

## [2023 WTO Moot Court Competition]

Note:

1. In this WTO Moot Court Competition problem, current international standards, hypothetical international standards, and scientific facts are mixed. Participants should base their arguments solely on the international standards and facts presented in this problem. Do not conduct additional research on international standards or scientific facts outside of this problem.
2. There are intended omissions and ambiguities for the purpose of making a balanced position to each side. Participants may ask clarifications, if needed.

### ***Rubria – Measures affecting importation of certain agricultural products (WT/DS937)***

1. The Republic of Rubria (“Rubria”) is an advanced country and a member of the WTO. Rubria has a strong competitive edge in agriculture, wine, cheese, fashion, and livestock industries. It also has a competitive manufacturing sector, with its advanced science and technology. Rubria collaborates with neighboring countries to manufacture large civil aircrafts. Their aircrafts divide the global market for large civil aircraft, which is an oligopoly market.
2. In December of last year, there was a general election, and the current majority party, the progressive Super-Green Agro Party, came into power. One reason for the victory of the progressive party in the election was that the previous administration lost public support due to its pension reforms. To gain public favor, the Super-Green Agro Party successfully passed the bill, Love Organics Act, imposing strict quarantine requirements on imported agricultural and livestock products.
3. Calling it, “terroir,” Rubrian people are very proud of the high-quality food produced in their own country. "Terroir" refers to the combination of factors that contribute to the unique characteristics of a food, specifically those related to the natural environment in which the agricultural products (including livestock) are grown. It encompasses the soil composition, topography, climate, and local growing conditions of a particular region. Rubrian people prefer organic and locally produced food from nearby areas.
4. It is known that Rubria pursues policies based on the precautionary principle. The European Parliament defines “precautionary principle” as follows:

“Precautionary principle enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high. ... To some, it is unscientific and an obstacle to progress. To others, it is an approach that protects human health and the environment.”<sup>1</sup>

5. Rubria acknowledges the usefulness of GMOs<sup>2</sup> to some extent and is conducting experiments within government agencies. However, Rubria has not approved any single GMO case for commercialization. Recently, however, there was a report in the media that many Rubrian farms were illegally importing and cultivating GMO products.
6. United States of Complania (“Complania”) is an advanced country and a member of the WTO. The majority of its industries are focused on technology, services, and manufacturing. However, it also has excellent agricultural competitiveness. Based on its cutting-edge scientific and technological capabilities, Complania has conducted extensive research on GMOs for a long time and holds numerous patented technologies.
7. As the largest exporter of agricultural products, including live cattle and beef, Complania is the country most affected by the Rubrian legislation, Love Organics Act. Complania and Rubria have had differing views on food safety issues for a long time. Indeed, Complania has brought an SPS<sup>3</sup> dispute with Rubria in the WTO, famously known as the hormones beef dispute, which is still ongoing.
8. Complania is known to have a frontier position in the field of biotechnology. When implementing its domestic policies, Complania does not rely on the precautionary principle. Recently, Complania experienced problems in the agricultural supply chain due to the COVID-19 pandemic. Russia’s invasion of Ukraine made the problems worse in terms of securing a stable supply chain and food security. To deal with potential food shortage, Complania has recently approved the commercialization of the GMO cattle created using biotechnology. It is known that the GMO cattle have improved resistance to various diseases such as foot-and-mouth disease.
9. GMO refers to all living organisms, including animals, plants, microorganisms, etc., that contain newly combined genetic material using genetic engineering techniques. Genetic engineering technology is a technique used to select useful genes from the genes of any organism

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<sup>1</sup> [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_IDA\(2015\)573876](https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2015)573876) (last visited on May 19, 2023)

<sup>2</sup> The term, “GMO (Genetically Modified Organisms)” is primarily used in the scientific and industrial fields. The term, “LMO (Living Modified Organisms)” carries the same meaning as GMO, but emphasizes that it is alive and capable of reproduction. The latter term implies the ability to engage in reproductive functions. For the sake of consistency, this moot court competition problem uses the term, GMO. For further definition, see paras. 9-10.

