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**JOHN H. JACKSON MOOT COURT COMPETITION**  
**22<sup>nd</sup> edition**

**Rutenia – Carbon Charge**

Burlandia  
*(Complainant)*

**VS**

Rutenia  
*(Respondent)*

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**SUBMISSION OF THE RESPONDENT**

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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**

Argentina—Financial Services	Argentina—Measures Relating to Trade in Goods and Services, WT/DS453/AB/R, adopted 9 May 2016.
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.
EC—Poultry	European Communities—Measures Affecting Importation of Certain Poultry Products, WT/DS69/AB/R, adopted 23 July 1998.
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Japan—Alcoholic Beverages II	Japan—Taxes on Alcoholic Beverages, WT/DS8/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—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 21 November 2001.

**B. Panel Reports of the WTO**

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.
Dominican—Safeguards	Dominican Republic—Safeguard Measures on Imports of Polypropylene Bags and Tubular Fabric, WT/DS415/R, WT/DS416/R, WT/DS417/R, WT/DS418/R, adopted 22 February 2012.
Indonesia—Autos	Indonesia—Certain Measures Affecting the Automobile Industry, WT/DS54/R, WT/DS55/R, WT/DS59/R, WT/DS64/R, adopted 23 July, 1998.
Japan—Alcoholic Beverages II	Japan—Taxes on Alcoholic Beverages, WT/DS8/R, WT/DS10/R, WT/DS11/R, adopted 1 November 1996.

Korea—Alcoholic Beverages	Korea—Taxes on Alcoholic Beverages, WT/DS75/R, WT/DS84/R, adopted 17 February 1999.
Russia—Imported Railway Product	Russia—Measures affecting the importation of railway equipment and parts thereof, WT/DS499/R, adopted 30 July 2018.
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/R, circulated 16 June 2020.
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.

**LIST OF ABBREVIATIONS**

ABR	Appellate Body Report
Art.	Article
CBDRRC	Common but Differentiated Responsibilities and Respective Capabilities
CO <sub>2</sub>	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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> An ODC is not an internal charge under Art. III:2.<sup>4</sup> 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,<sup>5</sup> WTO jurisprudence affirmed that the examination may begin with the second sentence.<sup>6</sup>

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<sup>1</sup> ABR, Japan—Alcoholic Beverages II, p.16.

<sup>2</sup> ABR, China—Auto Parts, [163]; PR, China—Auto Parts, [7.132].

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

<sup>4</sup> ABR, Canada—Periodicals, [468].

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

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> To examine it, WTO jurisprudence focused on the elasticity of substitution, that is, *responsiveness of consumers* to the various products in the market.<sup>9</sup> 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.<sup>10</sup> 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 CO<sub>2</sub> per tonne of glass than Rutenia's glass,<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> In other words, the relative price drop of Burlandia's glass

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<sup>7</sup> ABR, Japan—Alcoholic Beverages II, p. 24.

<sup>8</sup> PR, Korea—Alcoholic Beverages, [10.40].

<sup>9</sup> PR, Japan—Alcoholic Beverages II, [6.28].

<sup>10</sup> Case, [14].

<sup>11</sup> Case, [4, 7].

<sup>12</sup> ABR, Korea—Alcoholic Beverages, [142-143].

<sup>13</sup> Case, [4, 7]; Clarification, [8].

<sup>14</sup> 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*.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> In

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<sup>15</sup> ABR, Japan—Alcoholic Beverages II, p. 26.

<sup>16</sup> Case, [18].

<sup>17</sup> ABR, Japan—Alcoholic Beverages II, p. 29.

<sup>18</sup> ABR, Canada—Periodicals, p. 22-23.

<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> This rationale may be referred to when the Panel examines like products under GATT Art. I:1.

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<sup>20</sup> PR, *Argentina—Hides and Leather*, [11.183-11.184].

<sup>21</sup> Case, [Annex III].

<sup>22</sup> PR, *Russia—Imported Railway Product*, [7.898].

<sup>23</sup> 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,<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.**

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<sup>24</sup> Case, [18].

<sup>25</sup> Case, [9,10]; Clarification, [30].

<sup>26</sup> PR, Indonesia—Autos, [14.141].

<sup>27</sup> 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.<sup>28</sup>

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 CO<sub>2</sub> per tonne of glass than Korsania's glass,<sup>29</sup> 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.<sup>30</sup> 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.

