("DSU") confers exclusive jurisdiction to the WTO over disputes on WTO law such as the GATT.[8] Article 23 of the DSU is violated when WTO Members submit a dispute on WTO law to a non-WTO dispute settlement mechanism and when they act unilaterally to get results that can be achieved through the DSU.[9] Since the parties referred the dispute exclusively to the WTO DSB, it falls within Ressy's reservation.

2. Ressy's reservation applies despite the absence of a functioning Appellate Body.

As a general rule, optional clause declarations and reservations must be read as they stand, "having regard to the words actually used."[10] Interpretation must be non-restrictive,[11] natural and reasonable, and with due regard to intent.[12] Reservations "should be interpreted in a manner compatible with the effect sought by the reserving State."[13] When the conditions of a reservation disappear, subsequent acts of a party may determine the intent of the parties.[14]

In this case, the natural reading of Ressy's reservation only requires that another method of peaceful settlement be exclusively resorted to, which in this case the referral to the WTO

---

[5] Record, ¶ 33.
[6] Record, ¶ 34.
[7] *Id.*, ¶ 27.
[8] Appellate Body Report, *Canada – Continued Suspension of Obligations in the EC – Hormones Dispute*, ¶ 371-372, WTO Doc. WT/DS321/AB/R (adopted on 16 October 2008).
[9] Appellate Body Report, *US-Import Measures on Certain Products from the HC*, ¶ 111, WTO Doc. WTIDS 165/Al3/R (adopted on 10 January 2001) [hereinafter US–Imports Measures].
[10] Anglo-Iranian Oil Co. (U.K. v. Iran), Preliminary Objection, Judgment, 1952 I.C.J. Rep. 93, Dissenting opinion of Judge Read, at 145 (July 22).
[11] Fisheries Jurisdiction (Spain v. Canada), Judgment, 1998 I.C.J. Rep. 432, 454, ¶ 45 (December 4) [hereinafter, *Fisheries Jurisdiction*].
[12] Fisheries Jurisdiction, 1998 I.C.J. Rep., ¶ 49.
[13] *Id.*, ¶ 52.
[14] Aerial Incident of 10 August 1999 (Pakistan v. India), Judgment, 2000 I.C. J. Rep. 12, ¶ 43-44 (June 21).

DSB fulfills.[15] The dysfunctionality of the AB is merely temporary and does not amount to its non-existence as the WTO member's commitment to a functional DSB by 2024[16] shows an intention to maintain its existence. Ressy's participation in the WTO DSB[17] shows an intent to retain their reservation and to utilize the WTO DSB.[18] Thus, the AB's non-functionality does not bring the dispute outside of Ressy's reservation.

3. Avel's refusal to submit to the proceedings of the MPIA does not bring the current dispute outside of the scope of Ressy's reservation.

Reservations should be interpreted "in a manner compatible with the effect sought by the reserving State."[19] Applicant may argue that this interpretation should not result to a denial of justice[20] from a negative conflict of jurisdiction.[21] However, even if the dispute is not heard by the ICJ, there will be no denial of justice as Avel may still participate in the MPIA with Ressy.[22] Under Article 25 of the DSU, the MPIA provides a legally binding and alternative means of dispute settlement which is notified to the DSB.[23]

B. Assuming *arguendo* that the Court has jurisdiction, the Application is inadmissible as it contravenes the principles of *lis pendens*, *res judicata*, comity, *forum non conveniens*, and abuse of process.

The ongoing proceedings before the WTO render the Application inadmissible for contravening the principles of **[1]** *lis pendens* and alternatively, *res judicata,* **[2]** comity, **[3]** *forum non conveniens*, and **[4]** abuse of process.

1. The Application is inadmissible due to lis pendens and, alternatively, res judicata.

---

[15] Record, ¶ 33.
[16] Ministerial Conference Outcome Document, Twelfth Session, ¶ 4, WT/L/1135 (adopted on 17 June 2022).
[17] Record, ¶¶ 27, 31.
[18] *Id.*, ¶ 31.
[19] Fisheries Jurisdiction, 1998 I.C.J. Rep., ¶ 52.
[20] Maritime Delimitation in the Indian Ocean (Somalia v. Kenya), Preliminary Objections, Judgment, 2017 I.C.J. Rep. 50, ¶ 132 (Feb. 2) [hereinafter *Somalia v. Kenya*], *citing* Factory at Chorzów, Judgment No. 8, 1927 P.C.I.J. (ser A) No. 9, at 30.
[21] *Id.*
[22] Record, ¶ 31.
[23] DSU, art 25(3).