<sup>3</sup> “Sanitary and Phytosanitary,” as used in the WTO SPS Agreement.

(microorganisms, plants, animals) and introduce them into other organisms to express beneficial traits.

10. GMO modifies the sequence of DNA. This involves the process of introducing DNA from an external source. Recently, a method using gene editing tools has also been invented, which involves the use of enzymes, a type of protein. GMO has been a technique used for over 40 years, and there are approval processes in place for it. These processes are quite rigorous.

11. Rubria's Ministry of Agriculture has imposed a temporary ban on the importation of GMO cattle from Complania, based on Article 5.7 of the SPS Agreement. The reason behind this decision is that there is insufficient scientific information regarding potential risks to human health associated with GMO cattle. Thus, Rubria claims it was not able to conduct a risk assessment. However, Rubria imposed the provisional measure based on available pertinent information, *i.e.*, the European Union's restriction on GMO products, which was subject to the WTO dispute with the United States of America.<sup>4</sup>

12. Rubria has been seeking to obtain additional information necessary for a more objective assessment and found a scientific article written by Prof. Justakodui Ichua-Mochiko. Dr. Ichua-Mochiko, a GMO expert and professor of Sorbonne-Gondré University in Rubria, recently published a scientific article, warning a health risk of GMO food. The article has been published in the world-renowned academic journal, Harvard Biomedical Review. Given its seriousness, Rubria has reviewed its measure on the GMO cattle from Complania every month. Until today, however, Rubria has not modified its provisional measure.

13. Complania argues that GMO technology has been developed over the course of 40 years, and it has approved the GMO cattle after extensive research and experimentation by its Department of Agriculture ("USDA"). They claim to have sufficient scientific evidence and information. Complania presented several research articles performed by the USDA internally which were never peer-reviewed. Complania asserts that Rubria's ban on imports of GMO cattle and beef is unreasonable and only protectionist.

14. Recently, there has been an outbreak of mad cow disease in Complania. Rubria claims that the current outbreak of mad cow disease, generally caused by a prion protein, is related to genetic modification since it involves the modification of enzymes, which are a type of protein. Rubria announced that there is a correlation between GMO cattle and mad cow disease. The World Organisation for Animal Health ("WOAH," previously known as Office International des Épizooties, or "OIE") does not provide international standard about the correlation. Right after the announcement, Rubria completely banned the importation of all live cattle and beef from

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<sup>4</sup> *European Communities — Measures Affecting the Approval and Marketing of Biotech Products (WT/DS291)*.

Complania, regardless of whether it is, or is from, GMO cattle or not. The only exception is organic beef from Rubria. Rubria's decision was made solely based on the recommendation made by the SPS Board of Rubria's Ministry of Agriculture. The Board is composed of members with diverse background, which include professors (majoring in political science, statistics, and medicine), journalists, food safety activists, and civil rights NGOs of Rubria.

15. Bovine spongiform encephalopathy (BSE), commonly known as mad cow disease, is a neurodegenerative disease that affects cattle. It is caused by abnormal prion proteins that accumulate in the brain, leading to the degeneration of brain tissue. BSE can occur naturally. In the past, however, most BSE occurred due to animal feed. While BSE primarily affects cattle, it can also be transmitted to humans through the consumption of infected meat,<sup>5</sup> causing a related human disease called variant Creutzfeldt-Jakob disease (vCJD). The emergence of BSE in the 1980s and 1990s brought attention to the risks associated with this disease.

16. Significant efforts have been made globally to control and prevent the spread of BSE. These include surveillance programs, strict regulations, and animal feed bans to minimize the risk of BSE transmission. As a result, the incidence of BSE has declined significantly in many countries in recent years.

