

RUSSIA – TRAFFIC IN TRANSIT¹

(DS512)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Ukraine	GATT Art. XXI(b), Russia's Protocol of Accession	Establishment of Panel	21 March 2017
			Circulation of Panel Report	5 April 2019
Respondent	Russian Federation		Circulation of AB Report	NA
			Adoption	26 April 2019

1. MEASURE AND PRODUCT AT ISSUE

- The imposition, publication and administration of measures by the Russian Federation restricting international transit cargo by road and rail from Ukraine which is destined for the Republic of Kazakhstan or the Kyrgyz Republic, and banning such transit cargo for certain categories of goods.²

2. SUMMARY OF KEY PANEL FINDINGS

- **GATT 1994 Art. XXI(b)(iii) (national security exception not totally self-judging – measures taken in an emergency in international relations):** The Panel interpreted Art. XXI(b) as vesting in panels the power to review whether the requirements of the enumerated subparagraphs were met, rather than leaving it to the unfettered discretion of the invoking Member. Accordingly, the Panel rejected the Russian Federation's argument that the Panel lacked jurisdiction to review the Russian Federation's invocation of Art. XXI(b)(iii). The Panel considered that an "emergency in international relations" referred generally to a situation of armed conflict, or of latent armed conflict, or of heightened tension or crisis, or of general instability engulfing and surrounding a state. Both the existence of an "emergency in international relations" and whether the action was "taken in time of" such emergency, within the meaning of subparagraph (iii) of Art. XXI(b), were subject to objective determination. The Panel found that as of 2014, there existed a situation in the Russian Federation's relations with Ukraine that constitutes an emergency in international relations and that each of the measures at issue was "taken in time of" an emergency of international relations.
- **GATT 1994 chapeau of Art. XXI(b) (action which the invoking Member considers necessary for the protection of its essential security interests):** As for the level of review that the Panel would apply to the determination under the chapeau of Art. XXI(b), i.e. whether the invoking Member considered its action necessary for the protection of its essential security interests, the Panel said that, in general, while it is for every Member to define for itself what it considers to be its essential security interests, such essential security interests must be sufficiently articulated to demonstrate their veracity. Moreover, the obligation of good faith also required that the measures at issue meet a minimum requirement of plausibility in relation to the proffered essential security interests, i.e. that they are not implausible as measures protective of those interests. The Panel concluded that, taking into account the character of the emergency in international relations, as being very close to the "hard core" of war or armed conflict, the Russian Federation's articulation of its essential security interests cannot be considered obscure or indeterminate. In addition, the measures cannot be regarded as being so remote from or unrelated to the 2014 emergency in international relations that it is implausible that the Russian Federation implemented the measures for the protection of its essential security interests arising out of that emergency. That being so, and following logically from the adjectival clause "which it considers" in the chapeau of Art. XXI(b), it was for the Russian Federation to determine the "necessity" of the measures for the protection of its essential security interests. The Panel therefore found that the Russian Federation had met the requirements for invoking Art. XXI(b)(iii) in relation to the measures at issue.

¹ *Russia - Measures Concerning Traffic in Transit*

² The identified transit restrictions: 2016 Belarus Transit Requirements; the 2016 Transit Bans on Non-Zero Duty and Resolution No. 778 Goods; and the 2014 Belarus-Russia Bans on Transit of Resolution No. 778 Goods.