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JOHN H. JACKSON MOOT COURT COMPETITION
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Rutenia – Carbon Charge

Burlandia
(Complainant)

VS

Rutenia
(Respondent)

SUBMISSION OF THE COMPLAINANT

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LIST OF REFERENCES**I. CONVENTIONS AND TREATIES**

1. General Agreement on Tariffs and Trade 1994, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 190, 33 I.L.M. 1153 (1994).
2. Paris Agreement to the United Nation Framework Convention on Climate Change, December 12, 2015, 3156 U.N.T.S. 79 (2015).

II. CASES**A. Appellate Body Reports**

Brazil—Retreaded Tyres	Brazil—Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R, adopted 17 December 2007.
Canada—Autos	Canada—Certain Measures Affecting the Automotive Industry, WT/DS139/AB/R, WT/DS142/AB/R, adopted 19 June 2000.
Canada—Periodicals	Canada—Certain Measures Concerning Periodicals, WT/DS31/AB/R, adopted 30 July 1997.
Chile—Alcoholic Beverages	Chile—Taxes on Alcoholic Beverages, WT/DS87/AB/R, WT/DS110/AB/R, adopted 12 January 2000.
China—Auto Parts	China—Measures Affecting Imports of Automobile Parts, WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R, adopted 12 January 2009.
China—Publications and Audiovisual Products	China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/AB/R, adopted 19 January 2010.
China—Rare Earths	China—Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, WT/DS431/AB/R, WT/DS432/AB/R, WT/DS433/AB/R, adopted 29 August 2014.
EC—Asbestos	European Communities—Measures Affecting Asbestos and Products Containing Asbestos, WT/DS135/AB/R, adopted 5 April 2001.

EC—Seal Products	European Communities—Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R, WT/DS401/AB/R, adopted 18 June 2014.
Japan—Alcoholic Beverages II	Japan—Taxes on Alcoholic Beverages, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R adopted 4 October 1996.
Korea—Alcoholic Beverages	Korea—Taxes on Alcoholic Beverages, WT/DS75/AB/R, WT/DS84/AB/R, adopted 17 February 1999.
US—Clove Cigarettes	United States—Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/AB/R, adopted 24 April 2012.
US—Gambling	United States—Measures Affecting the Cross-Border Supply of Gambling and Betting Services, WT/DS285/AB/R, adopted 20 April 2005.
US—Gasoline	United States—Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted 20 May 1996.
US—Shrimp	United States—Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, adopted 6 November 1998.
US—Tuna II (Mexico)	United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/AB/R, adopted 13 June 2012.

B. Panel Reports

Argentina—Hides and Leather	Argentina—Measures Affecting the Export of Bovine Hides and the Import of Finished Leather, WT/DS155/R, adopted 19 December 2000.
Brazil—Retreaded Tyres	Brazil—Measures Affecting Imports of Retreaded Tyres, WT/DS332/R, adopted 17 December 2007.

China—Auto Parts	China—Measures Affecting Imports of Automobile Parts, WT/DS339/R, WT/DS340/R, WT/DS342/R, adopted 12 January 2009.
China—Publications and Audiovisual Products	China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WT/DS363/R, adopted 19 January 2010.
Colombia—Ports of Entry	Colombia—Indicative Prices and Restrictions on Ports of Entry, WT/DS366/R, adopted 20 May 2009.
Dominican—Cigarettes	Dominican Republic—Measures Affecting the Importation and Internal Sale of Cigarettes, WT/DS302/R, adopted 19 May 2005.
EC—Asbestos	European Communities—Measures Affecting Asbestos and Products Containing Asbestos, WT/DS135/R, adopted 5 April 2001.
EC—Bananas III	European Communities—Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/R/ECU, adopted 25 September 1997.
Indonesia—Autos	Indonesia—Certain Measures Affecting the Automobile Industry, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, adopted 26 July 1999.
Japan—Alcoholic Beverages	Japan—Taxes on Alcoholic Beverages, WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996.
Japan—Film	Japan—Measures Affecting Consumer Photographic Film and Paper, WT/DS44/5, adopted 22 April 1998.
Korea—Alcoholic Beverages	Korea—Taxes on Alcoholic Beverages, WT/DS75/R, WT/DS84/R, adopted 17 February 1999.
Mexico—Soft Drinks	Mexico—Tax Measures on Soft Drinks and Other Beverages, WT/DS308/R, adopted 24 March 2006.
Russia—Traffic in Transit	Russia—Measures Concerning Traffic in Transit, WT/DS512/R, adopted 26 April 2019.

Saudi Arabia—IPRs	Saudi Arabia—Measures concerning the Protection of Intellectual Property Rights, WT/DS567/11, circulated 16 June 2020.
US—Clove Cigarettes	United States—Measures Affecting the Production and Sale of Clove Cigarettes, WT/DS406/R, adopted 24 April 2011.
US—Gasoline	United States—Standards for Reformulated and Conventional Gasoline, WT/DS2/R, adopted 29 January 1996.
US—Origin Marking (Hong Kong, China)	United States—Origin Marking Requirement, WT/DS597/10, circulated 21 December 2022.
US—Poultry	United States—Certain Measures Affecting Imports of Poultry from China, WT/DS392/R, adopted 25 October 2010.
US—Steel and Aluminium Products (China)	United States—Certain Measures on Steel and Aluminium Products, WT/DS544/R, circulated 26 January 2023.
US—Tuna II (Mexico)	United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/R, adopted 13 June 2012.

III. ARTICLES AND CONTRIBUTIONS

1. WORLD BANK (2023), STATE AND TRENDS OF CARBON PRICING 2023.

LIST OF ABBREVIATIONS

ABR	Appellate Body Report
Art.	Article
CO ₂	Carbon Dioxide
DSB	Dispute Settlement Body
GATT	The General Agreement on Tariffs and Trade 1994
GHG	Greenhouse Gas
Glass	Flat Glass
HS	Harmonized System
IPCC	Intergovernmental Panel on Climate Change
LDCs	Least Developed Countries
MFN	Most Favoured Nation
NDC	Nationally Determined Contribution
NTA	The National Tax Administration
ODC	Other Duties and Charges
P.	Page
PPM	Process and Production Methods
PR	Panel Report
SIDS	Small Island and Developing States
The NZF Act	The Net Zero Future Act
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
USD	United States Dollar
WTO	World Trade Organization

SUMMARY**I. RUTENIA'S CARBON CHARGE IS INCONSISTENT WITH GATT ART. III:2.**

- Rutenia's carbon charge is inconsistent with GATT Art. III:2 first sentence because (i) it is an internal charge; (ii) the imported and domestic products are like products; (iii) the imported products are taxed in excess of the domestic products.
- Rutenia's carbon charge is inconsistent with GATT Art. III:2 second sentence because (i) the imported and domestic products are directly competitive or substitutable products; (ii) the imported and domestic products are not similarly taxed; (iii) the dissimilar taxation is applied to afford protection to domestic production.

II. RUTENIA'S CARBON CHARGE IS INCONSISTENT WITH GATT ART. I:1.

- Rutenia's carbon charge on Artania and Korsania is inconsistent with GATT Art. I:1 because (i) it falls within the scope of GATT Art. I:1; (ii) the products at issue are like products; (iii) the measure confers an "advantage" on products originating from certain countries; (iv) such advantage is not extended "immediately" and "unconditionally" to like products from all Members.

III. RUTENIA'S CARBON CHARGE IS NOT JUSTIFIED UNDER GATT ART. XXI(B)(III).

- Rutenia is not in an emergency in international relations within the meaning GATT Art. XXI(b)(iii).
- Rutenia failed to articulate its essential security interests arising from the alleged emergency.
- Rutenia's carbon charge is not a measure plausible to protect any alleged essential security interests since carbon charge deviates from its alleged policy objectives.

IV. RUTENIA'S CARBON CHARGE IS NOT JUSTIFIED UNDER GATT ART. XX(B) AND (G).

- Rutenia's carbon charge is not designed to protect life or health of human, animal or plant.
- Rutenia's carbon charge is not necessary; a reasonably available alternative exists.
- Rutenia's carbon charge is (i) not related to the conservation of exhaustible natural resources; and (ii) not made effective in conjunction with restrictions on domestic production.
- Rutenia's carbon charge (i) results in discrimination between members where the same conditions prevail, and (ii) the discrimination is arbitrary or unjustifiable in character.

STATEMENT OF FACTS

Rutenia, Burlandia, Korsania, and Artania, all WTO Members, are located in the Intermarium region. Rutenia is a developed country; Burlandia and Korsania are both developing countries; Artania is a least developed country. While all four countries produce glass, among them, Rutenia and Burlandia are leading manufacturers in the glass industry of the Intermarium region.

To combat climate change, Burlandia, in accordance with the Paris Agreement, has undertaken a commitment to reduce GHG emissions by 28 percent compared to 2005 levels by 2030 and promised to pursue net-zero emission by 2070. Therefore, Burlandia has been implementing a series of policies including the preservation of rainforest, the imposition of an energy excise tax on fossil fuels, and a program aiming to cancel fossil fuel subsidies. In June 2022, Burlandia convened a high-level regional dialogue with countries including Rutenia to explore the decarbonization of the industries through multilateral efforts. However, Burlandia encounters technical and administrative difficulties with monitoring and verifying released carbon emissions in its territory.

On 1 July 2022, the Parliament of Rutenia introduced a carbon charge on carbon emissions by adopting the NZF Act Section 10. In principle, domestic and imported glass are subject to a charge of USD 50 per tonne of embedded carbon emissions of the glass. If no reliable information for the calculation of the total carbon embedded in the product is available, default values of Rutenia's 5 percent worst installation shall apply. Under the scheme, any explicit carbon price paid in the country of origin can be deducted, while products from LDCs and SIDS will be exempted from the charge.

Under the NZF Act Section 10, the glass manufactured in Korsania enjoys a deduction of carbon charge since the glass is subject to an explicit carbon price, a carbon tax, in Korsania; whereas the glass produced in Artania is exempted from the charge for its LDC and SIDS status. However, notwithstanding the fact that Burlandia has levied energy excise tax on glass, Burlandia's glass is still subject to the default values and charged with a full carbon charge at the rate of USD 50 per tonne of carbon emission and qualifies for no deduction.

After unsuccessful consultations, Burlandia brought the case to the DSB asserting that Rutenia is inconsistent with its WTO obligations under GATT.

IDENTIFICATION OF THE MEASURE AT ISSUE

Rutenia's carbon charge: A measure implemented by Rutenia on domestic and imported glass which entered into force on 1 September, 2022. The measure is comprised of

- default values placed on products without reliable data for carbon emission;
- a deduction for countries that paid any carbon price in the country of origin; and
- an exemption on products originating in LDCs and SIDS.