Lis pendens is a general principle of law[24] prohibiting the exercise of the Court's jurisdiction where there are pending proceedings before another tribunal.[25] *Lis pendens* seeks to avoid conflicting rulings as this does not benefit the settlement of disputes and the good administration of justice.[26] For *lis pendens* to apply, the dispute must concern the same legal issues and parties, and be adjudicated before bodies of the same character.[27] *Lis pendens* should be applied in an adaptive manner to proceedings in judicial and quasi-judicial bodies so as not to "ignore the important role of quasi-judicial bodies in the modern international legal order."[28]

In this case, Avel instituted ICJ proceedings during the pendency of the WTO proceedings[29] when the Panel Report had not yet attained finality through adoption by the DSB.[30] While the ICJ is a judicial organ[31] and the WTO is a quasi-judicial body,[32] both bodies may still render conflicting rulings. As both disputes concern Avel's claim that Ressy's measures are inconsistent with Article III:4 of the GATT and are not justified under Article XX(a) of the GATT,[33] *lis pendens* should be applied. Similarly, the Court is precluded from re-litigating a case under the principle of *res judicata*[34] which applies where the parties, object, and legal grounds of two cases are identical[35] and the matter has been "determined, expressly

---

[24] Yuval Shany, *The Competing Jurisdictions of International Courts and Tribunals* 22 (2004).
[25] Rights of Minorities in Upper Silesia (Germany v. Poland), Judgment, 1925 P.C.I.J. (ser. A) No. 6, at 20 (April 26) [hereinafter *Germany v. Poland*].
[26] Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. UAE), Provisional Measures, 2019 I.C.J. Rep. 402, Dissenting Opinion of Judge ad hoc Cot, ¶ 3 (June 14) [hereinafter *Dissenting Op. of Judge ad hoc Cot*].
[27] Germany v. Poland, 1925 P.C.I.J. (ser. A) No. 6, at 20.
[28] Qatar v. UAE, Dissenting Op. of Judge ad hoc Cot, ¶ 9.
[29] Record, ¶¶ 29-31.
[30] DSU, art. 17(14).
[31] ICJ Statute, art. 1.
[32] David Palmeter and Petros C. Mavroidis, *Dispute Settlement in the World Trade Organization: Practice and Procedure 63-4,* 85 (2004).
[33] Record, ¶¶ 28, 31, Annex II.
[34] Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast (Nicar. v. Col.), Preliminary Objections, 2016 I.C.J. Rep. 125, ¶ 58 (March 17) [hereinafter *Nicaragua v. Colombia*].
[35] Nicaragua v. Colombia, 2016 I.C.J. Rep. 177, Separate opinion of Judge Greenwood, ¶ 4.

or by necessary implication."[36] Assuming *arguendo* that *lis pendens* does not apply, the matter has expressly been determined by the WTO Panel.[37] Thus, alternatively, *res judicata* applies.

2. The Application is inadmissible as it contravenes the principle of comity.

It has been held that the Court has discretion to decline judgment to preserve its judicial integrity.[38] For example, under the principle of comity, which is regarded as a general principle of law,[39] it would be inappropriate for the Court to exercise its jurisdiction when doing so might result in conflicting decisions on the same issue.[40] In this case, the ICJ ruling may conflict with the WTO ruling. Thus, under the principle of comity, the Application is inadmissible.

3. The Application is inadmissible as it contravenes the principle of forum non conveniens.

Similarly, the general principle of law[41] of *forum non conveniens* states that Courts may dismiss a case in favor of a more appropriate and convenient alternative judicial body.[42] In this case, the WTO proceedings are currently at the appellate stage.[43] Under the principle of *forum non conveniens*, it would thus be inappropriate for the Court to resolve the dispute pending finality of the WTO proceedings, as this could result in conflicting ICJ and WTO judgments. Since the WTO seized jurisdiction over the dispute, it should be decided with finality by the WTO.

