
25TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2020



IN THE
INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE
NETHERLANDS

CASE CONCERNING THE PROTECTION OF BATS AND INTERNATIONAL TRADE MEASURES

THE FEDERAL STATES OF ALDUCRA

APPLICANT

v.

THE REPUBLIC OF RUNBETI

RESPONDENT

MEMORIAL *for the* RESPONDENT

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TABLE OF ABBREVIATIONS

1.	¶	Paragraph
2.	&	And
3.	ALN	The Architerpan Long Nose Bat
4.	Art.	Article
5.	ARTA	The Architerpan Regional Trade Agreement
6.	BS	Bat safe
7.	CBD	Convention on Biological Diversity
8.	CC	Chiropetra Crusaders
9.	CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
10.	Clarifications	Clarifications to the 25 th Stetson International Environmental Mott Court Competition Record
11.	cm	Centimetres
12.	CMS	Convention on Migratory Species
13.	CN	The Common Noctule
14.	CoP	Conference of Parties
15.	Doc.	Document
16.	EIA	Environmental Impact Assessment
17.	EUROBATS	Agreement on the Conservation of Population of European Bats
18.	G.A.	General Assembly
19.	GATT	The General Agreement on Trade and Tariffs

20.	I.C.J	International Court of Justice
21.	ILC	International Law Commission
22.	IUCN	International Union for Conservation of Nature
23.	km	Kilometres
24.	LLN	The Lesser Long-nosed Bat
25.	M	Metres
26.	MVP	Minimum Viable Population
27.	NBS	Not bat safe
28.	NDC	Nationally Determined Contributions
29.	No.	Number
30.	PECO	Pinwheel Energy Co.
31.	Record	25 th Stetson International Environmental Mott Court Competition Record
32.	RN	The Royal Noctule
33.	SA	Special Agreement
34.	Statute	Alducra's 2019 statute
35.	U.N.	United Nations Treaty Series
36.	UN	United Nations
37.	UNEP	United Nations Environment Programme
38.	UNFCCC	United Nations Framework Convention on Climate Change
39.	v.	Versus
40.	VCLT	Vienna Convention on the Law of Treaties
41.	WTO	World Trade Organisation

42.	μl	Microlitre
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QUESTIONS PRESENTED

- A. WHETHER RUNBETI HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS WINDFARM PROJECT?
- B. WHETHER ALDUCRA HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS TRADE MEASURES FOR TAPAGIUM PRODUCTS?

STATEMENT OF JURISDICTION

In accordance with Article 40, paragraph 1 of the Statute of the ICJ, the Federal States of Alducra and the Republic of Runbeti have submitted the following dispute to the ICJ. By Special Agreement, both parties have agreed to submit their dispute relating to the protection of bats and international trade measures to the Registrar of the Court by a Joint Notification dated July 24, 2020.

The Registrar of the Court addressed a notification to the parties on July 31, 2020. Therefore, Alducra and Runbeti have accepted the jurisdiction of the Court pursuant to Article 36(1) of the Statute, and request the Court to adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

The parties have agreed to respect the decision of this Court.

STATEMENT OF FACTS

Alducra, a developed economy, and Runbeti, a developing economy, are neighbouring States located on Architerpo. They are parties to the VCLT, CBD, CMS, EUROBATS, CITES and UNFCCC. Runbeti is a member of the WTO as well.

Architerpo has over thirteen bat species, including RN and ALN, which are listed on the IUCN Red List, CITES Appendix II, CMS Appendix II, and EUROBATS Annex 1. Both species are protected under Alducra's national laws. Alducra and Runbeti have expressed a commitment to environmental conservation by fully participating in various international conferences regarding protection of the environment.

Both countries grow agave, but Runbeti is known for producing and exporting tapagium. Along with the other countries on Architerpo, they entered into ARTA.

Alducra passed a domestic legislation mandating its farmers to use "BS" practices by the end of 2015, as the use of clonal shoots has a detrimental impact on the survival of bats. In 2019, Alducra enacted another statute requiring all tapagium sold within its territory to be labelled as "BS" or "NBS", and it imposed a tax on the latter.

Runbeti began constructing a multi-phase windfarm on land owned by PECO, to meet its commitments under the UNFCCC and in anticipation of the Paris Agreement. It conducted an extensive EIA for the first phase of the project, and, subsequently, issued permits.

When CC expressed its concerns, to Runbeti, regarding the implementation of mitigation measures, it granted them access to monitor the windfarm during 2017 and 2018.

Alducra requested Runbeti to temporarily shut down the windfarm and implement mitigative measures, by alleging international law violations. However, Runbeti has refused to do so, as it had not violated any treaty obligations or CIL. Runbeti alleged that Alducra's statute was violative of ARTA, but Alducra refused to repeal it.

After negotiations failed, the parties instituted proceedings at the ICJ.

SUMMARY OF ARGUMENTS

A. RUNBETI HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS WINDFARM PROJECT.

Runbeti began the construction of its windfarm project in furtherance of its obligations to counter climate change. The operation of the first phase of the windfarm has been alleged to cause bat mortalities, but no direct causation can be drawn. Therefore, Runbeti has complied with its treaty obligations under EUROBATS, CBD and CMS, and its duties under CIL.

B. ALDUCRA HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS TRADE MEASURES FOR TAPAGIUM PRODUCTS.

Alducra has violated the national treatment requirements under ARTA in respect of the trade measures imposed under its statute. Alternatively, if Alducra's statute is found to violate the substantive provisions of ARTA, it would not be saved by the general exceptions under Article X(1)(b) and (g).

ARGUMENTS ADVANCED

A. RUNBETI HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS WINDFARM PROJECT.

Runbeti began the construction of its windfarm in furtherance of its obligations to counter climate change.¹ The operation of its first phase has been alleged to cause bat mortalities, but no direct causation can be drawn between the two. Therefore, Runbeti has complied with its treaty obligations (II) and CIL (III).

I. *Existing scientific data indicates that there is no direct link between windfarms and bat mortalities.*

RN and ALN are identical to CN and LNN, respectively.² The evidence on bat fatalities near windfarm projects is circumstantial at best, and only shows patterns but no direct link.³ All indications are hypotheses, which can be countered with evidence.⁴

Even assuming that the evidence was conclusive, Runbeti's wind farm could not have considerably affected bats. CNs, generally, fly below 50m.⁵ There is evidence to show that female bat fatalities are higher than those of males,⁶ and that males fly lower than the operating range.⁷ This is also applicable to LLN,

¹ Record, ¶23.