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<sup>28</sup> Case, [20].

<sup>29</sup> Case, [7, 8].

<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> Besides, an emergency does not need to originate in the Member invoking the exception.<sup>35</sup> 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,

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<sup>31</sup> ABR, EC—Seal Products, [5.88].

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

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

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

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



the term “emergency” is *comparable in its gravity or severity to a “war.”*<sup>36</sup> 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.<sup>37</sup> 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 Assembly<sup>38</sup> 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.<sup>39</sup> In Rutenia, climate change is expected to cause displacement of 2 million Rutenians, while 45 percent of Rutenians are considering emigration.<sup>40</sup> 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 Rutenians<sup>41</sup> 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.<sup>42</sup>

#### **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.<sup>43</sup> 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

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

<sup>37</sup> Case, [14].

<sup>38</sup> Case, [13].

<sup>39</sup> Case, [13].

<sup>40</sup> Case, [14].

<sup>41</sup> Case, [10]; Clarification, [31].

<sup>42</sup> Case, [14].

<sup>43</sup> PR, Russia—Traffic in Transit, [7.70].

are concerned of being forced to emigrate.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> The Paris Agreement also acknowledges carbon emission reduction as the major method to

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<sup>44</sup> Case, [14].

<sup>45</sup> PR, Russia—Traffic in Transit, [7.131-7.132].

<sup>46</sup> PR, Russia—Traffic in Transit, [7.138]

<sup>47</sup> PR, Russia—Traffic in Transit, [7.130].

<sup>48</sup> Case, [14].

<sup>49</sup> Case, [13].

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

<sup>51</sup> Case, [12].

combat climate change.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup> 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)

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<sup>52</sup> Paris Agreement, Art. 4.4.

<sup>53</sup> PR, US—Gasoline, [6.20].

<sup>54</sup> PR, Brazil—Retreaded Tyres, [7.101].

<sup>55</sup> Case [12].

the extent of the contribution to the achievement of the measure's objective; and (iii) its trade restrictiveness.<sup>56</sup> 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.<sup>57</sup> 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*.<sup>58</sup> 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,<sup>59</sup> 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,<sup>60</sup> which is merely *0.0068 percent of the sale price* of Burlandia's glass.<sup>61</sup> The difference in charges between Burlandia's and Rutenia's glass is even less, which is USD 14 per tonne of glass<sup>62</sup> 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.

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<sup>56</sup> ABR, Brazil—Retreaded Tyres, [178].

<sup>57</sup> ABR, Brazil—Retreaded Tyres, [156].

<sup>58</sup> ABR, Brazil—Retreaded Tyres, [179]; PR, Brazil—Retreaded Tyres, [7.210].

<sup>59</sup> Clarification, [41].

<sup>60</sup> Case, [19]; Clarification, [15].

<sup>61</sup> Clarification, [9].

<sup>62</sup> 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;<sup>63</sup> (ii) the measure is relating to the conservation of such resources;<sup>64</sup> and (iii) the measure is made effective in conjunction with restrictions on domestic production or consumption.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> In this case, Rutenia's carbon charge is applied to all covered products, including domestic and imported.<sup>69</sup> 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

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<sup>63</sup> ABR, US—Shrimp, [46].

<sup>64</sup> ABR, US—Shrimp, [51].

<sup>65</sup> ABR, US—Shrimp, [54].

<sup>66</sup> PR, US—Gasoline, [6.37].

<sup>67</sup> ABR, US—Shrimp, [136].

<sup>68</sup> ABR, US—Gasoline, p. 21.

<sup>69</sup> Case, [18].

discrimination is arbitrary or unjustifiable in character.<sup>70</sup> 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.<sup>71</sup> "Conditions" refer to those related to the objective under GATT Art. XX subparagraph that provisionally justifies the measure.<sup>72</sup> 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 region<sup>73</sup> 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.<sup>74</sup>

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,

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<sup>70</sup> ABR, US—Shrimp, [150].

<sup>71</sup> ABR, EC—Seal Products, [5.303]; ABR, US—Shrimp, [165].

<sup>72</sup> ABR, EC—Seal Products, [5.299-300].

<sup>73</sup> Case, [7].

<sup>74</sup> 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).