4. The Application is inadmissible as it constitutes an abuse of process.

---

[36] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 2007 I.C.J. Rep. 95, ¶ 126 (February 26).
[37] Record, Annex II.
[38] Case concerning the Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, 1963 I.C.J. Rep. 29 (December 2) [hereinafter *Northern Cameroons*].
[39] Joel R. Paul, *Comity in International Law*, 32 HARV. INT'L. L.J. 1, 4 (1991).
[40] MOX Plant (Ireland v. United Kingdom), UNCLOS Annex VII arbitration, Order No. 3 (Suspension), June 24, 2003, ¶ 28.
[41] Ronald A. Brand, *"Forum non conveniens",* in *Max Planck Encyclopedia of International Procedural Law* (2019).
[42] *Id.*
[43] Record, ¶ 31.

Abuse of process is the general principle of law[44] that the Court should not exercise its jurisdiction in exceptional cases where proceedings were arbitrarily instituted.[45] For instance, there is abuse of process when proceedings seek to obtain an illegitimate advantage against the effectiveness of other available processes.[46] It is also done by forum shopping which is the manipulation of forum choice to obtain a favorable judgment.[47]

Here, Avel refused to acknowledge the result of the proceedings it instituted in the WTO following a Panel Report which found that the measures are justified under Article XX(a) of the GATT.[48] Instead, it instituted an action with the ICJ to obtain a judgment in its favor.[49] These acts constitute abuses of Court proceedings which render the Application inadmissible.

II. THE MEASURES TAKEN TO IMPLEMENT THE ACT ARE EITHER CONSISTENT WITH THE OBLIGATIONS OF THE KINGDOM OF RESSY UNDER ARTICLE III:4 OF THE GATT OR JUSTIFIED UNDER ARTICLE XX(A) OF THE GATT.

The Apparel Industry Forced Labor Eradication Act ("the Act") and its implementation are **[A]** consistent with Article III:4 of the GATT; or, alternatively, are **[B]** justified under Article XX(a) of the GATT.

A. The measures are consistent with Article III:4 of the GATT.

To prove an inconsistency with Article III:4 of the GATT, it must be shown that **[1]** the imported and domestic products at issue are like products; **[2]** the disputed measure is a law, regulation, or requirement affecting the internal sale, offering for sale, purchase, transportation, distribution, or use of the imported products; and **[3]** the imported products are accorded less

---

[44] Carlotta Ceretelli, *Abuse of Process: An Impossible Dialogue Between ICJ and ICSID Tribunals?* 11 J. INT'L DISP. SETTLEMENT 47, 49 (2020); Andrew D. Mitchell, Trina Malone, "Abuse of Process in Inter-State Dispute Resolution", in *Max Planck Encyclopedia of International Procedural Law* (2018).
[45] Jadhav (India v. Pakistan), Judgment, 2019 I.C.J. Rep. 418, ¶ 49.
[46] Luke Tattersall & Azfer A. Khan, *Taking Stock: Abuse of Process within the International Court of Justice,* 19 LAW & PRAC. INT'L CTS. & TRIBUNALS 229, 230 (2020).
[47] Debra Lyn Bassett, *The Forum Game* 84 NCL REV. 333, 342 (2006).
[48] Record, Annex II.
[49] *Id*.

favorable treatment than like domestic products.[50] All three elements are not present.

1. The imported and domestic products at issue are not "like products."

"Likeness" is determined by various criteria affecting the competitive relationship[51] of the products at issue. Traditional likeness criteria include physical characteristics, end uses, and consumer tastes and habits.[52] *Consumer tastes* are the extent by which consumers are willing to use the products to perform their end uses.[53] Process and production methods ("PPMs") that impact consumer tastes are also relevant in determining likeness.[54] Non-product related PPMs ("NPR-PPMs") such as preference for fair trade are relevant if they affect consumer tastes.[55] The products at issue are Avelan garments such as those from GEE and Ressyan garments such as those from NIKKUN and PUM. Consumer tastes show that they are not like products as the utilization of forced labor is a PPM of imported garments from Avel. Ressy's consumers have shown increased human rights awareness[56] and in response, multinational brands have shifted to more sustainable practices.[57] Studies also show a growing concern for fair labor among garment consumers.[58] These demonstrate that the employment or non-employment of forced labor is an NPR-PPM affecting consumer tastes. Thus, the products at issue are not "like."