17. The categorization of BSE per country typically involves assessing the prevalence of the disease within a country's cattle population and implementing control measures to prevent its spread. The WOAHA classifies countries into three categories based on their BSE risk status as follows:

18. Negligible Risk: Countries in this category have never reported indigenous cases of BSE, and their risk of BSE transmission is considered negligible. These countries have implemented comprehensive control measures and surveillance systems. They have strict regulations regarding the importation of live cattle and beef products from countries with known BSE cases.

19. Controlled Risk: Countries in this category have implemented effective control measures to minimize the risk of BSE. They may have had a few isolated cases in the past but have successfully eradicated the disease and maintained strict surveillance systems. These countries have comprehensive feed bans and other preventive measures in place.

20. Undetermined Risk: Countries in this category have not been able to provide sufficient information about their BSE risk status due to limited surveillance or lack of data. These countries might not have experienced BSE cases or have limited surveillance systems in place. In

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<sup>5</sup> It is known that not every part of a cattle poses a risk of vCJD. Rather, specified risk materials (SRM) are known to be main cause of the vCJD. SRMs are tissues in cattle that are considered to be of high risk for prion contamination. SRMs are Tonsils and Distal Ileum (80 inches of unstretched small intestine, for all cattle ages; Skull, Brain, Eyes, Spinal Cord, Trigeminal Ganglia, Dorsal Root Ganglia, Vertebral Column, for cattle, the age of which is 30 months or older.

such cases, the WOHAI cannot make a definitive determination regarding their BSE risk status. Countries in this category may include those with emerging cattle industries or those with limited resources for surveillance and monitoring.

21. Under the WOHAI categorization, Complania is one of the “Controlled Risk” countries, while Rubria is an “Undetermined Risk” country.

22. The leader of the Super-Green Agro Party, Dr. Iya Euqean, who is also the Prime Minister, publicly stated on TV that Rubria’s appropriate level of protection of BSE is the same as the WOHAI’s Negligible Risk status.

23. More than ten years ago, the WOHAI adopted a resolution, as an international standard, lifting cattle age limits for boneless beef exports and imports with regard to BSE. As mentioned above, BSE has been on a stable decline worldwide. However, natural occurrences of BSE are still observed, although they are very rare among the member countries of the WTO. In fact, Rubria itself reports several cases of naturally occurring BSE each year.

24. Rubria has not imposed any restrictions on live cattle and beef imported from other WTO member countries, which reported naturally occurring BSE. However, Rubria banned importation of live cattle and beef from Complania as a precautionary measure, because of Complania’s GMO cattle, except for organic beef.

25. Rubria's measures are as follows:

- A. Total ban on the import of live cattle and beef from Complania, except for organic beef.
- B. Only organic beef may be imported. But exporters of Complania must prove that the organic beef do not originate from GMO cattle.
- C. Exporters of Complania must prove that the organic beef is not mixed with beef derived from GMO cattle, when packaging beef at the slaughterhouse.
- D. Rubria’s Ministry of Agriculture will conduct on-site inspections of organic cattle farms and slaughterhouse in Complania at any time during a year.
- E. Rubria’s customs and quarantine authorities conduct a complete inspection of all the imported containers of Complanian organic beef, in addition to import certificates, which typically takes more than one month. For beef from other origins, a sample inspection is conducted, which can be done in 3-4 days.

26. Complania has requested consultations with Rubria under Article 4 of the DSU,<sup>6</sup> stating that Rubria's measures mentioned above are inconsistent with the following provisions of the WTO SPS Agreement, and then requested the establishment of a panel. The panel request cites the same

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<sup>6</sup> Understanding on Rules and Procedures Governing the Settlement of Disputes.

provisions as the consultation request did. No other agreements or provisions are included.

- A. SPS Agreement, Articles 2.2, 2.3
- B. SPS Agreement, Articles 3.1, 3.3
- C. SPS Agreement, Articles 5.1, 5.6, 5.7

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