² Record, ¶14.

³ D. Griffin, *Migration and Homing of Bats*, BIOLOGY OF BATS 233, 233–264 (1970).

⁴ Taber. Allison et al., *Bats and Wind Energy: Impacts, Mitigation, and Tradeoffs*, AWWI WHITE PAPER (2018).

⁵ O'Mara Teague et al., *Common noctules exploit low levels of the aerosphere*, ROYAL SOCIETY OPEN SCIENCE (v6181942: 2019).

⁶ Manuel Roeleke et al., *Habitat Use of Bats in Relation to Wind Turbines Revealed by GPS Tracking*, SCIENTIFIC REPORTS (vol. 6 28961. 4 July 2016).

⁷ *Id.*; T. Kunz et al., *Ecological Impacts of Wind Energy Development on Bats: Questions, Research Needs, and Hypotheses*. 5 FRONT. ECOL. ENVIRON.315, 315–324 (2007); Edward Arnett et al., *Patterns of Bat Fatalities at*

which belongs to the Phyllostomidae, and cannot fly higher than CNs.⁸ Most significant threats known to LLN are occupancy of roosting sites by illegal border actives, vandalism, roost deterioration, fire, vampire bats, mine closure, forage unavailability, grazing, and increasing human population.⁹

Internationally, range States such as Greece¹⁰ and Finland¹¹ have deployed turbines at heights ranging from 50–65m and there was none, or little impacts on bats. Runbeti erred on the side of caution and deployed its windfarm at a height of 115m, which is more than twice the height at which bats fly and those deployed by other range States.

II. *Runbeti adhered to its treaty obligations.*

Parties must comply with their treaty obligations in good faith.¹² Runbeti has not violated its obligation to protect bats under the (a) EUROBATS, (b) CBD, and (c) CMS, all of which are treaties to which it is a party.¹³

a) Runbeti fulfilled its fundamental obligations under EUROBATS.

Runbeti has an obligation to identify and protect bat conservation sites from disturbance, keeping in mind social considerations.¹⁴ Compliance with the

Wind Energy Facilities in North America, 72(1) THE JOURNAL OF WILDLIFE MANAGEMENT 61, 61-78(2008); J. Rydell et al., *Bat Mortality at Wind Turbines in Northwestern Europe*, ACTA CHIROPTEROLOGICA 261, 261–274 (2010).

⁸ Katja Rex et al., *Vertical Stratification of Neotropical Leaf-Nosed Bats (Chiroptera: Phyllostomidae) Revealed by Stable Carbon Isotopes*. 27(3) JOURNAL OF TROPICAL ECOLOGY 211, 211-222(2011).

⁹ Dr. Theodore Fleming et al., *5-year Review: Summary and Evaluation: Lesser Long-Nosed Bat*, 70(21) U.S. FISH AND WILDLIFE SERVICE PHEONOX, ARIZONA 5460, 5460-463(2005).

¹⁰ P. Georgiakakis et al., *Bat Fatalities at Wind Farms in North-Eastern Greece*, 14(2) ACTA CHIROPTEROLOGICA 459, 459–468(2012).

¹¹ Simon Gaultier et al., *Bats and Wind Farms: The Role and Importance of the Baltic Sea Countries in the European Context of Power Transition and Biodiversity Conservation*, 54 (17), ENVIRONMENTAL SCIENCE & TECHNOLOGY 10385, 10385-10398(2020).

¹² Vienna Convention on the Law of Treaties, Art.26, May 23, 1969, 1155 U.N.T.S. 331[hereinafter, *VCLT*].

¹³ Record, ¶4–¶6.

obligation requires Runbeti to familiarise itself with the seasonal distribution of species, while also conducting surveys and monitoring work.¹⁵ Range States have to account for the impacts that on-shore and off-shore wind turbines have on bat populations, on different geographical scales.¹⁶

(i) *Runbeti fulfilled its obligations under Article III(2).*

The windfarm project is constructed on private property owned by PECO.¹⁷ Runbeti conducted an extensive EIA, which was reviewed prior to its first phase.¹⁸ Furthermore, to promote continuing cooperation between all stakeholders,¹⁹ Runbeti allowed CC²⁰ to monitor the project post construction.²¹

Runbeti is a developing nation,²² which acted in accordance to commitments under UNFCCC.²³ It is, thereby, contributing to the protection of various species, specially bat, from climate change's potentially negative impacts.²⁴

¹⁴ The Agreement on the Conservation of Populations of European Bats, Art.III(2), Dec. 4, 1991 UNEP/CMS/COP11/Inf.12.4 [hereinafter, *EUROBATS*].

¹⁵ L. Rodrigues et al., *Guidelines for Consideration of Bats in Windfarm Projects – Revision 2014*, EUROBATS PUBLICATION SERIES No.6 at 8. [hereinafter, *Guidelines*].

¹⁶ Meeting of the Parties to the EUROBATS, Wind Turbines and Bat Population, Resolution 7.5, ¶1 (2014).

¹⁷ Record, ¶17.

¹⁸ Record, ¶19.

¹⁹ The Meeting of the Parties to the EUROBATS, Wind Turbines and Bat Population, Resolution 8.4, ¶4 & ¶5 (2018)[hereinafter, *Res8.4*].

²⁰ *Guidelines*, *supra* note 15, at 18.

²¹ Record, ¶20.

²² Record, ¶1.

²³ Record, ¶16.

²⁴ Rick Adams, *Bat Reproduction Declines When Conditions Mimic Change Projections for Western North America*, 91(8) *ECOLOGY* 2437, 2437-2445(2010).

Following the mitigation hierarchy and prioritising avoidance,²⁵ Runbeti built the wind farm at a height of 115m, considering CN and LLN are low flying bats.²⁶ This is a supervised measure²⁷, ensuring no damage has occurred to bats.

b) Runbeti acted in accordance with CBD.