2. The measures do not affect the internal sale, offering for sale, purchase, transportation, distribution, or use of imported Avelan garments.

A law, regulation, or requirement[59] "affects" the internal sale, offering for sale, purchase,

---

[50] Appellate Body Report, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 5.99, WTO Doc. WT/DS400/AB/R,WT/DS401/AB/R (adopted on 18 June 2014) [hereinafter EC – Seal Products].
[51] Appellate Body Report, *EC – Asbestos*, ¶¶ 113-114, 117, 151-154.
[52] Appellate Body Report, *Canada – Certain Measures Concerning Periodicals*, at 21, WTO Doc. WT/DS31/AB/R (adopted Jun. 30, 1997) [hereinafter Canada – Periodicals].
[53] Appellate Body Report, *EC – Asbestos*, ¶ 117.
[54] *Id.*, ¶¶ 114-115.
[55] *Id.*
[56] Record, ¶ 6, 8.
[57] *Id.*, ¶ 6.
[58] Deirdre Shaw, Gillian Hogg, Elain Wilson et al., *Fashion Victim: The Impact of Fair Trade Concerns on Clothing Choice.* J. OF STRAT. MKTG. 14 (4): 427–40 (2006).
[59] Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen*

transportation, distribution, or use of a product when it modifies the conditions of competition.[60] The Act simply requires distributors to obtain certification or attach red tags to the garments to be sold.[61] The red tags merely inform consumers whether there was compliance with the certification. The Act does not determine how garments are to be sold, distributed, and used in Ressy, and consumers retain the freedom to choose which garments to purchase.

3. The imported Avelan garments are not accorded "less favorable treatment" than that accorded to like domestic products.

There is "less favorable treatment" when there is no "effective equality of competitive opportunities"[62] between the disputed products. *Effective equality of competitive opportunities* is the equal treatment of the disputed products "as to application of laws, requirements affecting internal sale, offering for sale, and distribution or use of products."[63] It is determined by examining the measure's design, structure, and effective operation; and actual market effects.[64]

As to design, the Act seeks to end forced labor through all means available to Ressy,[65] not impose unwarranted distinctions on Avelan garments. As to actual market effects, there is no direct causal relation between the Act and financial variations among garment brands from Avel and Ressy.[66] This could be due to other factors, like the fire incident in Juno.[67]

B. Even assuming that the measures are inconsistent with Article III:4 of the GATT, these measures are justified under Article XX(a) of the GATT.

Beef, ¶ 133, WTO Doc. WT/DS161/AB/R (adopted on 10 January 2001) [hereinafter Korea – Various Measures on Beef].

[60] Panel Report, *Canada - Certain Measures Affecting the Automotive Industry*, ¶¶ 10.80, 10.84-10.85, WTO Doc. WT/DS142/R (adopted on 19 June 2000) [hereinafter Canada – Autos].

[61] Act, art. 6-7.

[62] Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper*, ¶ 10.379, WTO Doc. WT/DS44/R (adopted on 22 April 1998) [hereinafter Japan – Film].

[63] Panel Report, *Japan – Film,* ¶ 10.379 (emphasis added).

[64] Appellate Body Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines,* ¶¶ 129, 134, WTO Doc. WT/DS371/AB/R (adopted 15 July 2011).

[65] Act, art. 1(1).

[66] Record, ¶ 23.

[67] *Id.*, ¶ 11.

A disputed measure is justified under Article XX(a) if it passes a two-tiered test: that the disputed measure **[1]** is provisionally justified under the specific paragraph of Article XX; and **[2]** satisfies the requirements of the introductory clause ("chapeau") of Article XX.[68]

1. The disputed measures are provisionally justified under subparagraph (a) of Article XX as they are necessary to protect public morals.

A measure is necessary to protect public morals if it is **[i]** "designed" and **[ii]** "necessary" to protect public morals.[69] In this case, both elements are not met.

i. The measures are designed to protect public morals.

