

[2024 WTO Moot Court Competition]

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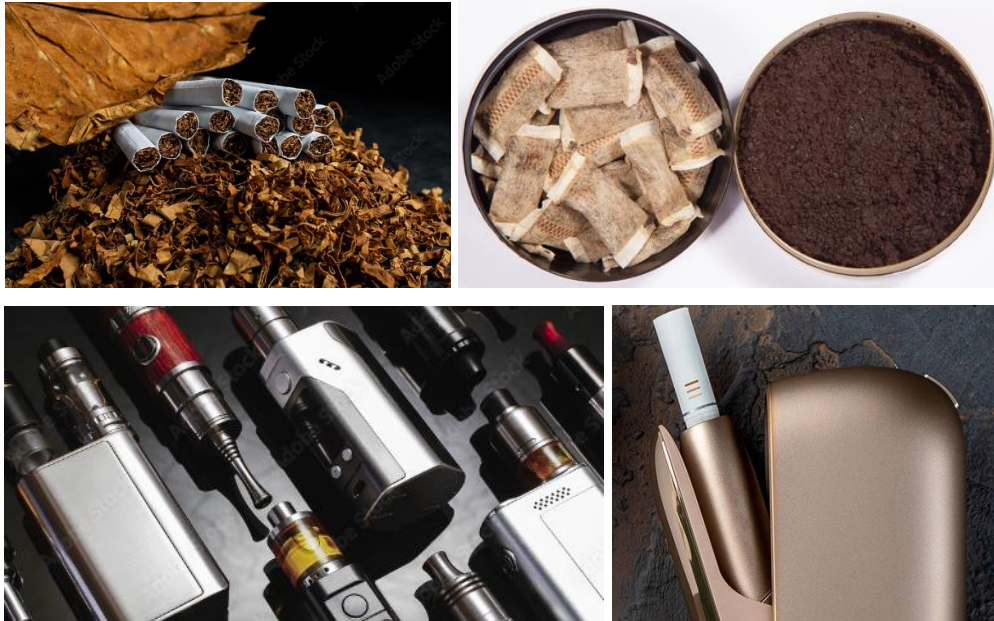
1. In this WTO Moot Court Competition problem, participants will encounter a mix of current international standards, hypothetical international standards, and hypothetical facts. Participants should base their arguments solely on the international standards and facts presented in this problem. Participants are not required to conduct additional research on international standards or scientific facts outside of this problem. Participants may further note that not all facts provided herein are necessarily relevant or material to the resolution of the question.
2. There are intended omissions and ambiguities for the purpose of balancing the positions for each side. Participants may ask for clarifications if necessary.

Aurumania – Certain measures affecting alternative tobacco and nicotine products from Tobacconia (Complaint by Tobacconia)¹

1. Tobacconia and Aurumania have been members of the WTO since 2000 and 1995, respectively. The two states have been active trading partners for decades and have been on relatively good terms. Tobacconia is considered a developing country with a GDP per capita of approximately USD 2,500, whereas Aurumania is considered a developed country with a GDP per capita of USD 100,000.
2. Tobacconia is a landlocked country situated near the equator. It relies heavily on its export of tobacco and nicotine-related products for 40% of the country's export. This includes the export of conventional cigarettes, electronic cigarettes (e-cigarettes), heated tobacco products, chewing tobacco, and raw tobacco. Tobacconia is renowned for its high-quality raw tobacco

¹ This moot court problem is a product of the author(s)' imagination and is solely for the purpose of this moot.

and manufactured products containing raw tobacco (i.e., conventional cigarettes, heated tobacco products, chewing tobacco). Such goods can only be exported after undergoing a very strict screening and selection procedure for the purpose of quality control.