Under CBD, Runbeti has complied with its specific obligations to: (i) identify components of biodiversity, (ii) make sustainable use of biodiversity. Additionally, the limiting language of the treaty provides flexibility and leverage to evaluate the measures that it seeks to enact.

(i) *Runbeti fulfilled its duty to identify components of biodiversity.*

Runbeti fulfilled its duty²⁸ of performing activities that are likely to impact the conservation of biodiversity,²⁹ by conducting an extensive EIA prior to the construction of its windfarm.³⁰ Identification and monitoring are tools for action, not ends in themselves.³¹ Therefore, Runbeti ensured that all information is accessible, and can be analysed, evaluated and disseminated in useful forms to CC³² by granting monitoring rights.³³

(ii) *Runbeti has made sustainable use of biodiversity.*

²⁵ Guidelines, *supra* note 15, at 11.

²⁶ *Supra* discussion A(III)(a).

²⁷ Res8.4, *supra* note 19, ¶8.

²⁸ Convention on Biological Diversity, Art.7(a), Jun. 5, 1992, 1760 U.N.T.S. 79[hereinafter, *CBD*].

²⁹ *Id.*, Art.7(c).

³⁰ Record, ¶19.

³¹ ARTHUR BRONWYN, A COMMENTARY ON THE CONVENTION ON BIOLOGICAL DIVERSITY AT 10(1993).

³² *Id.*; *CBD*, *supra* note 28, Art. 7(d).

³³ Record, ¶20.

Sustainable use is defined in terms of intergenerational equity.³⁴ So, a blend of an ecosystem and species approach need to be implemented.³⁵ However, there is no single way to implement the ecosystem based approach identified under Article 10, as it depends on “local, provincial, national, regional or global conditions”.³⁶

Runbeti made considerations for the conservation and sustainable use of biodiversity, as far as possible and appropriate.³⁷ It conducted an EIA,³⁸ and granted monitoring rights to CC.³⁹ Additionally, its implementation could apply differently to different species.⁴⁰

(iii) *The limiting language of CBD weakens Runbeti’s obligations.*

Parties are mandated to conserve their biological resources, as far as possible and appropriate.⁴¹ Language such as “as far as possible and appropriate”, “undertake”, “promote”, and “encourage” are unmeasured qualifiers,⁴² which apply differently for developed and developing nations, and must be distinguished.⁴³ This gives parties flexibility and leverage to evaluate the measures they seek.⁴⁴ In its

³⁴ CBD, *supra* note 28, Art. 2 & Annex 4.

³⁵ Lyle Glowkd, *Complementarities between the Convention on Migratory Species and the Convention on Biological Diversity*, 3:3 JOURNAL OF INTERNATIONAL WILDLIFE LAW AND POLICY 205, 227(2008); CBD, *supra* note 28, Art. 10.

³⁶ Conference of the parties to the CBD serving as the meeting of the parties to the Cartagena Protocol on Biosafety, Organization of work, UNEP/CBD/ BS/COP-MOP/5/3(June 21, 2010) [hereinafter, *COPMOP*].

³⁷ CBD, *supra* note 28, Art. 10(a).

³⁸ Record, ¶19.

³⁹ CBD, *supra* note 28, Art. 7 &8(l).

⁴⁰ COPMOP, *supra* note 36.

⁴¹ CBD, *supra* note 28, Art. 11.

⁴² *Id.* ;Bronwyn, *supra* note 31.

⁴³ United Nations Vienna Convention for the Protection of the Ozone Layer, Mar. 22, 1982, 26 ILM 1516.

⁴⁴ CARMEN CONZALEZ, ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW, 557(2013).

limited capacity as a developing nation, Runbeti conducted an EIA⁴⁵ to assess any serious harm that may arise out of it, and no serious threats were identified.

Additionally, language like “to endeavour”⁴⁶ introduces broad and elastic goals, which weaken obligations. The absence of specificity does not indicate a binding nature, as would also be implied through words such as “shall”.⁴⁷

c) Runbeti has not violated its obligations under CMS.

Under CMS, Runbeti complied with its duty to: (i) protect endangered species, and (ii) comply with Resolutions. Alternatively, Runbeti is not bound to comply with CMS Resolutions, as they are non-binding in nature.

(i) *Runbeti has not violated its duty to protect endangered migratory species.*

CMS places an obligation upon States to conserve migratory species.⁴⁸

Runbeti has not violated this requirement, as no direct link was established between windfarms and bat fatalities.⁴⁹ On the contrary, Runbeti worked in furtherance of these obligations. The windfarm

⁴⁵ CBD, *supra* note 28, Art. 14(1)(a).

⁴⁶ *Id.*, Art. 15(a) ¶ 2 & 6.

⁴⁷ IUCN ENVIRONMENTAL LAW PROGRAMME, DRAFT INTERNATIONAL COVENANT ON ENVIRONMENT AND DEVELOPMENT at 80 (2010).

⁴⁸ Convention on the Conservation of Migratory Species of Wild Animals, Art. II(1), June 23, 1979, 1651 U.N.T.S. 333.

⁴⁹ *Supra* discussion A(III)(a).

project was undertaken to counter the negative effects of climate change on migratory species of birds, and bats, specifically, as well.⁵⁰

(ii) *Runbeti did not violate the CMS Resolutions.*

Resolution 7.5 requires parties to conduct impact assessments of wind turbines on migratory species to assess the cumulative environmental impacts, and to take full account of the precautionary principle.⁵¹ As established, Runbeti had not defied the precautionary principle,⁵² and the EIA was conducted in its capacity as a developing State. Furthermore, Resolution 10.3 also recognises that the practical approach to the identification, designation, protection and management of critical sites will vary from one species to another.

(iii) *CMS Resolutions are non-binding.*

Alternatively, CMS Resolutions are not binding. Resolutions are, generally, intended to provide long-standing guidance with respect to the Convention.⁵³ So, the primary purpose of these resolutions is to interpret the Convention's text through its non-binding language.

III. *Runbeti has not violated the principles of CIL.*

⁵⁰ *Id.*

⁵¹ Meeting of the Conference of the Parties to the Convention on the CMS, Draft Report, UNEP/CMS/COP12/Doc.21.1.10. (Oct. 23, 2017).

⁵² *Supra* discussion A(III)(a).

⁵³ Meeting of the Conference of the Parties to the CMS, Review of Decisions, Resolution 11.6 (2014).