LEGAL PLEADINGS**I. RUTENIA'S CARBON CHARGE IS INCONSISTENT WITH GATT ART. III:2.****1. Rutenia's carbon charge is inconsistent with GATT Art. III:2 first sentence.**

A measure is inconsistent with GATT Art. III:2 first sentence if (i) it is an internal charge; (ii) the imported and domestic products are like products; and (iii) the imported products are taxed in excess of the domestic products.¹ Rutenia's carbon charge meets all these elements.

A. Rutenia's carbon charge is an internal charge.

A measure is an internal charge under GATT Art. III:2 if the obligation to pay such charge accrues because of an internal factor that occurs after the importation of a product.² WTO jurisprudence further affirmed that a charge is internal if it is applied to both imported and domestic products.³ Rutenia's carbon charge is an internal charge for the following reasons.

First, pursuant to the NZF Act Section 10 Art. 1, Rutenia's carbon charge applies to both domestic and imported glass *placed* on the market in Rutenia.⁴ This indicates that the charge accrues because of the glass' domestic placement in Rutenia's market, which is an event that occurs after the glass' importation.

Second, the said charge applies to both domestic and imported glass. This further evinces its internal charge nature pursuant to the WTO jurisprudence mentioned above.

Third, the carbon charge is not collected upon the importation of covered products, but on 1 June of each year based on Rutenian NTA's calculation.⁵ This further indicates that it accrues because of factors irrelevant to importation.

B. Burlandia's and Rutenia's glass are like products.

WTO jurisprudence has established four criteria for examining "like products" under GATT Art. III:2 first sentence, namely, (i) the property, nature, and quality; (ii) end-uses; (iii) consumers' tastes and habits; and (iv) tariff classifications.⁶ In this case, Burlandia's and Rutenia's glass are like products for the following reasons.

¹ ABR, Canada—Periodicals, p. 22-23; PR, China—Auto Parts, [7.105];

² ABR, China—Auto Parts, [163]; PR, China—Auto Parts, [7.132].

³ PR, Dominican—Cigarettes, [7.84].

⁴ Case, [18].

⁵ Clarification, [87].

⁶ ABR, Japan—Alcoholic Beverages II, p. 20; ABR, EC—Asbestos, [101].

a. Burlandia's and Rutenia's glass share similar property, nature, and quality.

The property test examines the products' physical characteristics, such as their nature and quality.⁷ In this case, Burlandia's and Rutenia's glass are not different in physical composition, quality, and performance.⁸ Therefore, they share similar property, nature, and quality.

b. Burlandia's and Rutenia's glass share the same end-uses.

The end-use test assesses the extent to which products are capable of performing similar functions.⁹ In this case, Burlandia's and Rutenia's glass share the same function in being used for the same products manufactured by DIM.¹⁰ Therefore, they share the same end-uses.

c. Burlandia's and Rutenia's glass share similar consumers' tastes and habits.

The consumers' tastes and habits test examines whether consumers perceive two products as alternative means of performing particular functions to satisfy a particular demand.¹¹ In this case, the consumer of Burlandia's and Rutenia's glass is DIM.¹² Both glass can satisfy DIM's particular demand, i.e., being used to manufacture windows, doors, mirrors, and table tops.¹³ Therefore, both glass are perceived by DIM as alternative means to satisfy the same demand.

Rutenia might argue that DIM perceives Burlandia's and Rutenia's glass differently because their carbon intensiveness during the production processes differs. However, carbon intensiveness is not a consideration in DIM's purchasing decision. In fact, DIM continues to increase purchasing Artania's glass,¹⁴ whose production process emits more carbon than Burlandia's.¹⁵ This evinces that carbon emissions do not affect DIM's consumer preference.

d. Burlandia's and Rutenia's glass share the same tariff classifications.

Tariff classifications refer to the international classification of products for tariff purposes.¹⁶ In this case, both glass share the same HS classification and tariff classification in Rutenia, that is, HS Heading 7005.¹⁷ Therefore, they share the same tariff classification.

e. Carbon intensiveness during the production process is irrelevant.

Rutenia might argue that Burlandia's and Rutenia's glass are not like products because their carbon intensiveness during their production processes differs. However, WTO

⁷ PR, US—Clove Cigarettes, [7.166-67]; PR, Japan—Alcoholic Beverages II, [6.22-6.23].

⁸ Clarification, [6].

⁹ ABR, EC—Asbestos, [117].

¹⁰ Case, [4]; Clarification, [11].

¹¹ ABR, EC—Asbestos, [101]; ABR, US—Clove Cigarettes, [125].

¹² Case, [4].

¹³ Case, [4, 7].

¹⁴ Case, [Annex IV].

¹⁵ Case, [9].

¹⁶ ABR, EC—Asbestos, [101].

¹⁷ Clarification, [10].

jurisprudence affirmed that product likeness should be analyzed based on the comparison between *products themselves* and thus rejected the *production processes* as a relevant factor.¹⁸ Therefore, the different carbon intensiveness between Rutenia's and Burlandia's glass during their production processes do not affect the above analyses.

In sum, Burlandia's and Rutenia's glass are like products.

C. Burlandia's glass is taxed in excess of Rutenia's glass.

A measure taxes imported products "in excess of" domestic products if it applies heavier actual tax burdens to imported than domestic like products.¹⁹ In this case, Burlandia's glass is charged in excess of Rutenia's glass. The NZF Act Section 10 Art. 3 applies default values to products with no reliable carbon emission data, which is based on average carbon emissions of the 5 percent worst relevant performing installations in Rutenia.²⁰ Since Burlandia lacks a carbon emissions tracking mechanism,²¹ its glass is automatically subject to the default values of 0.68 tonnes of CO₂ in 2022,²² subsequently charged USD 34 per tonne of glass.

By design, the charge applied to Burlandia's glass is at least heavier than 95 percent of Rutenia's glass. After all, it is calculated based on the 5 percent worst glass producers in Rutenia. Take Guta, which produces two-thirds of Rutenia's glass,²³ for instance. It emits 0.4 tonnes of CO₂,²⁴ and is thus only charged USD 20 per tonne of glass. Therefore, Burlandia's glass undertakes heavier actual tax burdens and is taxed in excess of Rutenia's glass.

2. Rutenia's carbon charge is inconsistent with GATT Art. III:2 second sentence.

An internal charge is inconsistent with GATT Art. III:2 second sentence if (i) the imported and domestic products are directly competitive or substitutable products; (ii) the imported and domestic products are not similarly taxed; and (iii) the dissimilar taxation is applied to afford protection to domestic production.²⁵ Rutenia's carbon charge meets all these elements.

A. Burlandia's and Rutenia's glass are directly competitive or substitutable.

The Appellate Body affirmed that "like products" under GATT Art. III:2 first sentence is a subset of, and is thus narrower than, "directly competitive or substitutable products" under GATT Art. III:2 second sentence.²⁶ Therefore, like products are logically directly competitive

¹⁸ PR, US—Tuna II (Mexico), [7.250].

¹⁹ PR, Argentina—Hides and Leather, [11.183-11.184].

²⁰ Case, [18].

²¹ Case, [7].

²² Clarification, [15].

²³ Case, [4].

²⁴ Case, [4].

²⁵ ABR, Japan—Alcoholic Beverages II, p. 23-31; ABR, Canada—Periodicals, p. 24-25.

²⁶ ABR, Korea—Alcoholic Beverages, [118].

or substitutable. In this case, as elaborated in I.1.B, Burlandia's and Rutenia's glass are like products under GATT Art. III:2 first sentence. Therefore, they are logically directly competitive or substitutable products under GATT Art. III:2 second sentence.

B. Burlandia's and Rutenia's glass are not similarly taxed.

The term "not similarly taxed" under GATT Art. III:2 second sentence refers to excessive taxation more than *de minimis*,²⁷ whereas the term "in excess of" under GATT Art. III:2 first sentence includes even the smallest amount of excess.²⁸ Thus, a measure satisfying the latter logically meets the former. In this case, as elaborated in I.1.C., Rutenia's carbon charge taxes Burlandia's glass in excess of Rutenia's glass. Therefore, it logically fails to tax Burlandia's and Rutenia's glass similarly.

C. Rutenia's carbon charge is applied to afford protection to domestic production.

In determining if an internal charge is to afford protection to domestic production, WTO jurisprudence examined the measure's design and structure²⁹ and considered the magnitude of the dissimilar taxation, the actual protective effect of the measure, or statements of the Member's explicit policy objectives in introducing the measure.³⁰ In this case, Rutenia's carbon charge is applied so as to afford protection to its domestic glass for the following reasons.

First, the design and structure of Rutenia's carbon charge reflect its protective purpose. WTO jurisprudence found a tax's protective purpose if it operates in such a way that the lower tax brackets cover almost exclusively domestic production, whereas the higher tax brackets embrace almost exclusively imported products.³¹ In this case, between Burlandia's and Rutenia's glass, because of the default value design and the lack of tracking mechanisms as mentioned above, the measure, by design, applies higher carbon charge to all Burlandia's glass than Rutenia's glass. This demonstrates the measure's protective purpose.

Second, the dissimilar taxation is of a significant magnitude. WTO jurisprudence affirmed the magnitude of dissimilar taxation as a crucial, if not the most, factor.³² As elaborated in I.1.C., Burlandia's glass is charged USD 34 per tonne of glass, which is USD 14, or 70 percent, higher than the charge on Rutenia's glass. This demonstrates the measure's aim to protect domestic production.

²⁷ ABR, Japan—Alcoholic Beverages II, p. 26.

²⁸ ABR, Japan—Alcoholic Beverages II, p. 23; PR, Argentina—Hides and Leather, [11.243].

²⁹ ABR, Japan—Alcoholic Beverages II, p. 29; ABR, Chile—Alcoholic Beverages, [71].

³⁰ ABR, Canada—Periodicals, p. 30-32.

³¹ ABR, Korea—Alcoholic Beverages, [150]; PR, Korea—Alcoholic Beverages, [10.102].

³² ABR, Japan—Alcoholic Beverages II, p. 29; ABR, Korea—Alcoholic Beverages, [150].

Third, the measure causes actual protective effect on Rutenia’s glass. In ascertaining a measure’s protective purpose, WTO jurisprudence also relied on a measure’s negative competition effect on imported products.³³ In this case, after the NZF Act Section 10 entered into force in 2022, the sales of Burlandia’s glass in Rutenia declined by more than 26 percent in 2023, which demonstrates the measure’s protective effect on domestic production.