[Pictures from left to right: conventional cigarettes placed on top of raw tobacco; chewing tobacco; assortment of e-cigarettes; heated tobacco product]

3. A study published in 2015 confirmed that tobacco products made from Tobacconia's raw tobacco contain about 20% less nicotine than products made with raw tobacco from other countries, making them relatively less addictive. Following this positive study on Tobacconia's tobacco, Tobacconia saw a steady increase in demand for its tobacco-related products.
4. Tobacconia, through its state-owned entity "Dream Tobacco", invested greatly in research and development for a tobacco product that could further reduce health risks. In late 2022, Dream Tobacco publicly announced it had developed chewing tobacco that has a significantly reduced risk of causing health complications such as oral cancer. The chewing tobacco, under the brand name "Tobagum", while still containing nicotine, does not contain other harmful chemicals such as lead, formaldehyde, and various carcinogens normally found in other tobacco

products.² Dream Tobacco plans to start exporting Tobagum in early 2025 and will market the product as a ‘healthier’ alternative to other tobacco-related products.

5. Since 2009, Tobacconia has taken great interest in the e-cigarette, expecting it to become the next trend in smoking. The Tobacconian government provided subsidies to Dream Tobacco to research and develop e-cigarettes that would be competitive on the market. However, the WHO’s call for a total ban on flavoured e-cigarette liquids at the end of 2023 led to a significant drop in Tobacconia’s e-cigarette liquid exports.
6. Aurumania has long been a country just as much interested in tobacco as Tobacconia, but on the other side—consumption. As mentioned previously, Aurumania is a longtime trade partner of Tobacconia. It is in fact, Tobacconia’s largest importer of tobacco. 50% of Aurumania's total imports of tobacco-related products originate from Tobacconia. Tobacconia’s high-quality tobacco is greatly sought out by the Aurumanian population and Tobacconia’s tobacco products are among the most popular in the Aurumanian market. Aurumania imports approximately USD 100 million worth of tobacco-related products from Tobacconia annually.
7. Aurumania is bountiful with natural resources but is especially known for its massive gold reserves. Aurimanians are known for enjoying luxurious and leisurely lifestyles as well as its strict ban on alcohol consumption for religious reasons. Naturally and historically, the smoking culture of Aurumania has become a pivotal part of the Aurumanian lifestyle. Among Aurumania’s population, 50% are active smokers (inclusive of underaged smokers) and the costs that follow smoking take up more than 7% of Aurumania's GDP each year.
8. Aurumania has seen a relatively steady rise in the popularity of alternative tobacco and nicotine product users, such as chewing tobacco and flavored e-cigarettes, compared to a slight decrease in demand for conventional cigarettes over the past four years since 2020. Following this trend, domestic Aurumanian cigarette brands, most of which rely predominantly on sales of conventional cigarettes, have begun to develop and market alternative tobacco products.

² Studies have shown that nicotine is not a carcinogen and does not have a direct causal link to cancer. Other chemical substances such as benzene, formaldehyde and tobacco-specific nitrosamines are considered carcinogens.

9. Despite Aurumania’s advanced medical practice, 45,000 tobacco-related deaths, 250,000 cancer diagnoses, 300,000 pneumonia cases, 100,000 strokes, etc. are recorded every year. Among the youth, 13% of Aurumanian underaged citizens use tobacco and e-cigarettes. The morbidity of the younger population is expected to rise.
10. The Aurumanian government has become increasingly concerned for the health of its population. In light of the adverse effects of tobacco-related product consumption in the country, Aurumania introduced the Alternative Tobacco and Nicotine Product Act (ATNP Act) on 1 January 2024 (Act 001/2024).
11. The relevant provisions are as follows:

PREAMBLE – THE PURPOSE OF THE ALTERNATIVE TOBACCO AND NICOTINE PRODUCT ACT (THE “ACT”) IS TO PROHIBIT HARMFUL TOBACCO AND NICOTINE PRODUCTS THAT SERVE AS ALTERNATIVES TO CONVENTIONAL CIGARETTES.