CIL place binding obligations upon States.⁵⁴ In respect of its windfarm, Runbeti is required to: (a) apply the precautionary principle, (b) observe due diligence, (c) avoid transboundary harm, and (d) cooperate to protect the environment.

a) Runbeti has complied with the precautionary principle.

The precautionary principle is a norm of CIL,⁵⁵ obligating States to anticipate, avoid and mitigate serious or irreversible threats to the environment, even in the absence of scientific certainty.⁵⁶ The risks associated with climate change are serious and irreversible, and may threaten certain ecosystems.⁵⁷

To combat these threats, Runbeti took cost effective measures by investing in its windfarm. Hence, such actions are, *de facto*, precautionary in nature. Through its windfarm, Runbeti fulfilled its obligations⁵⁸ and responsibilities⁵⁹ under NDC, keeping in mind the developmental and environmental needs of intergenerational equity, while focusing on the common concern of climate change and its adverse effects.⁶⁰

⁵⁴ Arie Trouwborst, *Evolution and Status of the Precautionary Principle in International Law*, 96(4) AMERICAN JOURNAL OF LAW. 1016, 1016-018 (2002).

⁵⁵ Daniel Bodansky, *Customary (and Not So Customary) International Environmental Law*, 3 GLOBAL LEGAL STUDIES JOURNAL. 105, 108 (1995); Owen McIntyre et al., *The Precautionary Principle As A Norm Of CIL*, 9(2) JOURNAL OF ENVIRONMENTAL LAW 221, 221–241 (1997).

⁵⁶ U.N. Conference on Environment and Development, Rio Declaration on Environment and Development, Principle 15, U.N. Doc. A/CONF.151/26/Rev.1 (Aug. 12, 1992) [hereinafter, *RioDec*].

⁵⁷ Amanda Staudt et al., *The added complications of climate change: understanding and managing biodiversity and ecosystems*, 11(9) FRONTIERS IN ECOLOGY AND THE ENVIRONMENT 494, 494 (2013).

⁵⁸ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

⁵⁹ Declaration of the United Nations Conference on the Human Environment, Principle 3&5, UN Doc. A/CONF.151/26 (June 16, 1992).

⁶⁰ United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107. .

The precautionary principle is not a concrete obligation,⁶¹ rather it may be invoked to justify risk regulations.⁶² The principle must be applied by a State through exercise of its sovereign right to determine the level of protection to be imposed under its jurisdiction.⁶³

Runbeti only started construction after conducting and reviewing the EIA.⁶⁴ Scientific understanding of nature is not comprehensive, and changes over time. Thus, if uncertainty is cited as a justification for inaction, the resulting effects may invite more harm.⁶⁵ Additionally, a lack of analysis⁶⁶ on other complex scientific issues such as climate change,⁶⁷ and geographical characteristics⁶⁸ might also be responsible for bat mortalities.⁶⁹

b) Runbeti has complied with the due diligence requirements.

CIL requires states to observe due diligence,⁷⁰ which is an obligation of conduct and not result.⁷¹ It entails a level of vigilance,⁷² and anticipation,⁷³ to

⁶¹ ANDRE NOLLKAEMPER, *THE PRECAUTIONARY PRINCIPLE AND INTERNATIONAL LAW: THE CHALLENGE OF IMPLEMENTATION* 80 (1996).

⁶² Sonia Boutillon, *The Precautionary Principle: Development of an International Standard*, 23 MICH. J. INT'L L. 429, 429 (2002).

⁶³ Franz Perrez, *Precaution from Rio to Johannesburg Proceedings of a Geneva Environment Network roundtable*, GENEVA ENVIRONMENT NETWORK 165, 165 (2002).

⁶⁴ Record, ¶19.

⁶⁵ Boutillon, *supra* note 62.

⁶⁶ Perrez, *supra* note 63, 154.

⁶⁷ S.West, *The Influence of Regional Climate and Nightly Weather Conditions on Activity Patterns of Insectivorous Bats*. 4(1)ACTA CHIROPTEROLOGICA 17, 17 (2002).

⁶⁸ D. Kelm, *Seasonal Bat Activity in Relation to Distance to Hedgerows in an Agricultural Landscape in Central Europe and Implications for Wind Energy Development*, 16 (1) ACTA CHIROPTEROLOGICA 65, 65-73 (2014).

⁶⁹ *Supra* discussion A(III)(a).

⁷⁰ XUE HANQIN, *THE DOCTRINE OF DUE DILIGENCE AND STANDARD OF CONDUCT, IN TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW* 163 (2003).

⁷¹ *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, ¶ 110, Case No. 17, Advisory Opinion of Feb. 1, 2011, 15 ITLOS Rep. 10 [hereinafter, Res&obs].

⁷² *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, ¶185, Judgement, 2010 I.C.J. 113 (Apr. 20)[hereinafter, PulpM]; *Gabcikovo-Nagymaros Project (Hung. v. Slov.)*, judgement, 1997 I.C.J. 3 (Feb. 5)[hereinafter, GabNag].

⁷³ GabNag, *supra* note 72, ¶187.

ensure that states minimise the risk of transboundary harm.⁷⁴ Accordingly, due diligence is fulfilled if duties like performing an EIA,⁷⁵ cooperating,⁷⁶ and monitoring⁷⁷ are performed.

Runbeti was not required to prevent the occurrence of all harm.⁷⁸ In furtherance of these obligations, it approved the windfarm after reviewing results of the EIA.⁷⁹ Moreover, the bat conservation group, CC, had access⁸⁰ to conduct surveys, and communicated the results to Alducra.⁸¹ Therefore, by taking such measures,⁸² Runbeti discharged its due diligence obligations.⁸³

c) Runbeti did not breach its duty to avoid causing transboundary harm.

States are obligated to ensure that activities within their jurisdiction or control do not cause harm to other States.⁸⁴

The burden of proving a breach of this obligation lies on the claimant State.⁸⁵ So, Alducra must establish that Runbeti's actions have caused significant harm, based on clear and convincing evidence,⁸⁶ which must include a direct

⁷⁴ Int'l Law Comm'n, Rep. on the Work of Its Fifty-Third Session, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, U.N.Doc. A/56/10, at 154 (2001).