Finally, the measure’s declared policy objectives demonstrate its protective intent. WTO jurisprudence found a measure’s protective objective based on the government’s statement of its commitment to protect domestic industry when introducing the measure.³⁴ In this case, when advocating the carbon charge, Rutenia’s Prime Minister publicly stated, “the new carbon levy will not disadvantage them [i.e., our domestic manufacturers] vis-à-vis foreign competitors.”³⁵ This demonstrates that Rutenia purposely designed its carbon charge in a manner that protects its domestic production.

To conclude, Rutenia’s carbon charge is inconsistent with GATT Art. III:2.

II. RUTENIA’S CARBON CHARGE IS INCONSISTENT WITH GATT ART. I:1.

A measure is inconsistent with GATT Art. I:1 if (i) it falls within the scope of GATT Art. I:1; (ii) the products at issue are “like products”; (iii) the measure confers an “advantage” on products originating from certain countries; and (iv) such advantage is not extended “immediately” and “unconditionally” to like products from all Members.³⁶ Rutenia’s carbon charge meets all these elements by according advantages to Artania’s and Korsania’s glass.

1. Advantages to Artania’s glass

A. Rutenia’s carbon charge falls within the scope of GATT Art. I:1.

GATT Art. I:1 applies to measures referred to in GATT Art. III:2. As elaborated in I.1.A., Rutenia’s carbon charge is an internal charge under GATT Art. III:2. Therefore, it falls within the scope of GATT Art. I:1.

B. Burlandia’s and Artania’s glass are like products.

“Like products” under GATT Art. I:1 can be established when a measure distinguishes products *solely based on their origin*.³⁷ In this case, the NZF Act Section 10 Art. 5 stipulates carbon charge exemption for products from LDCs and SIDS. In operation, Rutenia distinguishes between Burlandia’s and Artania’s glass and applies the exemption to the latter.

³³ ABR, Canada—Periodicals, p. 31-32.

³⁴ ABR, Canada—Periodicals, p. 30-31; PR, Mexico—Soft Drinks, [8.91-8.94].

³⁵ Case, [11].

³⁶ ABR, EC—Seal Products, [5.86]; PR, US—Poultry, [7.432].

³⁷ PR, US—Poultry, [7.427-29]; PR, China—Publications and Audiovisual Products, [7.1446]; ABR, Canada—Periodicals, p.12.

Therefore, it distinguishes glass solely based on its origin, rendering the two glass like products.

Alternatively, Burlandia's and Artania's glass are like products under the four-criteria test.³⁸ WTO jurisprudence affirmed that the finding of like products under GATT Art. III:2 justifies the finding of like products under GATT Art. I:1.³⁹ In this case, similar to Burlandia's and Rutenia's glass, Burlandia's and Artania's glass are like products under GATT Art. III:2 for the same reasons elaborated in I.1.B. Therefore, they are also like products under GATT Art. I:1.

C. Rutenia's carbon charge confers "advantages" on Artania's glass.

A measure confers "advantages" if it creates more favourable competitive opportunities for products of certain origins.⁴⁰ In this case, by imposing carbon charges on Burlandia's glass while exempting Artania's glass from carbon charges on the grounds of Artania's LDC status,⁴¹ Rutenia's carbon charge reduces the tax burdens and thus creates more favourable competitive opportunities for Artania's glass. Therefore, it confers an advantage to Artania's glass.

D. The advantage is not immediately and unconditionally accorded to Burlandia's glass.

WTO jurisprudence affirmed that if a measure accords duty exemption to certain products from certain countries, it fails to accord the same advantage of duty exemption immediately and unconditionally to like products of all other Members.⁴² In this case, by according the carbon charge exemption merely to Artania's glass, Rutenia's carbon charge fails to accord the same advantage immediately and unconditionally to Burlandia's glass.

2. Advantages to Korsania's glass

A. Rutenia's carbon charge falls within the scope of GATT Art. I:1.

For the same reasons elaborated in II.1.A., Rutenia's carbon charge falls within the scope of GATT Art. I:1.

B. Burlandia's and Korsania's glass are like products.

As mentioned in II.1.B., like products under GATT Art. I:1 can be established when a measure distinguishes products solely based on their origin. In this case, the NZF Act Section 10 Art. 4 stipulates carbon charge deduction for products whose importers paid carbon price in their country of origin. In operation, Rutenia distinguishes between Burlandia's and Korsania's glass and applies the deduction to the latter.⁴³ Therefore, it distinguishes glass solely based on

³⁸ ABR, EC—Asbestos, [101].

³⁹ PR, Indonesia—Autos, [14.141].

⁴⁰ PR, EC—Bananas III, [7.239].

⁴¹ Case, [9, 20].

⁴² ABR, Canada—Autos, [85].

⁴³ Case, [20].

its origin, rendering the two glass like products.

Alternatively, Burlandia's and Korsania's glass are like products under the four-criteria test. Similar to Burlandia's and Artania's glass, Burlandia's and Korsania's glass are like products under GATT Arts. III:2 first sentence and I:1 for the same reasons elaborated in I.1.B and II.1.B.

C. Rutenia's carbon charge confers "advantages" on Korsania's glass.

As mentioned in II.1.C., a measure confers "advantages" if it creates more favourable competitive opportunities for products of certain origins. In this case, by applying carbon charges to Burlandia's glass while permitting Korsania's glass to deduct the carbon price paid in Korsania from the applicable carbon charges, Rutenia's carbon charge reduces the tax burdens and thus creates more favourable competitive opportunities for Korsania's glass. Therefore, it confers an advantage to Korsania's glass.

Rutenia might argue that the said deduction does not reduce the tax burden of Korsania's glass because Korsania's glass is additionally charged carbon price in Korsania. However, Burlandia's glass is similarly charged an energy excise tax in Burlandia, which is equivalent to USD 15 per tonne of CO₂.⁴⁴ By according carbon charge reduction merely to Korsania's glass without extending it to Burlandia's glass, Rutenia accords an advantage to Korsania's glass.

D. The advantage is not extended immediately and unconditionally.

As mentioned in II.1.D., if a measure accords duty exemption to certain products from certain countries, it fails to accord the same advantage of duty exemption immediately and unconditionally to like products of all other Members. In this case, by according the carbon charge deduction merely to Korsania's glass, Rutenia fails to accord the same advantage immediately and unconditionally to Burlandia's glass.

To conclude, Rutenia's carbon charge is inconsistent with GATT Art. I:1.

III. RUTENIA'S CARBON CHARGE IS NOT JUSTIFIED UNDER GATT ART. XXI(B)(III).

WTO jurisprudence has established that GATT Art. XXI(b)(iii) defense is not self-judging, and the Panel has jurisdiction to review this defense.⁴⁵ A Panel should examine, in order, if a measure is (i) taken in time of war or other emergency in international relations, and (ii) considered necessary by the adopting Member for protecting its essential security interests.⁴⁶

⁴⁴ Case, [6].

⁴⁵ PR, US—Origin Marking (Hong Kong, China), [7.185-7.186]; PR, US—Steel and Aluminium Products (China), [7.128]; PR, Russia—Traffic in Transit, [7.56].

⁴⁶ PR, US—Origin Marking (Hong Kong, China), [7.263].

In this case, Rutenia argues that its carbon charge is taken in time of a climate emergency, which constitutes an “emergency in international relations” under GATT Art. XXI(b)(iii).⁴⁷ However, Rutenia’s carbon charge fails to satisfy these elements for the following reasons.

1. Rutenia’s carbon charge is inconsistent with GATT Art. XXI(b)(iii).

To invoke GATT Art. XXI(b)(iii), a Member must establish that (i) there is an emergency in international relations; and (ii) the measure is taken in time of that emergency.⁴⁸ Rutenia’s carbon charge fails to meet both elements for the following reasons.

A. There is no emergency in international relations in Rutenia.

WTO jurisprudence defines “emergency in international relations” as a situation of armed conflict, latent armed conflict, heightened tension or crisis, or general instability engulfing or surrounding a state, which causes a Member’s *defense or military interests or maintenance of law and public order interests* in question.⁴⁹ In contrast, political or economic conflicts with other countries are not emergencies in international relations unless they threaten a Member’s defense and military interests or maintenance of law and public order interests.⁵⁰ In this case, there is no such emergency in Rutenia for the following reasons.

a. The sea-level rising is not an “emergency” in Rutenia.

WTO jurisprudence affirmed that “emergency” under GATT Art. XXI(b)(iii) refers to a serious state of affairs *requiring urgent action*.⁵¹ Moreover, its interpretation shall be informed by the preceding term “war” in the same subparagraph; thus, the “emergency” must be at least *comparable in its gravity or severity to a “war”* in terms of its impact on international relations.⁵² Most political tensions and differences among countries, *including environmental tensions or divergences*, are normally not close enough to constitute an emergency.⁵³

In this case, no evidence indicates that Rutenia faces any emergency comparable to war that requires urgent action. Rutenia is a developed country with a prosperous economy and sound social order.⁵⁴ Although the sea-level rising might pose risks to Rutenia’s smaller islands and low-lying coasts, the risks are *in long-run terms* based on estimates of 2050. The gravity or severity of these risks is not comparable to war that causes an *imminent threat* to a country’s defense and military interest or law and public order interest and thus calls for urgent actions.

⁴⁷ Case, [24].

⁴⁸ PR, US—Origin Marking (Hong Kong, China), [7.267].

⁴⁹ PR, Russia—Traffic in Transit, [7.76].

⁵⁰ PR, Russia—Traffic in Transit, [7.75].

⁵¹ PR, US—Origin Marking (Hong Kong, China), [7.279].

⁵² PR, US—Steel and Aluminium Products (China), [7.139].

⁵³ PR, US—Origin Marking (Hong Kong, China), [7.311].

⁵⁴ Case, [2].

In fact, no clear evidence indicates that climate change causes displacement and armed conflicts.⁵⁵ Therefore, Rutenia is not in an emergency within GATT Art. XXI(b)(iii).

b. The climate emergency is not an emergency “in international relations.”

WTO jurisprudence affirmed that not any emergency qualifies under GATT Art. XXI(b)(iii), but only those *occurring in international relations*,⁵⁶ that is, interactions between nations or national governments.⁵⁷ This requirement distinguishes GATT Art. XXI(b)(iii) emergency from an emergency in *purely domestic or national affairs*.⁵⁸

In this case, the climate risk of concern to Rutenia is merely a domestic or national emergency. In *US—Steel and Aluminium Products (China)*, the Panel found the displacement of domestic production and the consequent adverse impact on domestic industry irrelevant to its analysis of GATT Art. XXI(b)(iii) emergency.⁵⁹ This case is similar. The impacts of sea-level rising raised by Rutenia, including the potential land submergence and population displacement in Rutenia,⁶⁰ relates to Rutenia’s domestic affairs instead of its interactions with other nations. Following the rationale of *US—Steel and Aluminium Products (China)* Panel, these impacts, if any, are not an emergency “in international relations.”