ARTICLE 1 – THE IMPORTATION, DISTRIBUTION, COMMERCIALIZATION, ADVERTISING AND ANY FORM OF PROMOTION AND SPONSORSHIP OF TOBACCO PRODUCTS OTHER THAN CONVENTIONAL CIGARETTES, AS LISTED UNDER APPENDIX A, HEREBY "ALTERNATIVE TOBACCO PRODUCTS", IS HENCEFORTH PROHIBITED THROUGHOUT THE AURUMANIAN TERRITORY.

ARTICLE 2 – THE IMPORTATION, DISTRIBUTION, COMMERCIALIZATION, ADVERTISING AND ANY FORM OF PROMOTION AND SPONSORSHIP OF ALL NICOTINE-INFUSED PRODUCTS OTHER THAN CONVENTIONAL CIGARETTES, AS LISTED UNDER APPENDIX B, HEREBY “NICOTINE PRODUCTS”, IS HENCEFORTH PROHIBITED THROUGHOUT THE AURUMANIAN TERRITORY, AND SUCH PROHIBITION SHALL BE EXTENDED TO ANY TYPE OF ACCESSORY INTENDED FOR THE INGESTION OF NICOTINE.

ARTICLE 3 – THE IMPLEMENTATION OF THIS ACT SHALL FOLLOW THE SCHEDULE AS PROVIDED UNDER APPENDIX C.

APPENDIX A – LIST OF PROHIBITED ALTERNATIVE TOBACCO PRODUCTS

1. SMOKELESS TOBACCO PRODUCTS. INCLUDES CHEWING OR SPIT TOBACCO, SNUFF OR SNUS.
2. HEATED TOBACCO PRODUCTS: ELECTRONIC DEVICES THAT HEAT TOBACCO TO A HIGH TEMPERATURE SO THAT THE USER CAN INHALE NICOTINE WITHOUT SMOKE.

APPENDIX B – LIST OF PROHIBITED NICOTINE PRODUCTS

1. E-CIGARETTES (ALSO CALLED VAPES). BATTERY-POWERED DEVICES THAT HEAT E-CIGARETTE LIQUID INTO A VAPOUR FOR THE USER TO INHALE.
2. NICOTINE POUCHES. POUCHES THAT SLOWLY RELEASE NICOTINE WHEN THE USER PLACES THEM IN THEIR MOUTH.

APPENDIX C – SCHEDULE

1. THIS ACT SHALL BE IMPLEMENTED IN GRADUAL STAGES STARTING FROM 1 JANUARY 2024.
 2. ANY BANS ON IMPORTS SHALL BE PASSED UNDER PRESIDENTIAL DECREES AND PUBLICLY ANNOUNCED THREE MONTHS PRIOR TO THE IMPLEMENTATION OF THE BANS.
12. Aurumania has been a signatory to the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) since 2022 and plans to ratify the convention in 2025. While Aurumania has not yet passed many laws other than the ATNP Act on tobacco control, it has announced its plans to implement further legislation and measures to reflect the provisions of the WHO FCTC in due course.
13. On 1 March 2024, the Aurumanian government passed Presidential Decree No. 202, which bans the importation of alternative tobacco and nicotine products from Tobacconia, as defined under the ATNP Act. The Aurumanian government provided in an official statement that the purpose of Presidential Decree No. 202 is to ban imports of alternative tobacco-related and nicotine-infused products from Tobacconia effective 1 June 2024, accounting for 50% of Aurumania's tobacco imports. This is the first and only Presidential Decree the Aurumanian government currently passed following the ATNP Act.
14. Tobacconia has requested consultations with Aurumania under Article 4 of the DSU³ on 1 May 2024, stating that Aurumania's measures as depicted above are inconsistent with the following provisions of the WTO Technical Barriers to Trade Agreement (TBT Agreement) and General Agreement on Tariffs and Trade 1994 (GATT 1994).
15. Tobacconia cites the following provisions in its request:
- A. Articles 2.1, 2.2, and 2.12 of the TBT Agreement
 - B. Articles 12.1, 12.2 and 12.3 of the TBT Agreement
 - C. Article I, paragraph 1 of the GATT 1994 (following the provisions of the GATT 1947)
 - D. Article III, paragraph 4 of the GATT 1994 (following the provisions of the GATT 1947)