⁷⁵ Res&obs, *supra* note 71, ¶141-150.

⁷⁶ Hanqin, *supra* note 70.

⁷⁷ *Id.* at 166.

⁷⁸ PulpM, *supra* note 72, ¶187.

⁷⁹ Record, ¶19.

⁸⁰ Record, ¶20.

⁸¹ Record, ¶18.

⁸² PulpM, *supra* note 72, ¶ 205 & ¶ 215-216.

⁸³ Hanqin, *supra* note 70.

⁸⁴ Trail Smelter Arbitration (U.S. v. Can.) 1938/1941, 3 R.I.A.A. 1905 [hereinafter, *TrailS*]; Territorial Jurisdiction of International Commission on the River Oder (U.K. v. Pol.) 1959 P.C.I.J. Ser. A, No. 23 (Sept. 10); Corfu Channel (U.K. v. Alb.), Judgement, 1949 I.C.J. 4, 22 (Apr. 9).

⁸⁵ ARIE TROUWBORST, PRECAUTIONARY RIGHTS AND DUTIES OF STATES 193 (2006).

⁸⁶ PulpM, *supra* note 72.

link⁸⁷ between the harm caused within their territory and the windfarm. Runbeti also conducted an EIA that demonstrated no transboundary effects would arise.⁸⁸

As established, there is no direct link between bat deaths and the windfarm.⁸⁹ The surveys conducted by CC noted a 50.21% increase in the number of deaths in 2018, from 2017.⁹⁰ The first phase of the windfarm project was consistently operated since December 2016,⁹¹ but figures have been inconsistent between 2017 and 2018. Therefore, a direct cause and effect relationship cannot be established.

d) Runbeti fulfilled its duty to cooperate.

The duty to cooperate in protecting the environment is a norm of CIL,⁹² stemming from the obligation to notify, exchange information, consult with potentially affected States, and coordinate international scientific research respectively.⁹³ However, States need not arrive at an agreement,⁹⁴ and the State that is being consulted cannot veto the action.⁹⁵

⁸⁷ PulpM, *supra* note 72, ¶225, ¶257, ¶259, ¶264.

⁸⁸ RioDec, *supra* note 56, Principle 17; Mox Plant case (ITLOS –U.K. v. Ir.), Case No 10, Order, 2001, ICGJ 343 (Dec. 03) [hereinafter, *MOXPlant*].

⁸⁹ *Supra* discussion A(III)(a).

⁹⁰ Record, ¶21.

⁹¹ Record, ¶19.

⁹² GabNag, *supra* note 72.

⁹³ RioDec, *supra* note 56, Principle 9.

⁹⁴ P. SANDS, *PRINCIPLES OF INTERNATIONAL LAW* 463-464 (2003); *Texaco Overseas Petroleum Co. and California Asiatic Oil Co. v. Libya*, ¶87, 53 ILR 389 (1977); *Kuwait v. American Independent Oil Co.*, 21 ILM 976 (1982).

⁹⁵ *Id.*

Runbeti has fulfilled its duty to cooperate by communicating and notifying Alducra through diplomatic dialogue.⁹⁶ The nature of possible damage from transboundary harm is ongoing.⁹⁷ Hence, CC was given access to monitor the project site.⁹⁸ Such access, however, was revoked, because it was used in bad faith⁹⁹ to hinder Runbeti's use of its own resources¹⁰⁰ which was in opposition to Runbeti's interests¹⁰¹ as a State. Therefore, by following procedural obligations to cooperate, assessing potential environmental risks through continuous monitoring,¹⁰² and negotiating in good faith, Runbeti has fulfilled its duty to cooperate.¹⁰³

B. ALDUCRA HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS TRADE MEASURES FOR TAPAGIUM PRODUCTS.

Alducra violated the requirements under ARTA with respect to its trade measures. Although the tax complies with the first sentence of Article VIII:2, it does not comply with the second sentence (II). Furthermore, the labelling requirement does not comply with the requirements of Article VIII:3 (III). If Alducra's statute is found to be in violation of the substantive provisions of ARTA, it would also not be saved by the general exceptions under Article X(1)(b) and (g) (IV).

I. *Alducra's statute violates Article VIII:2, second sentence.*

⁹⁶MOXPlant, *supra* note 88, Separate opinion, Judge Rudiger Wolfrum.

⁹⁷ Case Concerning Land Reclamation by Singapore in and Around The Straits Of Johar (ITLOS -Malaysia v. Singapore), ¶99, Case No 12, 2003, Order, 126 IRL (Oct. 03).

⁹⁸ Record, ¶20.

⁹⁹ Steven Reinhold, *Good Faith in International Law*, 2 UCL JOURNAL OF LAW AND JURISPRUDENCE 40, 40- 63 (2013); TrailS, *supra* note 84.

¹⁰⁰ Record, ¶22.

¹⁰¹ Sands, *supra* note 94.

¹⁰² PulpM, *supra* note 72, ¶225, ¶257, ¶259, ¶264.

¹⁰³ GabNag, *supra* note 72, ¶112, ¶139-41.

The second sentence contains a separate prohibition,¹⁰⁴ which must also be satisfied since it is conceded that the measure does not violate the first sentence.

The first two tiers under the second sentence of GATT — the products must be “directly competitive or substitutable”, and must not be “similarly taxed” — do not need to be tested. They are imported from *Ad Article III:2*, which is specifically excluded from ARTA.

a) The absence of an *Ad Article VIII:2* in ARTA evinces the intent to deviate from GATT.

Annex I of GATT provides for an *Ad Article III:2*, but ARTA does not provide for an interpretive note to be read along with Article VIII:2. Following the principle of *expressio unius est exclusio alterius*,¹⁰⁵ it can be inferred that the contracting States sought to exclude the other requirements under Article III:2, second sentence of the GATT.

The second sentence must be interpreted in accordance with the ordinary meaning,¹⁰⁶ and in context of the remaining provisions of the Article.¹⁰⁷ So, there will be no requirement of determining whether domestic and imported products are “directly competitive or substitutable”.¹⁰⁸ Instead, the two products can only be compared according to the sole criterion provided in

¹⁰⁴ Appellate Body Report, *Japan — Taxes on Alcoholic Beverages*, 18 – 19, WTO Doc. WT/ DS8/AB/R (adopted Oct. 4, 1996) [hereinafter *AlcoABR*].