Moreover, GATT Art. XXI(b)(iii) emergency must be *of the utmost gravity*, representing a *breakdown or near-breakdown in the relations between states or other participants in international relations*.⁶¹ In *US—Origin Marking (Hong Kong, China)*, the Panel found the absence of any breakdown or near-breakdown in international relations after it found that the international relations between involved Members *continued to cooperate in many policy areas*, including carrying out trade largely as before.⁶² The Panel further supported its finding based on that the involved Members *did not sever their diplomatic, consular, or economic relations*.⁶³

This case is similar. No evidence indicates that Rutenia severed any international relations with other countries. On the contrary, Rutenia continued participating in international efforts in combating sea-level rising, including the negotiations on the UN General Assembly

⁵⁵ Case, [13].

⁵⁶ PR, US—Origin Marking (Hong Kong, China), [7.281].

⁵⁷ PR, US—Steel and Aluminium Products (China), [7.137].

⁵⁸ PR, US—Steel and Aluminium Products (China), [7.137].

⁵⁹ PR, US—Steel and Aluminium Products (China), [7.142-7.143].

⁶⁰ Case, [14].

⁶¹ PR, US—Origin Marking (Hong Kong, China), [7.306].

⁶² PR, US—Origin Marking (Hong Kong, China), [7.354, 7.356].

⁶³ PR, US—Origin Marking (Hong Kong, China), [7.357].

resolution⁶⁴ and the regional dialogue convened by Burlandia.⁶⁵ Therefore, no evidence indicates that Rutenia faces any breakdown or near-breakdown in international relations.

B. Rutenia’s carbon charge is not taken in emergency in international relations.

WTO jurisprudence affirmed that the phrase “taken in time of” requires chronological concurrence connecting the measure and the emergency in international relations.⁶⁶ In this case, since there is no emergency in international relations, Rutenia’s carbon charge is not taken “in time of” such an emergency.

2. Rutenia’s carbon charge is inconsistent with GATT Art. XXI(b) chapeau.

A measure is inconsistent with GATT Art. XXI(b) chapeau if the adopting Member fails to exercise its discretion of designating particular concerns as the protected essential security interests in good faith.⁶⁷ Therefore, the adopting Member must (i) articulate its essential security interests with greater specificity, and (ii) demonstrate the plausible connection between the measure and the protected essential security interests.⁶⁸ In this case, Rutenia’s carbon charge fails to meet these elements for the following reasons.

A. Rutenia failed to articulate its essential security interests with greater specificity.

Essential security interests refer to those interests associated with the quintessential functions of the Member, such as protecting its territory and populations from external threats and maintaining its own law and public order.⁶⁹ The adopting Member shall articulate the protected essential security interests precisely enough to demonstrate their veracity.⁷⁰ It must provide greater specificity of articulation when an emergency in international relations is more distant from armed conflicts or breakdown of law and public order.⁷¹

In this case, even assuming *arguendo* that the alleged climate emergency falls within GATT Art. XXI(b)(iii), Rutenia fails to specify the essential security interests protected by its carbon charge. After all, the negative impacts of sea-level rising remain highly debated by the international community. As mentioned above in III.1.A.a., no clear evidence supports that climate change causes displacement and armed conflicts. Moreover, since the alleged climate emergency is distant from armed conflicts as mentioned above in III.1.A.a., Rutenia shall

⁶⁴ Case, [16].

⁶⁵ Case, [15].

⁶⁶ PR, Russia—Traffic in Transit, [7.70].

⁶⁷ PR, Russia—Traffic in Transit, [7.131-7.132].

⁶⁸ PR, Russia—Traffic in Transit, [7.138].

⁶⁹ PR, Russia—Traffic in Transit, [7.130].

⁷⁰ PR, Russia—Traffic in Transit, [7.134].

⁷¹ PR, Russia—Traffic in Transit, [7.135].

provide greater specificity of the essential security interests it intends to protect. By alleging the general concept of “climate emergency”, Rutenia fails to articulate it.

B. Rutenia’s carbon charge bears no plausible connections with the alleged essential security interests.

To examine the plausible connection between alleged essential security interests and the challenged measure, WTO jurisprudence affirmed that a Panel shall assess whether the measure is remote from, or unrelated to, the alleged essential security interests.⁷²

In this case, Rutenia fails to demonstrate a plausible connection between its carbon charge and the alleged essential security interests because it deviates from its alleged policy objectives. Rutenia claims protecting its populations from sea-level rise caused by carbon emissions as its essential security interest and adopts the carbon charge to reduce carbon emissions. However, the LDCs and SIDS exemption permits Artania’s glass to be exempted from carbon charges even though it produces the most carbon emissions during the production process. Therefore, Rutenia fails to demonstrate the plausibility between the carbon charge and the alleged essential security interests of combatting sea-level rising.

To conclude, Rutenia’s carbon charge is not justified under GATT Art. XXI(b)(iii).

IV. RUTENIA’S CARBON CHARGE IS NOT JUSTIFIED UNDER GATT ART. XX(B) AND (G).

1. Rutenia’s carbon charge is inconsistent with GATT Art. XX(b).

To invoke GATT Art. XX(b), the defending Member must demonstrate that the measure is (i) designed to protect the life or health of human, animal, or plant, and (ii) necessary.⁷³ Rutenia’s carbon charge, however, fails to meet these elements for the following reasons.

A. Rutenia’s carbon charge is not designed to protect the life or health of human, animal, or plant.

To invoke the human life or health defense, the defending Member must demonstrate the existence of risks to the human life or health as supported by scientific evidence.⁷⁴ In addition, a simple assertion of endangerment to the environment is insufficient.⁷⁵ In this case, Rutenia’s carbon charge is not designed to protect the life or health of human, animal, or plant for the following reasons.

First, Rutenia’s carbon charge is designed to address the impact of climate change on the environment. As the NZF Act Section 10 Art. 1 stipulates, the objective of the carbon charge

⁷² PR, Russia—Traffic in Transit, [7.138]; PR, Saudi Arabia—IPRs [7.285].

⁷³ PR, US—Gasoline, [6.20].

⁷⁴ PR, US—Gasoline, [6.21]; PR, EC—Asbestos, [8.184].

⁷⁵ PR, Brazil—Retreaded Tyres, [7.45-7.46].

is to incentivize emission-reduction actions, further the goals of the Paris Agreement, and address the climate crisis, which concerns the protection of the overall environment. In contrast, no concrete life or health issue of human, animal, or plant is mentioned. Since Rutenia's carbon charge simply asserts the endangerment to the environment, it does not fall within GATT Art. XX(b).

Second, Rutenia fails to provide scientific evidence demonstrating the risks to the life or health of human, animal, or plant. The only relevant scientific report prepared by Rutenia is the 2022 Sea-Level Rising Report.⁷⁶ This report, however, merely mentioned the potential land submergence and population displacement without specifying the risks to the life or health of human, animal, or plant. Not to mention that the potential risk identified in this report is remote and will not materialize until 2050.⁷⁷ Therefore, Rutenia's carbon charge is not designed to protect the life or health of human, animal, or plant.

B. Rutenia's carbon charge is not necessary.

Even assuming *arguendo* that Rutenia's carbon charge is designed to protect the life or health of human, animal or plant, it is not necessary. The necessity of a measure is assessed through weighing and balancing between (i) the measure's contribution to the realization of the ends pursued, and (ii) the restrictive effect of the measure on international commerce.⁷⁸ A measure is not necessary if a reasonably available alternative that achieves the equivalent level of protection and is less GATT-inconsistent exists.⁷⁹

In this case, Rutenia's carbon charge is not necessary because a qualified alternative exists. Specifically, Rutenia may adopt a different carbon charge mechanism that collects charges from covered producers based on the difference between producers' carbon emissions and carbon offsets attributed to covered producers. Qualified offsets may include carbon-offsetting activities directly carried out and carbon offset rights purchased by covered producers. This proposed alternative is qualified for the following reasons.

First, it is less trade restrictive. Since the charge is based on the difference between a producer's carbon emissions and offsets, covered producers may reduce their carbon charges by reducing their carbon emissions or obtaining more carbon offsets. They thus have more opportunities to control their carbon charges and the associated operational costs. Therefore, this proposed alternative poses less restriction on covered producers.

⁷⁶ Case, [14].

⁷⁷ Case, [14].

⁷⁸ ABR, China—Publications and Audiovisual Products, [244].

⁷⁹ ABR, Brazil—Retreaded Tyres, [156].

Second, it achieves the objective pursued at an equivalent level. The objective pursued by Rutenia is to control CO₂ level in the atmosphere, ultimately preventing sea-level rising. However, controlling CO₂ can be achieved by reducing carbon emissions and increasing carbon offsets. By introducing carbon offsets into its charge base, the alternative incentivizes carbon-offsetting activities, which contributes to CO₂ control at an equivalent level to Rutenia's carbon charge.

Third, it is reasonably available. An alternative is reasonably available if it does not impose an undue burden on the adopting Member.⁸⁰ Nowadays, many countries have introduced a carbon charge system that considers carbon offset.⁸¹ As a developed country that leads in combatting climate change,⁸² Rutenia should have sufficient knowledge and resources to implement this system. Therefore, the proposed alternative is reasonably available to Rutenia.

2. Rutenia's carbon charge is inconsistent with GATT Art. XX(g).

To invoke GATT Art. XX(g), a measure must be (i) related to the conservation of exhaustible natural resources, and (ii) made effective in conjunction with restrictions on domestic production or consumption.⁸³ Rutenia's carbon charge, however, fails to meet these elements for the following reasons.

First, it is not related to the conservation of exhaustible natural resources. A measure is "related to" an objective only when a close and genuine relationship of ends and means exists.⁸⁴ In this case, as elaborated in III.2.B., Rutenia's carbon emissions lack a plausible connection with its objective to combat sea-level rising because it exempts Artania's glass from carbon charges even though Artania produces the most carbon emissions. Similarly, it lacks a close and genuine relationship with, and thus not related to, its objective to control CO₂ in the atmosphere.

Second, it is not made effective in conjunction with restrictions on domestic production. To satisfy this requirement, a measure must be applied in an even-handedness manner.⁸⁵ In this case, as elaborated in I.1.C., Rutenia's carbon charge, by design, applies a higher carbon charge to Burlandia's glass than 95 percent of Rutenia's domestic glass because of the default value

⁸⁰ ABR, Brazil—Retreaded Tyres, [156]; ABR, US—Gambling, [308].

⁸¹ WORLD BANK, STATE AND TRENDS OF CARBON PRICING 2023 51 (2023).

⁸² Case, [2, 3].

⁸³ ABR, China—Rare Earths, [5.88].