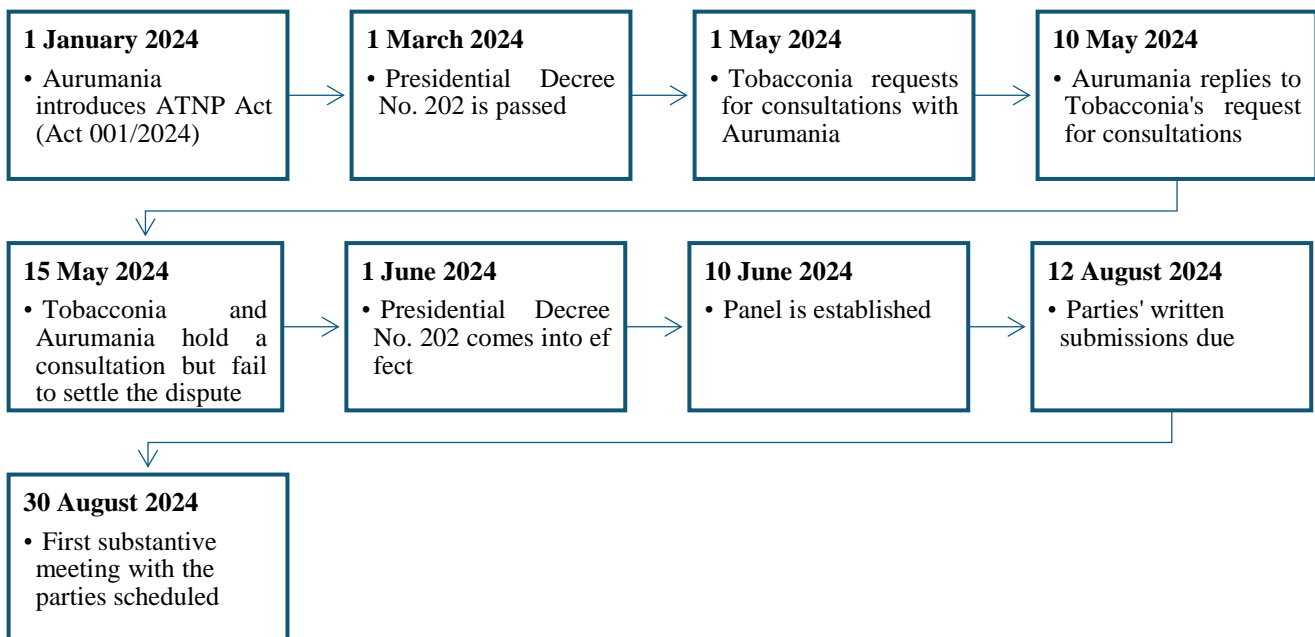
³ Understanding on Rules and Procedures Governing the Settlement of Disputes. Tobacconia has correctly followed all procedural requirements under the DSU.

E. Article XI, paragraph 1 of the GATT 1994 (following the provisions of the GATT 1947)

16. Aurumania argued in its reply to Tobacconia’s request for consultations dated 10 May 2024 that its measures are neither discriminatory nor trade restrictive. Alternatively or additionally, Aurumania’s measures can be justified under the relevant exceptions, namely Article XX(a) and Article XX(b) of the GATT 1994. Aurumania maintained its position set out in its reply to Tobacconia during the consultation.

17. The consultation held on 15 May 2024 concluded with a joint consideration by Tobacconia and Aurumania that the dispute has failed to settle. Tobacconia immediately requested the establishment of a panel to adjudicate the dispute following Article 4.7 of the DSU, citing the same provisions as in its consultation request. No other agreements or provisions have been additionally included. The WTO Dispute Settlement Body established a panel for the dispute on 10 June 2024. The two governments’ submissions to the panel are due by 12 August 2024, and the first substantive meeting with the parties is scheduled to take place in Geneva on 30 August 2024.

18. The timeline of the dispute can be summarized as follows:



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