¹⁰⁵ *Ford v. United States*, 273 U.S. 593, 611 (1927).

¹⁰⁶ VCLT, *supra* note 12, Art. 31(1).

¹⁰⁷ MARK VILLIGER, COMMENTARY ON THE 1969 VIENNA CONVENTION ON THE LAW OF TREATIES 427 (2009).

¹⁰⁸ General Agreement on Tariffs and Trade, Annex I & Art. III:2, Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter, *GATT*].

Article VIII — the likeness analysis — which has been determined.¹⁰⁹ Additionally, there is no requirement that the products be “not similarly taxed”.¹¹⁰ It only has to be established that the internal tax was applied to “afford protection to domestic production”.

b) Alducra’s tax on imported products affords protection to domestic production.

The second sentence specifically invokes Article VIII:1 to determine whether the tax has been imposed to “afford protection to domestic protection”. It is irrelevant whether Alducra intended to protect domestic tapagium, so long as the implementation, *de facto*, leads to this effect on imported products.¹¹¹

Despite the fact that an identical tax is imposed on imported tapagium,¹¹² it still affords protection to domestic production. It was applied in a manner that provided *de facto* protection to domestic production.¹¹³ Alducra’s 2015 statute obligated all domestic farmers to transition to “BS” practices by the end of 2015.¹¹⁴ Even if Alducra’s domestic farmers had not complied with the requirements by then, in practice, they had till December 29, 2020 to comply. The practices required were equivalent under both the statutes.¹¹⁵ Runbeti’s farmers had only one year to align their practices.

II. *Alducra’s statute violates Article VIII:3.*

¹⁰⁹ *Supra* discussion Part (B)(II)(a).

¹¹⁰ GATT, *supra* note 112, at *Ad Art. III:2*.

¹¹¹ Panel Report, *Japan — Taxes on Alcoholic Beverages*, ¶76.28, WTO Doc. WT/DS8/R (adopted July 11, 1996).

¹¹² Record, ¶26.

¹¹³ AlcoABR, *supra* note 104, at 28.

¹¹⁴ Record, ¶15.

¹¹⁵ *Id.*, ¶26.

Article VIII:3 is violated if: (a) the imported and domestic products are “like” products, (b) the measure in question is a “law, regulation, or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use”, and (c) the imported products are accorded “less favourable” treatment than domestic products.

a) Alducra and Runbeti’s tapagium are “like” products.

In order to determine whether two products are “like”, their physical properties, end-uses in a given market, consumers’ tastes and habits,¹¹⁶ and tariff classification must be compared.¹¹⁷ So, the criteria applicable under Article VIII:2, first sentence are also applicable hereinunder.¹¹⁸ Alducra’s domestically-produced tapagium and Runbeti’s imported tapagium are only differentiable on the basis of the agave’s source. So , they must be treated as like products,¹¹⁹ and would fall within the broader scope of Article VIII:3 allowing for the inclusion of a broader scope of products based on the extent of the competitive relationship.¹²⁰

b) The labelling provision is a binding requirement, and affects internal sale and purchase.

A “requirement” is binding, enforceable and must be complied with within the domestic legal system of the State instituting the trade measure.¹²¹ The

¹¹⁶ Appellate Body Report, *Canada — Certain Measures Concerning Periodicals*, 21, WTO Doc. WT/DS31/AB/R (adopted Jun. 30, 1997).

¹¹⁷AlcoABR, *supra* note 104, at pp. 21.

¹¹⁸ Appellate Body Report, *European Communities — Measures Affecting Asbestos and Asbestos-containing Products*, 39, WTO Doc. WT/DS135/AB/R (adopted Mar. 12, 2001) [hereinafter, *AppAsbestosPan*].

¹¹⁹ Panel Report, *India — Measures Affecting the Auto. Sector*, ¶7.174, WTO Doc. WT/DS146/R (adopted Dec. 21, 2001) [hereinafter, *AutosP*].

¹²⁰ *AppAsbestosPan*, *supra* note 118, at 38.

¹²¹ *AutosP*, *supra* note 119, ¶7.190.

labelling provision enforces binding requirements upon all tapagium sold within Alducra, to include a label indicating whether it is “BS” or “NBS”.¹²²

The word “affecting”, which defines the scope of “internal sale, offering for sale, purchase, transportation, distribution, or use”, has a broad scope.¹²³ It covers not only measures that directly regulate the sale of products, but also the measures that create incentives or disincentives.¹²⁴ In this case, *ceteris paribus*, consumers decisions will be based on the labels, which indicate whether the tapagium is “BS” or “NBS”. Even if all other factors are not controlled, an environmentally conscious consumer will exercise their personal choice on the basis of farming practices. Therefore, the labelling requirement affects the sale of tapagium by altering the existing conditions of competition.¹²⁵

c) The labelling provision affords less favourable treatment to imported tapagium.

Whether imported products are treated less favourably than domestic products has to be determined by examining if the measure modifies the conditions of competition in the market to the detriment of imports.¹²⁶ As in the case of

¹²² Record, ¶26.

¹²³ Appellate Body Report, *European Communities — Regime for the Importation, Sale and Distribution of Bananas*, ¶220, WTO Doc. WT/DS27/AB/R (adopted Sep. 09, 1997).

¹²⁴ Panel Report, *China — Measures Affecting Trading Rights And Distribution Services For Certain Publications And Audiovisual Entertainment Products*, ¶7.1450, WTO Doc. WT/DS363 /R (adopted Aug. 12, 2009).

¹²⁵ Panel Report, *United States — Certain Measures Relating to the Renewable Energy Sector*, ¶7.161, WTO Doc. WT/DS510/R (adopted June 27, 2019).

¹²⁶ Appellate Body Report, *Korea — Measures Affecting Import of Fresh, Chilled and Frozen Beef*, ¶137, WTO Doc. WT/DS161/AB/R (adopted Dec. 11, 2000) [hereinafter, *BeefABR*].

United States — Shrimp,¹²⁷ Alducra’s labelling requirement provides an advantage and disadvantage, the access to which is controlled by the trade measure. A “BS” label incentivises consumer to purchase “BS” tapagium, and disincentivises the purchase of “NBS” tapagium.