⁸⁴ ABR, US—Shrimp, [136].

⁸⁵ ABR, US—Gasoline, p. 21.

design. Therefore, it is not applied to domestic and imported products in an even-handed manner.

3. Rutenia's carbon charge is inconsistent with GATT Art. XX chapeau.

A measure is inconsistent with GATT Art. XX chapeau if (i) discrimination exists between members where the same conditions prevail; and (ii) the discrimination is arbitrary or unjustifiable in character.⁸⁶ In this case, even assuming *arguendo* that Rutenia's carbon charge is provisionally justified under GATT Art. XX(b) or (g), it is inconsistent with GATT Art. XX chapeau for the following reasons.

A. Rutenia's carbon charge results in discrimination between members where the same conditions prevail.

Discrimination within GATT Art. XX chapeau exists when a measure treats Members with the same prevailing conditions differently.⁸⁷ The "conditions" here refer to those related to the objective under GATT Art. XX subparagraph that provisionally justifies the measure.⁸⁸

Rutenia's carbon charge results in discrimination between Burlandia's and Artania's glass. Rutenia justifies its carbon charge based on the objective to control carbon emissions. However, while Burlandia's glass is charged for its carbon emissions, Artania's glass is exempted from any carbon charge even though it produces even more carbon emissions than Burlandia's glass.⁸⁹ Therefore, it treats Members with the same prevailing conditions differently and thus constitutes discrimination.

Rutenia's carbon charge also results in discrimination between Burlandia's and Korsania's glass. While Burlandia's glass is charged for its carbon emissions, Korsania's glass is given a carbon charge deduction even though it also produces significant carbon emissions.⁹⁰ This constitutes discrimination between Members with the same prevailing conditions.

B. The discrimination is arbitrary or unjustifiable in character.

Rutenia's discrimination between Burlandia's and Artania's glass is arbitrary and unjustifiable. Discrimination is arbitrary or unjustifiable in character if it bears no rational relationship to the pursuit of the policy objective under the GATT Art. XX subparagraph that provisionally justifies the contested measure.⁹¹ In this case, Rutenia might justify its

⁸⁶ ABR, US—Tuna II (Mexico), [6.270].

⁸⁷ ABR, EC—Seal Products, [5.303]; ABR, US—Shrimp, [165].

⁸⁸ ABR, EC—Seal Products, [5.299-300].

⁸⁹ Case, [7, 9, 20].

⁹⁰ Case, [8, 20].

⁹¹ ABR, Brazil—Retreaded Tyres, [227].

discrimination in favour of Artania's glass by arguing that Artania is an LDC or SIDS, while LDCs and SIDS bear the least responsibility for climate change.⁹² However, Artania does not fall within that category. As mentioned above, its glass produces the most carbon emissions than other glass. Exempting Artania's glass from carbon charges goes against, and thus has no rational relationship with, the alleged policy objective of Rutenia's carbon charge. Therefore, the discrimination is arbitrary and unjustifiable.

Rutenia's discrimination between Burlandia's and Korsania's glass is also arbitrary and unjustifiable. A measure is arbitrary and unjustifiable within GATT Art. XX chapeau if it is operated in a rigid and inflexible manner.⁹³ In this case, Rutenia might justify its discrimination in favour of Korsania's glass by arguing that Korsania's glass is already subject to some carbon tax in Korsania. However, as elaborated in II.2.C., Burlandia's glass is also subject to an energy excise tax in Burlandia, which is equivalent to USD 15 per tonne of CO₂.⁹⁴ By rigidly designing its deduction regime that only applies to specific forms of carbon price without extending it flexibly to all forms of carbon costs, Rutenia's carbon charge is operated in a rigid and inflexible manner. Thus, it is arbitrary and unjustifiable.

In conclusion, Rutenia's carbon charge is not justified under GATT Art. XX(b) and (g).

⁹² Clarification, [2].

⁹³ ABR, US—Shrimp, [177].

⁹⁴ Case, [6].

REQUEST FOR FINDINGS

Burlandia respectfully requests the Panel to find that:

1. Rutenia's carbon charge on glass from Burlandia is inconsistent with Article III:2 of the GATT;
2. Rutenia's carbon charge on glass from Artania is inconsistent with Article I:1 of the GATT;
3. Rutenia's carbon charge on glass from Korsania is inconsistent with Article I:1 of the GATT; and
4. The inconsistencies with the GATT are not justified under Article XXI(b)(iii), XX(b), and XX(g).

Burlandia, thus, respectfully requests this Panel to recommend the DSB that Rutenia brings its measure into conformity with its obligations under the GATT.

JHJMCC 2023-2024

Team: 027R

JOHN H. JACKSON MOOT COURT COMPETITION
22nd edition

Rutenia – Carbon Charge

Burlandia
(Complainant)

VS

Rutenia
(Respondent)

SUBMISSION OF THE RESPONDENT

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LIST OF REFERENCES**I. CONVENTIONS AND TREATIES**

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2. Paris Agreement to the United Nation Framework Convention on Climate Change, December 12, 2015, 3156 U.N.T.S. 79 (2015).

II. CASES**A. Appellate Body Reports**

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Brazil—Retreaded Tyres	Brazil—Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R, adopted 17 December 2007
Canada—Periodicals	Canada—Certain Measures Concerning Periodicals, WT/DS31/AB/R, adopted 30 July 1997.
China—Auto Parts	China—Measures Affecting Imports of Automobile Parts, WT/DS339/AB/R, WT/DS340/AB/R, WT/DS342/AB/R, adopted 12 January 2009.
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US—Poultry	United States—Certain Measures Affecting Imports of Poultry from China, WT/DS392/R, adopted 25 October 2010.
US—Steel and Aluminium Products (China)	United States—Certain Measures on Steel and Aluminium Products, WT/DS544/R, circulated 26 January 2023.

LIST OF ABBREVIATIONS

ABR	Appellate Body Report
Art.	Article
CBDRRC	Common but Differentiated Responsibilities and Respective Capabilities
CO ₂	Carbon Dioxide
DSB	Dispute Settlement Body
GATT	The General Agreement on Tariffs and Trade 1994
GDP	Gross Domestic Product
GHG	Greenhouse Gas
Glass	Flat Glass
HS	Harmonized System
IPCC	Intergovernmental Panel on Climate Change
LDCs	Least Developed Countries
MFN	Most Favoured Nation
NDC	Nationally Determined Contribution
ODC	Other Duties and Charges
P.	Page
PPM	Process and Production Methods
PR	Panel Report
SIDS	Small Island and Developing States
The NZF Act	The Net Zero Future Act
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
USD	United States Dollar
WTO	World Trade Organization

SUMMARY**I. RUTENIA'S CARBON CHARGE IS CONSISTENT WITH GATT ART. III:2.**

- Rutenia's carbon charge does not fall into the scope of GATT Art. III:2 since it is not an internal charge but an ODC.
- Rutenia's carbon charge is consistent with GATT Art. III:2 second sentence because (i) the imported and domestic products are not directly competitive or substitutable; (ii) the imported and domestic products are similarly taxed; and (iii) it is not applied so as to afford protection to domestic production.
- Rutenia's carbon charge is consistent with GATT Art. III:2 first sentence because (i) the imported and domestic products are not like products; and (ii) the imported products are not taxed in excess of domestic products.

II. RUTENIA'S CARBON CHARGE IS CONSISTENT WITH GATT ART. I:1.

- Rutenia's carbon charge on Korsania and Artania is consistent with GATT Art. I:1 because (i) it does not fall within the scope of GATT Art. I:1; (ii) the products at issue are not like products; (iii) the measure does not confer an "advantage" on products originating from certain countries; and (iv) such advantage is extended "immediately" and "unconditionally" to like products from all Members.

III. RUTENIA'S CARBON CHARGE IS JUSTIFIED UNDER GATT ART. XXI(B)(III).

- Rutenia is in an emergency in international relations within the meaning GATT Art. XXI(b)(iii).
- Rutenia has articulated its essential security interests arising from the alleged emergency with enough specificity.
- Carbon charge is a measure plausible to protect any alleged essential security interests.

IV. RUTENIA'S CARBON CHARGE IS JUSTIFIED UNDER GATT ART. XX(B) AND (G).

- Rutenia's carbon charge is designed to protect life or health of human, animal or plant.
- Rutenia's carbon charge is necessary.
- Rutenia's carbon charge is (i) related to the conservation of exhaustible natural resources; and (ii) made effective in conjunction with restrictions on domestic production.
- Rutenia's carbon charge does not (i) result in discrimination between members where the same conditions prevail, and (ii) the discrimination is not arbitrary or unjustifiable in character.

STATEMENT OF FACTS

Rutenia, Burlandia, Korsania, and Artania are all WTO Members and Parties to UNFCCC and Paris Agreement. Rutenia is a developed country, whereas Burlandia and Korsania are both developing countries, and Artania is an LDC. Among the four countries, all of which produce flat glass, Rutenia and Burlandia have more prosperous glass manufacturing industries.

Artania, a small island country, has been suffering from climate change-induced coastal flooding and erosion. These disasters resulted in heavy casualties, submergence of territory, and destruction of infrastructures. As a result, 300 thousand migrants fled to Rutenia in 2021.

Rutenia is soon to meet the same fate as Artania, since Rutenia is a country composed of 18 islands and has around 20 percent of its population living near coastlines. According to studies done by Rutenia's leading public university, the adverse effects of climate change will displace two million people, to speak nothing of the devastating hit on Rutenia's coastal tourism, which represents 10 percent of Rutenia's GDP. Therefore, climate change is Rutenia's most major and urgent existential crisis.

On 1 July 2022, to address climate change and achieve the goal of the Paris Agreement, the Parliament of Rutenia introduced a carbon charge on carbon emissions by adopting the NZF Act Section 10. The NZF Act Section 10 imposes a charge on, domestic and imported glass of USD 50 per tonne of embedded carbon emissions per tonne of glass. However, any explicit carbon price paid in the country of origin can be deducted from the carbon charge. To calculate the amount of the charge, domestic manufacturers and importers of glass shall submit verified information regarding the total quantity of glass, total carbon emission embedded in glass, and carbon price effectively paid in the country of origin. If no reliable information is available, default values shall apply. In addition, glass from LDCs and SIDS will be exempted from the charge.

After unsuccessful consultations, Burlandia brought the case to the DSB asserting that Rutenia is inconsistent with its WTO obligations under GATT.

IDENTIFICATION OF THE MEASURES AT ISSUE

Rutenia's carbon charge: A measure implemented by Rutenia on domestic and imported glass which entered into force on 1 September, 2022. The carbon charge is comprised of

- default values placed on products without reliable data for carbon emission;
- a deduction for countries that paid any carbon price in the country of origin; and
- an exemption on products originating in LDCs and SIDS.