Public morals refer to the "standards for right and wrong conduct"[70] which States have the latitude to define within their territory.[71] A measure is "designed" to protect public morals when there is a relationship between the measure and the protection of public morals.[72] To determine whether a measure is designed to protect public morals, its content, structure and expected operation are assessed.[73] Article XX(a) must be interpreted in relation to applicable rules of international law.[74] Thus, Ressy may identify combating forced labor as part of its public morals in line with its commitment to international labor conventions.[75] Further, the Act aims to eradicate forced labor[76] by requiring distributors to provide clear and convincing evidence

---

[68] Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, at 22, WTO Doc. WT/DS2/AB/R (adopted on 20 May 1996) [hereinafter US – Gasoline].
[69] Appellate Body Report, *Colombia - Measures Relating to the Importation of Textiles, Apparel and Footwear,* ¶¶ 5.67-5.70, WTO Doc. WT/DS461/AB/R (adopted on 22 June 2016) [hereinafter Colombia – Textiles].
[70] Panel Report, *United States – Measures Affecting the Cross Border Supply of Gambling and Betting Services*, ¶¶ 6.465, WTO Doc. WT/DS285/R (adopted 20 April 2005) [hereinafter US – Gambling].
[71] Panel Report, *China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, ¶ 7.759, WTO Doc. WT/DS363/R (adopted on 19 January 2010) [hereinafter China – Publications].
[72] Appellate Body Report, *Colombia – Textiles,* ¶ 5.68.
[73] *Id.*, ¶¶ 5.69. art. 31 ¶ 1.
[74] DSU, art. 3.2; Appellate Body Report, *US – Gasoline*, at 25; Vienna Convention on the Law of Treaties art. 31 ¶ 1, May 23, 1969, 1155 U.N.T.S. 331; 8 I.L.M. 679.
[75] Record, Annex III.
[76] Act, art. 1.

that their products do not employ forced labor.[77] Thus, the measure relates to the protection of public morals. While the Act also applies to garments from territories outside of Ressy, combating forced labor is a shared and common interest among States, and not just Ressy.[78] Thus, even if Avel argues that the measure's design is limited by an implied jurisdictional limitation, Article XX(a) justifies addressing public moral concerns outside of the regulating Member.[79]

ii. The measures are necessary to protect public morals.

Necessity is determined by a holistic weighing and balancing of (a) the relative importance of the interest at stake; (b) the measure's degree of contribution; and (c) its trade restrictiveness.[80] Less trade restrictive alternatives making an equivalent contribution are then examined.[81]

First, the more vital the interest, the more "necessary" is the measure.[82] Forced labor has resulted in exploitation of women, substandard working conditions, and increased underage labor.[83] Thus, combating forced labor as a public moral is of utmost importance. Second, the greater the contribution, the more "necessary" is the measure.[84] This can be analyzed in "quantitative or qualitative" terms, depending on "the nature of the risk, the objective pursued, and the level of protection sought."[85] Studies suggest that States should focus on enhancing transparency in supply chains to combat forced labor.[86] Thus, the Act substantially contributes

---

[77] Act, art. 6.
[78] International Covenant on Civil and Political Rights art. 8(3)(a), March 23, 1976, 999 U.N.T.S. 171.
[79] Appellate Body Report, *EC – Seal Products*, ¶ 5.173.
[80] Appellate Body Report, *China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, ¶ 242, WTO Doc. WT/DS363/AB/R (adopted on 19 January 2010) [hereinafter China – Publications].
[81] Appellate Body Report, *Brazil – Retreaded Tyres*, ¶ 182.
[82] Appellate Body Report, *Colombia – Textiles*, ¶¶ 5.71.
[83] Record, ¶ 3, 10.
[84] Appellate Body Report, *Colombia – Textiles*, ¶¶ 5.72.
[85] Appellate Body Report, *Brazil – Retreaded Tyres*, ¶¶ 145-146.
[86] Organization for Security and Co-operation in Europe, *Model Guidelines on Government Measures to Prevent Trafficking for Labor Exploitation in Supply Chains* at 10-11 (2018); *See*

by informing consumers which garments do not use forced labor through the tags and requiring distributors to show clear and convincing evidence for the same through its certification requirements.[87] Third, trade restrictiveness is determined by the materiality of a measure's impact on imports[88] and the existence of an undue burden on exporting States.[89] In contrast with an import ban or tariff, distributors are not materially affected by the Act as they simply need to submit documentation or attach red tags to their garments.[90]

Finally, a measure is necessary if it has no less trade restrictive and reasonably available alternatives.[91] Alternatives are reasonably available when: (a) they make an equivalent contribution; (b) are not merely theoretical; (c) are not already being implemented; or (d) do not impose an undue burden on the responding State.[92] Notably, the burden of proof is with the Applicant.[93] While offering financial support could be a less trade restrictive alternative, it is unduly burdensome financially. Attempting international cooperation also does not guarantee an equivalent level of contribution as it will depend on the compliance of the parties.