Furthermore, even where the measure imposes formally identical requirements, it could accord less favourable treatment to imports in practice.¹²⁸ Alducra’s domestic and Runbetis’ imported tapagium are, both, subject to identical labelling requirements.¹²⁹ However, as established, Runbeti is effectively disadvantaged in its ability to access and use the “BS” label.¹³⁰ Therefore, the labelling requirement violates Article VIII:3, because it accords *de facto* “less favourable” treatment to imported tapagium.

III. ***Alducra’s statute does not satisfy the requirements of the general exceptions under Article X(1)(b) and (g).***

Article X provides for general exceptions, which are not limited by any substantive provisions of ARTA. Therefore, subject to the chapeau, it allows for the adoption of measures inconsistent with Article VIII, if: (a) the trade measure falls within the scope of at least one of the listed exceptions, and (b) the measure satisfies the requirements of the chapeau.¹³¹

a) Alducra’s statute is not necessary to protect animal, or plant life or health.

¹²⁷ Appellate Body Report, *United States — Measures Concerning The Importation, Marketing And Sale Of Tuna And Tuna Products*, ¶237 – 239, WTO Doc. WT/DS381/AB/R (adopted May 12, 2012).

¹²⁸ *Id.* ¶136.

¹²⁹ Record, ¶26.

¹³⁰ *Supra* discussion Part (B)(I)(b).

¹³¹ Appellate Body Report, *Brazil — Measures Affecting Imports of Retreated Tyres*, ¶139, WTO Doc. WT/DS332/AB/R (adopted Dec. 03, 2007) [hereinafter, *ReTyres.ABR*].

Article X(1)(b) allows for the adoption of any measure if: (i) the policy is designed to protect animal, or plant life or health, and (ii) the measure is necessary to fulfil the policy objective.¹³²

(i) *Alducra's policy of requiring "BS" farming practices falls within the range of policies designed to protect only animal, but not plant life or health.*

Alducra possess authority, as a sovereign State, to set its own environmental objectives.¹³³ However, it is not acceptable for Alducra to use economic measures to require other States to adopt the same regulatory program, and to achieve the same policy goal as that within its territory.¹³⁴

Nonetheless, it is accepted that Alducra's statute is designed to protect animal life or health. There exists a risk to the life or health of ALN,¹³⁵ because ALN is deprived of a significant source of food when the agaves are not allowed to flower.¹³⁶

However, the statute is not designed to protect agave life or health.

Although it is claimed that the process of farming through clones

¹³² Panel Report, *United States — Standards for Reformulated and Conventional Gasoline*, ¶6.20, WTO Doc. WT/DS2/R (adopted Jan. 29, 1996).

¹³³ ReTyresABR, *surpanote* 131, ¶140.

¹³⁴ Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, ¶161, WTO Doc. WT/DS58/AB/R (adopted Oct. 12, 1998) [hereinafter, *ShrimpABR*].

¹³⁵ Panel Report, *European Communities — Measures Affecting Asbestos and Asbestos-containing Products*, ¶8.184, WTO Doc. WT/DS135/R (adopted Sep. 18, 2000) [hereinafter, *AsbestosPan*].

¹³⁶ Martha Rocha et al., *Pollination Biology and Adaptive Radiation of Agavaceae, with Special Emphasis on the Genus Agave*, 22 ALISO: A JOURNAL OF SYSTEMATIC AND EVOLUTIONARY BOTANY 329, 329- 338 (2006).

depresses genetic diversity,¹³⁷ the pollination ecology in wild and cultivated species of agaves has been scarcely studied.¹³⁸ There is no direct correlation drawn between farming practices that allow increased flowering of agaves and increased genetic diversity in agaves. The ecological relationships between LLN and agaves has been described only through a correlation, which is based on the presence of bats in areas with abundance and diversity of agave during their flowering period.¹³⁹

(ii) *Alducra's 2019 measures are not necessary to fulfil the objective of the policy.*

In order to determine whether the statute is necessary to fulfil Alducra's policy objective, the level of protection sought to be achieved must be determined.¹⁴⁰ The statute has set a standard, which claims that allowing 5% of agaves to flower will provide food for 89 bats.¹⁴¹ However, the actual protection might be lower since total volume of nectar produced and concentration of sugar therein varies across different species.¹⁴² Approximately 89 LLNs could be fed each night only if the flower produces 180µl of nectar in 100 active flowers per night per inflorescence, with a sugar concentration of 26%.¹⁴³

¹³⁷ Trejo-Salazar et al., *Save Our Bats, Save Our Tequila: Industry and Sci. Join Forces to Help Bats and Agaves*, 36 NATURAL AREAS JOURNAL 523,523- 526 (2016).

¹³⁸ *Id.* 525.

¹³⁹ Alberto Rojas-Martínez et al., *Análisis comparativo de la quiroptero fauna del Valle de Tehuacán-Cuicatlán, Puebla-Oaxaca*, 67 ACTA ZOOLOGICA MEXICANA 1, (1996).

¹⁴⁰ AsbestosPan, *supra* note 135, ¶8.179.

¹⁴¹ Trejo-Salazar, *supra* note 137, at 527.

¹⁴² Rocha *supra* note 136.

¹⁴³ Trejo-Salazar, *supra* note 137, at 527.

Secondly, to determine whether the measure is necessary, the importance of common interests protected and the contribution made by the compliance measure to the enforcement of the regulation at issue must be weighed and balanced.¹⁴⁴

It is not disputed that the protection of the lives and health of ALNs is an important interest. Bats are ecologically important to Architerpo,¹⁴⁵ and ALN, in particular, is a vulnerable species.¹⁴⁶

The term “necessary” must be understood as being positioned significantly closer, on the continuum, to the pole of being indispensable than to merely “making a contribution to”.¹⁴⁷ It cannot be stated that the statute is likely to make material contribution to the animal health objective of Alducra. As established,¹⁴⁸ 89 LLNs could be fed each night during the flowering period if certain further pre-conditions are satisfied.¹⁴⁹ Furthermore, the measure is also not compulsory in nature, and allows producers to continue using “NBS” farming practices as long as they pay the tax, and label their products as “NBS”.

b) Alducra’s statute is not made effective in conjunction with restrictions on domestic production.