LEGAL PLEADINGS**I. RUTENIA'S CARBON CHARGE IS CONSISTENT WITH GATT ART. III:2.**

Rutenia's carbon charge is consistent with GATT Art. III:2 because (i) it does not fall within the scope of GATT Art III:2; (ii) it is consistent with GATT Art III:2 second sentence; and (iii) it is consistent with GATT Art. III:2 first sentence. The reasons are as follows:

1. Rutenia's carbon charge does not fall within the scope of GATT Art. III:2.

GATT Art. III:2 only applies to internal charges.¹ In this case, Rutenia's carbon charge is not an internal charge for the following reasons.

First, it does not accrue because of an internal factor that occurs after the importation of a product. A measure is an internal charge under GATT Art. III:2 only when the obligation to pay accrues because of an internal factor occurring after the product's importation, e.g., because the product is re-sold or used internally.² In this case, however, the carbon charge is collected based on the amount of carbon emissions during the production, which occurs *in the products' origin before* the products' importation. Therefore, the carbon charge does not accrue because of an *internal* factor occurring *after* the products' importation.

Second, it is an ODC. An ODC under GATT Art. II:1 is a tariff surcharge above the MFN tariff rate whose obligation to pay accrues upon the entry of a product into the customs territory.³ An ODC is not an internal charge under Art. III:2.⁴ In this case, Rutenia's carbon charge is a surplus charge collected based on the amount of carbon emissions and constitutes an additional duty above the ordinary tariff. The obligation to pay accrues when products producing carbon emissions *enter into* Rutenia. Therefore, it is an ODC instead of an internal charge within the scope of GATT Art. III:2.

2. Rutenia's carbon charge is consistent with GATT Art. III:2 second sentence.

Even assuming *arguendo* that Rutenia's carbon charge falls with the scope of GATT Art. III:2, it is consistent with GATT Art. III:2 first and second sentences. Between them, since the second sentence applies to "directly competitive or substitutable products," which is broader in scope than "like products" under the first sentence,⁵ WTO jurisprudence affirmed that the examination may begin with the second sentence.⁶

¹ ABR, Japan—Alcoholic Beverages II, p.16.

² ABR, China—Auto Parts, [163]; PR, China—Auto Parts, [7.132].

³ PR, Dominican—Safeguards, [7.86-7.87]; ABR, EC—Poultry, [145]; PR, China—Auto Parts, [7.184].

⁴ ABR, Canada—Periodicals, [468].

⁵ ABR, Japan—Alcoholic Beverages II, p. 19-21; ABR, Korea—Alcoholic Beverages, [118].

⁶ PR, Korea—Alcoholic Beverages, [10.36].

An internal charge is inconsistent with Art. III:2 second sentence only when (i) the imported and domestic products are directly competitive or substitutable; (ii) the imported and domestic products are not similarly taxed; and (iii) the taxation is applied so as to afford protection to domestic production.⁷ Rutenia's carbon charge meets none of these elements for the following reasons.

A. Rutenia's and Burlandia's glass are not directly competitive or substitutable.

Products are directly competitive or substitutable only when consumers consider them as alternatives to satisfy a particular taste.⁸ To examine it, WTO jurisprudence focused on the elasticity of substitution, that is, *responsiveness of consumers* to the various products in the market.⁹ Rutenia's and Burlandia's glass are not directly competitive or substitutable because the responsiveness of Rutenia's consumers to them differs in the following aspects.

First, their carbon emissions differ. Rutenia is an island country plagued by sea-level rise: 73 percent of its citizens consider climate change as Rutenia's largest existential threat in 2022; 45 percent have concerns about the displacement impact of climate change.¹⁰ Since carbon emissions are the major cause to climate change, Rutenia's consumers have different perception between products with different levels of carbon emissions. Since Burlandia's glass produces 0.25 tonnes more, or 62.5 percent more, of CO₂ per tonne of glass than Rutenia's glass,¹¹ their consumers' responsiveness in Rutenia differs.

Second, their prices differ. WTO jurisprudence affirmed that, in determining product competitiveness or substitutability, a generic category of product may be divided into different sub-categories based on price.¹² In other words, products with different prices may not be in a competitive or substitutable relationship. In this case, Burlandia's glass is on average 20 percent cheaper than Rutenia's glass in 2022.¹³ This significant difference indicates that they serve different markets and are not in directly competitive or substitutable relationship.

Third, they are in reverse price elasticity relationship. During 2021 and 2022, the sale price of Rutenia's glass increased by 20,000 USD/tonne, but its sales still rose by 20,000 tonnes. In contrast, the sale price of Burlandia's glass decreased by 30,000 USD/tonne, but its sales still dropped by 40,000 tonnes.¹⁴ In other words, the relative price drop of Burlandia's glass

⁷ ABR, Japan—Alcoholic Beverages II, p. 24.

⁸ PR, Korea—Alcoholic Beverages, [10.40].

⁹ PR, Japan—Alcoholic Beverages II, [6.28].

¹⁰ Case, [14].

¹¹ Case, [4, 7].

¹² ABR, Korea—Alcoholic Beverages, [142-143].

¹³ Case, [4, 7]; Clarification, [8].

¹⁴ Case, [Annex IV]; Clarification [9].

against Rutenia's glass does not promote, but reduce, the former's sales, which indicates a reverse price elasticity relationship between Burlandia's and Rutenia's glass. This evinces that they are not in a directly competitive or substitutable relationship.

B. Rutenia's and Burlandia's glass are similarly taxed.

The term "not similarly taxed" refers to excessive taxation more than *de minimis*.¹⁵ In this case, the amount of carbon charge to be collected is set at a single rate of USD 50 per tonne of CO₂ emission, which is applied to both domestic and imported products.¹⁶ Therefore, Rutenia's carbon charge taxes Burlandia's and Rutenia's glass similarly.

C. Rutenia's carbon charge is not applied so as to afford protection to domestic production.

WTO jurisprudence affirmed that whether a measure is to afford protection to domestic production is discerned from its design, architecture, and revealing structure.¹⁷ In this case, as elaborated in I.2.B., Rutenia's carbon charge applies the same rate to both domestic and imported products. Since it does not impose dissimilar charge on Rutenia's and Burlandia's glass, it is not applied to afford protection to domestic production.

Burlandia might argue that the default value rule under the NZF Act Section 10 Art. 3.2 protects Rutenia's domestic product by applying a higher charge to products without reliable data, including Burlandia's glass. However, the said default value rule applies to any products without reliable data, including imported and domestic products. *Its purpose is to prevent circumvention*, that is, prevent carbon intensive products, including imported and domestic, from manipulating, or refusing to provide, data to circumvent the carbon charges to be collected. Therefore, the carbon charge is not applied so as to afford protection to domestic production.

3. Rutenia's carbon charge is consistent with GATT Art. III:2 first sentence.

An internal charge is inconsistent with GATT Art. III:2 first sentence only when (i) imported and domestic products are like products and (ii) imported products are taxed in excess of domestic products.¹⁸ Rutenia's carbon charge meets none of these elements for the following reasons.

A. Rutenia's and Burlandia's glass are not like products.

As mentioned in I.2., "like products" under GATT Art. III:2 first sentence is a subset of "directly competitive or substitutable products" under GATT Art. III:2 second sentence.¹⁹ In

¹⁵ ABR, Japan—Alcoholic Beverages II, p. 26.

¹⁶ Case, [18].

¹⁷ ABR, Japan—Alcoholic Beverages II, p. 29.

¹⁸ ABR, Canada—Periodicals, p. 22-23.

¹⁹ ABR, Japan—Alcoholic Beverages II, p. 19-21; ABR, Korea—Alcoholic Beverages, [118].

this case, as elaborated in I.2.A, Rutenia's and Burlandia's glass are not directly competitive or substitutable, which encompasses a broader scope of products. Therefore, they are logically not like products under GATT Art. III:2 first sentence, which encompasses a narrower scope.

B. Burlandia's glass is not taxed in excess of Rutenia's glass.

A measure taxes imported products "in excess of" domestic products only when it applies heavier actual tax burdens to imported than domestic like products.²⁰ In this case, as elaborated in I.2.B., Rutenia's carbon charge applies the same rate on domestic and imported products. The actual charge is determined by the products' CO2 emissions in its production as verified by qualified third-party entities.²¹ Therefore, Burlandia's glass is not charged in excess of Rutenia's glass.

To conclude, Rutenia's carbon charge is consistent with GATT Art. III:2.

II. RUTENIA'S CARBON CHARGE IS CONSISTENT WITH GATT ART. I:1.

Burlandia might argue that Rutenia's carbon charge is inconsistent with GATT Art. I:1 because it disadvantages Burlandia's glass vis-à-vis Artania's and Korsania's glass. However, Rutenia's carbon charge is consistent with GATT Art. I:1 because (i) Burlandia's glass is not like product with Artania's and Korsania's glass; and (ii) the measure does not confer an "advantage" on Artania's or Korsania's glass. The reasons are as follows.

1. Burlandia's glass is not like product with Artania's glass and Korsania's glass.

Burlandia might argue that its glass is like product with Artania's and Korsania's glass based on the solely origin-based test and the four-criteria test. However, these arguments shall be rejected for the following reasons.

A. Burlandia's glass vis-à-vis Artania's glass

a. Rutenia's carbon charge does not distinguish Burlandia's and Artania's glass solely based on their origins.

WTO jurisprudence referred to GATS Art. II:1 jurisprudence when assessing product likeness under GATT Art. I:1, particularly whether a measure is solely origin-based.²² In *Argentina—Financial Services*, the Appellate Body established that, if a measure is not based on the origin of services *per se*, but on the regulatory framework inextricably linked to the origin, it does not distinguish services solely based on their origins.²³ This rationale may be referred to when the Panel examines like products under GATT Art. I:1.

²⁰ PR, *Argentina—Hides and Leather*, [11.183-11.184].

²¹ Case, [Annex III].

²² PR, *Russia—Imported Railway Product*, [7.898].

²³ ABR, *Argentina—Financial Services*, [6.56].

Rutenia's carbon charge does not distinguish between Burlandia's and Artinia's glass based on their origin *per se*, but based on the regulatory framework linked to the origin. Specifically, Rutenia adopts the regulatory framework for carbon charges based on the principles enshrined in the Paris Agreement,²⁴ particularly the CBDRRC stipulated in the Paris Agreement Arts. 2.2 and 4.6. Specifically, Rutenia's carbon charge stipulates the LDCs and SIDS exemption after acknowledging their less regulatory need due to their relative vulnerabilities to the adverse effects of climate change.