2. The disputed measures satisfy the requirements of the chapeau of Article XX.

The chapeau requires that a measure should not be applied in a manner which would constitute **[i]** a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or **[ii]** a disguised restriction on international trade.[94]

i. The measures are neither arbitrarily nor unjustifiably discriminatory.

A two-step analysis determines arbitrary or unjustifiable discrimination: whether (a) there is

---

also International Trade Union Confederation, *Scandal: Inside the global supply chains of 50 top companies*, at 4 (2016).
[87] Act, art. 6, 7.
[88] Panel Report, *Brazil — Certain Measures Concerning Taxation and Charges,* ¶ 7.607, WTO Doc. WT/DS497/R (adopted on 11 January 2019).
[89] Appellate Body Report, *China – Publications*, ¶¶ 326-327.
[90] Act, art. 6, 7.
[91] Appellate Body Report, *EC – Asbestos*, ¶¶ 170-171.
[92] Appellate Body Report, *Brazil – Retreaded Tyres*, ¶ 156.
[93] Appellate Body Report, *EC – Asbestos*, ¶¶ 170-171.
[94] Appellate Body Report, *US – Shrimp*, ¶¶ 118, 158.

differential treatment between countries where the "same conditions prevail"; and (b) the resulting discrimination is "arbitrary or unjustifiable."[95]

First, the same conditions prevail when two countries have common circumstances "relevant to the context of the chapeau."[96] Ressy temporarily exempted Meluna from the Act due to their agreement to address key labor issues.[97] Meluna and Avel do not have the same conditions since the latter did not similarly commit to addressing forced labor. Second, a measure is arbitrarily or unjustifiably discriminatory based on factors like the rational relationship between a measure and its objectives,[98] regulatory flexibility,[99] and due process considerations.[100] There is a rational relationship between the Act and combating forced labor as the Act informs consumers of garments not using forced labor and it requires clear and convincing evidence for the same.[101] This requirement of evidence also shows proper regard for due process.

ii. The measures are not a disguised restriction on international trade.

A measure is a disguised restriction on international trade if it amounts to arbitrary or unjustifiable discrimination "taken under the guise of being formally within the terms of the exceptions in Article XX."[102] The absence of arbitrary or unjustifiable discrimination against Avel suggests that there is no disguised restriction on international trade.[103] The rational relation between the Act and its purpose shows that the Act is not a disguised trade restriction. Hence, the measure is justified under Article XX and the measure is consistent with the GATT.

---

[95] Appellate Body Report, *EC – Seal Products*, ¶ 5.303.
[96] *Id.*, ¶¶ 5.299-5.301.
[97] Record, ¶ 18.
[98] Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (Recourse to Article 21.5 of the DSU by Mexico),* ¶ 7.316, WTO Doc. WT/DS381/AB/RW (adopted on 3 December 2015).
[99] Appellate Body Report, *US – Shrimp*, ¶¶ 163-165.
[100] Appellate Body Reports, *EC – Seal Products*, ¶ 5.326.
[101] Act, art. 6-7.
[102] Appellate Body Report, *US – Gasoline*, at 25.
[103] *Id.*

SUBMISSIONS

The Kingdom of Ressy respectfully requests the Court to adjudge and declare that:

(a) The Court lacks jurisdiction to entertain the Republic of Avel's submission (b), or, even if the Court has jurisdiction, the Republic of Avel's Application is inadmissible;

(b) The measures taken to implement the Apparel Industry Forced Labor Eradication Act are either consistent with the obligations of the Kingdom of Ressy under Article III:4 of the General Agreement on Tariffs and Trade or justified under Article XX(a).

Respectfully submitted on behalf of the Respondent.