¹⁴⁴ BeefABR, *supra* note 126, ¶164.

¹⁴⁵ *Id.*, ¶14.

¹⁴⁶ *Id.*

¹⁴⁷ Panel Report, *European Communities – Conditions For The Granting Of Tariff Preferences To Developing Countries*, ¶7.211, WTO Doc. WT/DS246/R (adopted Dec. 01, 2003).

¹⁴⁸ *Supra* discussion Part (B)(III)(a)(ii).

¹⁴⁹ Trejo-Salazar, *supra* note 137, at 527.

To determine whether the measure falls within the scope of Article X(1)(g), it must be concerned with the protection of an “exhaustible natural resource”, relate to the conservation thereof, and be made effective in conjunction with restrictions on domestic production.

In light of the recognition of sustainable development in the Preamble of ARTA, living resources such as animals are included within “exhaustible natural resources”.¹⁵⁰ Therefore, ALN may be considered as an “exhaustible natural resource”, as it is a vulnerable species.¹⁵¹

It is accepted that there exists a relationship between the measure and the legitimate policy of conserving bats,¹⁵² as its objective is to institute “BS” practices and increase the availability of nectar for bats.¹⁵³

In determining whether the statute imposes obligations in respect of domestically-produced and imported tapagium, it must be seen whether there has been an even-handed imposition.¹⁵⁴ Despite the fact that the statute has imposed a similar tax on domestically-produced and imported tapagium,¹⁵⁵ it has been established that Runbeti’s farmers had one year and Alducra’s farmers had 5 years to transition to “BS” practices.¹⁵⁶

¹⁵⁰ ShrimpABR, *supra* note 134, ¶128.

¹⁵¹ Record, ¶14.

¹⁵² ShrimpABR, *supra* note 134, ¶135.

¹⁵³ Trejo-Salazar, *supra* note 137, at 527.

¹⁵⁴ Appellate Body Report, *United States — Standards for Reformulated and Conventional Gasoline*, 20 – 21, WTO Doc. WT/DS2/AB/R (adopted Apr. 29, 1996).

¹⁵⁵ Record, ¶26.

¹⁵⁶ *Supra* discussion Part (B)(I)(b).

c) Alducra's statute does not satisfy the requirements of the chapeau.

The chapeau to Article X imbibes three standards: (i) there should be no arbitrary discrimination between countries where same conditions prevail, (ii) there should be no unjustifiable discrimination between countries where same conditions prevail, and (iii) the measure at issue should not be a disguised restriction on international trade. The chapeau ensures that States act in good faith¹⁵⁷ to protect interests considered legitimate under Article X, not to circumvent their obligations.

(i) *Alducra's statute is unjustifiably discriminatory.*

The statute, in its application, conditions the exercise of Runbeti's ARTA right on adopting the same policy as applied to Alducra's domestic farmers. It may be acceptable for a government to adopt a single standard for all its citizens. However, it is not acceptable for it to require others to adopt the same regulatory program as that in force within its territory, without considering the different conditions of other States.¹⁵⁸

Runbeti is the largest producer of tapagium in Architerpo.¹⁵⁹ So, allowing 5% of agaves to flower will have a significantly negative impact on its agave exports, as they cannot be used to distil tapagium.¹⁶⁰ It is also a developing economy,¹⁶¹ and its farmers cannot

¹⁵⁷ ShrimpABR, *supra* note 134, ¶158.

¹⁵⁸ ShrimpABR, *supra* note 134, ¶164.

¹⁵⁹ Record, ¶11.

¹⁶⁰ Trejo-Salazar, *supra* note 137, at 526.

¹⁶¹ Record, ¶1.

afford compliance with “BS” measures.¹⁶² The Preamble to ARTA recognises the need to conduct trade relations between contracting States “in a manner consistent with their respective needs and concerns at different levels of economic development”. Therefore, the statute is unjustifiably discriminatory, because it requires differently situated States to adopt the same regulatory regime.

(ii) *Alducra’s statute is arbitrarily discriminatory.*

The certification process under the statute consists of verification by an independent scientific organisation.¹⁶³ However, there is no transparency regarding the process, which would allow it to satisfy the requirements of predictability.¹⁶⁴ It does not provide clarifications regarding the procedure to be used in performing the verification, or the minimum credentials of the independent scientific organisation. So, Alducra cannot ascertain whether the statute is being applied in a just and consistent manner, which creates arbitrary discrimination between countries where the same conditions prevail.

(iii) *Alducra’s statute is a disguised restriction on international trade.*

A measure will constitute a “disguised restriction”, wherein, it seeks to conceal the pursuit of trade restrictive objectives.¹⁶⁵ Despite the fact that the statute may have imposed identical obligations on

¹⁶² *Id.*, ¶27.

¹⁶³ *Id.*, ¶15.

¹⁶⁴ ShrimpABR, *supra* note 134, ¶180.

¹⁶⁵ AsbestosPan, *supra* note 135, ¶8.236.

domestically-produced and imported tapagium,¹⁶⁶ it would constitute a “disguised restriction”.

As established, Runbeti’s farmers had only one year to align their practices.¹⁶⁷ The length of the phase-in period is not inconsequential for exporting countries desiring certification, as it relates to the onerousness of complying with the requisites and the practical feasibility of locating and developing alternative export markets.¹⁶⁸ Runbeti is a developing country¹⁶⁹ with comparatively constrained economic and technological capabilities. Therefore, its poor farmers, who produce a larger volume of tapagium, require more time and assistance to adopt “BS” practices. This transition will also have a greater depressive effect during the transition period, on Runbeti’s production of tapagium, which is an essential export of its economy.¹⁷⁰

¹⁶⁶ Record, ¶26.

¹⁶⁷ *Supra* discussion Part (B)(I)(b).

¹⁶⁸ ShrimpABR, *supra* note 134, ¶174.

¹⁶⁹ *Id.* at 1.

¹⁷⁰ Record, ¶11.

CONCLUSION

Runbeti respectfully requests this Court to adjudge and declare that:

- A. Runbeti has not violated international law with respect to its windfarm project.
- B. Alducra has violated international law with respect to its trade measures for tapagium products.

Respectfully submitted,

AGENTS FOR RESPONDENT