In other words, Rutenia's carbon charge does not distinguish Artania's glass from Burlandia's glass simply because the former is from Artania. The measure makes this distinction because Artania's glass bears less regulatory needs, considering it is least responsible for climate change and least capable of adapting to new climate conditions. In fact, Artania has been hit hard by climate change: In 2021, 18 percent of their nationals emigrated due to the climate change hit.²⁵ This indicates that Artania's glass is of less regulatory threat and shall be distinguished from Burlandia's glass in the spirit of CBDRRC under the Paris Agreement.

b. Burlandia's and Artania's glass are not like products.

WTO jurisprudence affirmed that the finding of like products under GATT Art. III:2 informs that of like products under GATT Art. I:1.²⁶ In this case, similar to Rutenia's and Burlandia's glass, Burlandia's and Artania's glass are not like products under GATT Art. I:1 for the similar reasons elaborated in I.2.A. and I.3.A.

Specifically, Burlandia's and Artania's glass are in a reverse price elasticity relationship. During 2021 and 2022, the sale price of Artania's glass increased by 10,000 USD/tonne, but its sales rose by 5,000 tonnes. In contrast, the sale price of Burlandia's glass decreased by 30,000 USD/tonne, but its sales dropped by 40,000 tonnes.²⁷ In other words, the relative price drop of Burlandia's glass against Artania's glass did not promote, but reduced, the former's sale, which indicates a reverse price elasticity relationship between Burlandia's and Artania's glass. This evinces that they are not in a competitive relationship and are not like products.

B. Burlandia's glass vis-à-vis Korsania's glass

a. Rutenia's carbon charge does not distinguish Burlandia's and Korsania's glass solely based on their origins.

²⁴ Case, [18].

²⁵ Case, [9,10]; Clarification, [30].

²⁶ PR, Indonesia—Autos, [14.141].

²⁷ Case, [Annex IV]; Clarification, [9].

As elaborated in II.1.A.a., a measure does not distinguish products solely based on their origins if it is based on the regulatory framework inextricably linked to the origin. In this case, Rutenia's carbon charge does not distinguish between Burlandia's and Korsania's glass based on their origin *per se*, but based on the regulatory framework linked to the origin. Specifically, it makes this distinction because Korsania's glass has paid carbon price in Korsania.²⁸

To elaborate, Rutenia imposes carbon charges on products to cause producers internalize the environmental costs of their carbon emissions. By paying carbon price in Korsania, Korsania's glass internalizes the environmental costs of its carbon emissions. Therefore, there is no regulatory need for Rutenia to double charge Korsania's glass. In this light, Rutenia's carbon charge does not distinguish Korsania's glass from Burlandia's glass simply because the former is from Korsania. It makes this distinction because Korsania's glass bears less regulatory need than Burlandia's glass.

b. Burlandia's and Korsania's glass are not like products.

Similar to Burlandia's and Artania's glass, Burlandia's and Korsania's glass are not like products under GATT Art. I.1 for the similar reasons elaborated in II.1.A.b. As elaborated in I.2.A., concerned with the adverse effects of climate change, Rutenia's consumers have different perception between products with different levels of carbon emissions. Since Burlandia's glass produces 0.1 tonnes more, or 18.2 percent more, of CO₂ per tonne of glass than Korsania's glass,²⁹ their consumer responsiveness in Korsania differs.

Furthermore, Burlandia's and Korsania's glass are in a reverse price elasticity relationship. During 2021 and 2022, the sale price of Korsania's glass increased by 15,000 USD/tonne, but its sales rose by 15,000 tonnes. In contrast, the sale price of Burlandia's glass decreased by 30,000 USD/tonne, but its sales dropped by 40,000 tonnes.³⁰ In other words, the relative price drop of Burlandia's glass against Korsania's glass did not promote, but reduced, the former's sale, which indicates a reverse price elasticity relationship between Burlandia's and Korsania's glass. This evinces that they are not in a competitive relationship and are not like products.

²⁸ Case, [20].

²⁹ Case, [7, 8].

³⁰ Case, [Annex IV]; Clarification, [9].

2. Rutenia’s carbon charge does not confer “advantages” on Korsania’s glass.

WTO jurisprudence affirmed that, even if a measure distinguishes between like imported products, it does not confer advantages as long as such distinction does not result in a detrimental impact on the competitive opportunities for products from any Members.³¹

The carbon charge deduction applied to Korsania’s glass does not result in any detrimental impact on the competitive opportunities for Burlandia’s products. As mentioned above, Korsania’s glass is entitled to this deduction because it is charged the carbon price in Korsania and undertakes the environmental costs of its carbon emissions. In contrast, Burlandia’s glass is not charged a carbon price in Burlandia and has not internalized the environmental costs. By charging Burlandia’s glass while permitting some reduction for Korsania’s glass, Rutenia’s carbon charge ensures that both glass internalize equivalent costs for their carbon emissions. Therefore, the measure does not confer an advantage to Korsania’s glass.

To conclude, Rutenia’s carbon charge is consistent with GATT Art. I:1.

III. RUTENIA’S CARBON CHARGE IS JUSTIFIED UNDER GATT ART. XXI(B)(III).

A measure is justified under GATT Art. XXI(b)(iii) if it is (i) taken in time of emergency in international relations, and (ii) is considered necessary by the Member for the protection of its essential security interests.³² In this case, Rutenia’s carbon charge meets both elements for the following reasons.

1. Rutenia’s carbon charge is taken in time of emergency in international relations.

A measure is justified under GATT Art. XXI(b)(iii) if (i) there is an emergency in international relations, and (ii) the measure is taken in time of that emergency.³³ In this case, Rutenia’s carbon charge meets both elements for the following reasons.

A. There is an emergency in international relations.

WTO jurisprudence affirmed that an “emergency in international relations” includes a serious event that occurs in relations between states and requires urgent actions.³⁴ Besides, an emergency does not need to originate in the Member invoking the exception.³⁵ In this case, Rutenia is facing a climate emergency that constitutes an emergency in international relations for the following reasons.

First, Rutenia is losing its territory and population in a manner comparable to war. WTO jurisprudence affirmed that, informed by the preceding term “war” in the same subparagraph,

³¹ ABR, EC—Seal Products, [5.88].

³² PR, US—Origin Marking (Hong Kong, China), [7.263].

³³ PR, US—Origin Marking (Hong Kong, China), [7.267].

³⁴ PR, US—Origin Marking (Hong Kong, China), [7.282].

³⁵ PR, US—Origin Marking (Hong Kong, China), [7.297].

the term “emergency” is *comparable in its gravity or severity to a “war.”*³⁶ In this case, because Rutenia is an island country, climate change poses a particularly severe impact on Rutenia’s security. Its territory is eroding, with 17 percent of the habitable land area expected to be submerged by 2050. Its people are facing life threats, with 2 million, or 6.7 percent of its people expected to be displaced by 2050. Its society is in unrest, with 45 percent of its people concerned about being forced to emigrate.³⁷ The impact of climate change on Rutenia’s territory, population, and societal trust is tantamount to, if not exceeding, war. The characterization of climate change as a “security risk” by the President of the UN General Assembly³⁸ further supports this understanding.

Second, Rutenia’s climate emergency occurs in relations between states. Climate change is expected to cause masses of displacement, which could reach “a biblical scale” as warned by the UN Secretary-General.³⁹ In Rutenia, climate change is expected to cause displacement of 2 million Rutenians, while 45 percent of Rutenians are considering emigration.⁴⁰ This large-scale emigration wave will foreseeably cause significant social tensions between Rutenian migrants and local residents and jeopardize the relations *between Rutenia and recipient states*. The social tensions between climate-induced Artanian migrants and Rutenians⁴¹ are telling. Therefore, Rutenia’s climate emergency is an emergency in international relations.

Third, Rutenia’s climate emergency requires urgent actions. As the Preamble of the Paris Agreement reflects, the international community has affirmed that the threat of climate change is “urgent”. Not to mention that in Rutenia, the threat of climate change is real and has caused large-scale social unrest, with 45 percent of its people *now* concerning about being forced to emigrate.⁴²

B. Rutenia’s carbon charge is taken in time of emergency in international relations.

The phrase “taken in time of” refers to chronological concurrence connecting the measure and the emergency.⁴³ In this case, Rutenia is now in the climate emergency: 73 percent of Rutenians consider climate change as the largest existential threat facing Rutenia. 45 percent

³⁶ PR, US—Steel and Aluminium Products (China), [7.139].

³⁷ Case, [14].

³⁸ Case, [13].

³⁹ Case, [13].

⁴⁰ Case, [14].

⁴¹ Case, [10]; Clarification, [31].

⁴² Case, [14].

⁴³ PR, Russia—Traffic in Transit, [7.70].

are concerned of being forced to emigrate.⁴⁴ Therefore, Rutenia's carbon charge is taken in time of emergency in international relations.

2. Rutenia's carbon charge is consistent with GATT Art. XXI(b) chapeau.

A measure is consistent with GATT Art. XXI(b) chapeau if a Member exercises its discretion of designating particular concerns as the protected essential security interests in good faith.⁴⁵ Specifically, GATT Art. XXI is invoked in good faith if a Member (i) articulates its essential security interests with greater specificity, and (ii) demonstrates the plausible connection between the measure and the protected interests.⁴⁶ In this case, Rutenia's carbon charge is consistent with GATT Art. XXI(b) chapeau for the following reasons.

A. Rutenia articulates its essential security interests with greater specificity.

Essential security interests refer to interests associated with the quintessential functions of the Member, such as protecting its territory and populations from external threats and maintaining its own law and public order.⁴⁷

In this case, Rutenia has clearly specified its protected essential security interests, that is, its *territory, population, and the public order of societal trust*. As mentioned above, Rutenia is facing eroding territory, displacement of population, and the widespread social concern about displacement caused by climate change, and these threats are supported by scientific report and opinion poll conducted by qualified institutions.⁴⁸ These specific articulations correspond to the concerns raised in the international community, such as the UN Secretary-General and President of the UN General Assembly.⁴⁹ Therefore, Rutenia has articulated its security interests with specificity.

B. The connection between Rutenia's carbon charge and the essential security interests is plausible.

A measure's connection with its protected essential security interests is plausible if it is not remote from, or not unrelated to, the essential security interests.⁵⁰ In this case, Rutenia's carbon charge is a plausible measure to protect the essential security interests. According to the IPCC report, carbon emission is the main cause of climate change-induced sea level rise.⁵¹ The Paris Agreement also acknowledges carbon emission reduction as the major method to

⁴⁴ Case, [14].

⁴⁵ PR, Russia—Traffic in Transit, [7.131-7.132].

⁴⁶ PR, Russia—Traffic in Transit, [7.138]

⁴⁷ PR, Russia—Traffic in Transit, [7.130].

⁴⁸ Case, [14].

⁴⁹ Case, [13].

⁵⁰ PR, Russia—Traffic in Transit, [7.138]; PR, Saudi Arabia—IPRs [7.285].

⁵¹ Case, [12].

combat climate change.⁵² By collecting carbon charge on products based on their carbon emissions, Rutenia's carbon charge program drives producers to internalize the environmental costs of carbon emissions and motivates them to reduce carbon emissions. In this sense, Rutenia's carbon charge contributes to the reduction of carbon emissions, mitigates climate change-induced sea level rises, and controls the eroding territory, displacement of population, and social unrest facing Rutenia. Therefore, Rutenia's carbon charge has a plausible connection with its protected essential security interests.

To conclude, Rutenia's carbon charge is justified under GATT Art. XXI(b)(iii).

IV. RUTENIA'S CARBON CHARGE IS JUSTIFIED UNDER GATT ART. XX(B) AND (G).

1. Rutenia's carbon charge is consistent with GATT Art. XX(b).

A measure is justified under GATT Art. XX(b) if it is (i) designed to protect the life or health of human, animal, or plant, and (ii) necessary.⁵³ Rutenia's carbon charge meets these elements for the following reasons.

A. Rutenia's carbon charge is designed to protect human life or health.

A measure meets this element if (i) risks to the life or health of human, animal, or plant are present, and (ii) the measure's policy objective reduces such risks.⁵⁴ In this case, Rutenia's carbon charge meets these elements for the following reasons.

First, Rutenia is facing risks to human life and health caused by climate change. As mentioned above, climate change is causing the rise in sea level in Rutenia, which threatens the life and health of Rutenians and causes their displacement. IPCC also affirmed that the adverse effects of climate change include flooding, drought, and increased emergence of pathogenic diseases, which are detrimental to the physical and mental health of people globally.⁵⁵ Thus, Rutenia is facing risks to human life and health of its population.

Second, Rutenia's carbon charge is designed to mitigate climate change to reduce the above risks. As elaborated in III.2.B., Rutenia's carbon charge motivates producers to reduce their carbon emissions, thus mitigates the risks to human life and health of Rutenians. Therefore, it is designed to protect human life or health.

B. Rutenia's carbon charge is necessary.

To determine whether a measure is necessary, WTO jurisprudence weighed and balanced between three relevant factors, namely, (i) the importance of the interests or values at stake; (ii)

⁵² Paris Agreement, Art. 4.4.

⁵³ PR, US—Gasoline, [6.20].

⁵⁴ PR, Brazil—Retreaded Tyres, [7.101].

⁵⁵ Case [12].

the extent of the contribution to the achievement of the measure's objective; and (iii) its trade restrictiveness.⁵⁶ Specifically, a measure is necessary if a reasonably available alternative that achieves the equivalent level of protection and is less GATT-inconsistent does not exist.⁵⁷ In this case, Rutenia's carbon charge is necessary for the following reasons.

First, Rutenia pursues the most vital interest of human life and health. WTO jurisprudence has affirmed that the objective of protecting human life and health is *vital and important in the highest degree*.⁵⁸ In this case, as mentioned above, Rutenia's carbon charges seeks to protect human life and health of Rutenians. Therefore, it pursues the most vital and important interest.

Second, Rutenia's carbon charge contributes significantly to the protection of human life and health of Rutenians. As elaborated in III.2.B., the measure motivates producers to reduce carbon emissions, thus mitigates the risks to human life and health of Rutenians. Specifically, Rutenia's carbon charge is expected to reduce 8 percent of carbon emissions in Rutenia and 3 percent of carbon emissions in other countries of the Intermarium region by 2030,⁵⁹ which contributes significantly to carbon emission reductions and the protection of Rutenians.

Third, Rutenia's carbon charge is restrictive at a minimal level. In the case of Burlandia's glass, it charges USD 34 per tonne of glass,⁶⁰ which is merely *0.0068 percent of the sale price* of Burlandia's glass.⁶¹ The difference in charges between Burlandia's and Rutenia's glass is even less, which is USD 14 per tonne of glass⁶² or *0.0028 percent of the sale price* of Burlandia's glass. Therefore, Rutenia's carbon charge poses minimal, if any, competitive impact on Burlandia's glass.

Fourth, no qualified alternative to Rutenia's carbon charge exists. Burlandia might propose Rutenia permit Burlandia's glass to deduct its energy excise tax from Rutenia's carbon charges. However, a qualified alternative must achieve the objective pursued by the measure *at an equivalent level*. Allowing Burlandia's glass the proposed carbon charge deduction would decrease Burlandia's incentives to reduce carbon emissions. Burlandia would further have reduced incentive to verify or establish a mechanism to track its carbon emissions. Therefore, Burlandia's proposed alternative would compromise the level of carbon emission reductions pursued by Rutenia. Thus, it is not a qualified alternative.

⁵⁶ ABR, Brazil—Retreaded Tyres, [178].

⁵⁷ ABR, Brazil—Retreaded Tyres, [156].

⁵⁸ ABR, Brazil—Retreaded Tyres, [179]; PR, Brazil—Retreaded Tyres, [7.210].

⁵⁹ Clarification, [41].

⁶⁰ Case, [19]; Clarification, [15].

⁶¹ Clarification, [9].

⁶² Case, [4, 19]; Clarification, [15].

2. Rutenia's carbon charge is consistent with GATT Art. XX(g).

A measure is justified under GATT Art. XX(g) if (i) there are exhaustible natural resources;⁶³ (ii) the measure is relating to the conservation of such resources;⁶⁴ and (iii) the measure is made effective in conjunction with restrictions on domestic production or consumption.⁶⁵ Rutenia's carbon charge meets these elements for the following reasons.

A. Low-CO2 air and habitable land are exhaustible natural resources.

The Panel of *US—Gasoline* affirmed that clean air is an exhaustible natural resource within the meaning of Art. XX(g) because it could be exhausted by pollutants emitted through the process of producing glass.⁶⁶ Following the same rationale, low-CO2 air is an exhaustible natural resource because it could be similarly exhausted by CO2 emitted through the process of producing glass. Moreover, habitable land is also an exhaustible natural resource considering that it could be eroded by the sea level rise.

B. Rutenia's carbon charge is relating to the conservation of natural resources.

A measure is "relating to" an objective if a close and genuine relationship of ends and means exists.⁶⁷ In this case, as elaborated in III.2.B., Rutenia's carbon charge motivates producers to reduce their carbon emissions, which controls the amount of CO2 in the air and mitigates the risks to Rutenia's habitable land. Therefore, the measure has close and genuine relationship with the conservation of exhaustible natural resources.

C. Rutenia's carbon charge is made effective in conjunction with restrictions on domestic production.

A measure is made effective in conjunction with restrictions on domestic production if it is applied in an even-handedness manner between domestic and imported products.⁶⁸ In this case, Rutenia's carbon charge is applied to all covered products, including domestic and imported.⁶⁹ Therefore, it fulfills the even-handedness requirement.

3. Rutenia's carbon charge is justified under GATT Art. XX chapeau.

A measure is justified under GATT Art. XX chapeau if no arbitrary or unjustifiable discrimination exists, while such discrimination exists if (i) the application of a measure results in discrimination between countries where the same conditions prevail; and (ii) such

⁶³ ABR, US—Shrimp, [46].

⁶⁴ ABR, US—Shrimp, [51].

⁶⁵ ABR, US—Shrimp, [54].

⁶⁶ PR, US—Gasoline, [6.37].

⁶⁷ ABR, US—Shrimp, [136].

⁶⁸ ABR, US—Gasoline, p. 21.

⁶⁹ Case, [18].

discrimination is arbitrary or unjustifiable in character.⁷⁰ Rutenia's carbon charge is not arbitrary or unjustifiable discrimination for the following reasons.

A. Rutenia's carbon charge does not result in discrimination between countries.

Discrimination within GATT Art. XX chapeau exists only when a measure treats Members *with the same prevailing conditions* differently.⁷¹ "Conditions" refer to those related to the objective under GATT Art. XX subparagraph that provisionally justifies the measure.⁷² In this case, Burlandia has different prevailing conditions with other countries.

Burlandia is different with Rutenia. Rutenia has a well-established mechanism for tracking carbon emissions during the product production process, which contributes to the control of carbon emissions, the protection of human life and health, and the conservation of habitable land in Rutenia. In contrast, Burlandia, lacks this tracking mechanism. Therefore, its prevailing conditions with Rutenia's differ.

Burlandia is also different with Artania. As elaborated in II.1.A.a., Artania is an LDC and SIDS that is vulnerable to climate change and poses minimal regulatory threat to the global warming. In contrast, Burlandia is a large glass producer in the Intermarium region⁷³ and produces huge carbon emissions. Therefore, its prevailing conditions with Artania's differ.

Burlandia is further different with Korsania. As elaborated in II.1.B.a., Korsania adopts a carbon tax system that causes its products internalize the environment costs of carbon emissions. In contrast, Burlandia has not introduced this internalization system. Therefore, its prevailing conditions with Korsania's differ.

B. Rutenia's carbon charge is not arbitrary or unjustifiable in character.

Discrimination is arbitrary or unjustifiable in character if it bears no rational relationship to the pursuit of the policy objective under the GATT Art. XX subparagraph that provisionally justifies the contested measure.⁷⁴

In this case, the different treatment accorded to Burlandia's glass, if any, bears rational relationship with the objective pursued by Rutenia's carbon charge. As mentioned above, Burlandia is treated differently because it lacks a mechanism for tracking carbon emissions, less vulnerable to climate change compared to LDCs and SIDS, and lacks a carbon tax system. Since Burlandia is less devoted to internalizing the environmental costs of carbon emissions,

⁷⁰ ABR, US—Shrimp, [150].

⁷¹ ABR, EC—Seal Products, [5.303]; ABR, US—Shrimp, [165].

⁷² ABR, EC—Seal Products, [5.299-300].

⁷³ Case, [7].

⁷⁴ ABR, Brazil—Retreaded Tyres, [227].

treating Burlandia differently has rational relationship with Rutenia's policy objective to reduce carbon emissions, protect its populations, and conserve low-CO2 air and habitable land.

To conclude, Rutenia's carbon charge is justified under GATT Art. XX(b) and (g).

REQUEST FOR FINDINGS

Rutenia respectfully requests this Panel to find that:

1. Rutenia's carbon charge on glass from Burlandia is consistent with Art. III:2 of the GATT;
2. Rutenia's carbon charge on glass from Artania is consistent with Art. I:1 of the GATT;
3. Rutenia's carbon charge on glass from Korsania is consistent with Art. I:1 of the GATT;
and
4. Any potential inconsistencies with the GATT are justified under Article XXI(b)(iii), XX(b), and XX(g).