CHAPTER 10

Energy Transit in the Tangled Web of RTAs: The Relationship between GATT Articles V and XXIV in the Context of Energy Goods

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1 Introduction

At the close of the Uruguay Round of negotiations in 1994, the World Trade Organization was comprised of 123 Members, with only a handful among them representing States vital to the global supply of energy resources. Uruguay-era negotiations pertaining to trade in goods focused primarily on the reduction of import tariffs, as well as regulatory restrictions that could hinder trade flows, particularly in key sectors such as agriculture and textiles. The negotiators accorded comparatively little focus to trade in natural and raw materials, including energy goods. In contrast to agricultural and manufactured products, importing States rarely find it in their best interest to impede the flow of energy goods such as oil and natural gas. Indeed, such restrictions are uncommon in the energy sector; States typically seek to obtain energy goods at the lowest possible price, seldom imposing high tariffs or costly regulatory restrictions.

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2 It should be noted that negotiators from key developed country Members, like the United States, pushed to include specific disciplines within the final agreement on access to natural resources. These proposals were rebuffed by the developing country negotiating bloc. See Terence P. Stewart, The GATT Uruguay Round: A Negotiating History, Volume I: Commentary (Kluwer Law, 1993) 489–90. See also Statement by the Informal Group of Developing Countries, GATT Doc No MTN.TNC/W/19 (9 April 1990).
3 As Yanovich points out, while bound tariffs on fuel imports may be relatively high in some countries, on balance, actual applied tariffs are relatively low, with an average of 0.5% in developed countries and 6.7% in developing countries in 2007. See Alan Yanovich, ‘WTO Rules and the Energy Sector’ in Y. Selivanova (ed.) Regulation of Energy in International Trade Law (Kluwer 2011) 4.
It is of little surprise that the existing WTO Agreement lacks provisions that specifically address the particular challenges of the energy sector.4

Since Uruguay, the times have changed, even if the rulebook has not. Within the WTO, energy is now a matter of highest priority. The mounting global dependence on oil and gas reserves found in remote and land-locked areas, paired with the fragmentation of transit routes between many different jurisdictions,5 has ‘increased the importance of transit pipeline issues in global oil and gas markets and politics.’6 In parallel with this trend, several important producers of oil and natural gas have acceded to the WTO,7 as have States that serve as critical conduits for the transit of these products.8 While the WTO Agreement sets out general rules applicable to the transit of all goods in Article V of the GATT 1994, these provisions have only been subject to minimal interpretation by the WTO Dispute Settlement Body,9 and they have never been applied in the context of energy transit. Over the past decade, the European region has experienced several high-profile disputes over the transit of hydrocarbons,10

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5 Most markedly demonstrated in the former Soviet Union (FSU) and former Yugoslavia.


8 Both Georgia (acceded in 2000) and Ukraine (which joined in 2008) control critical pipeline infrastructure used for the transit of natural gas. Accession negotiations are ongoing for Belarus, another important transit State.

9 WTO Panel Report, Colombia—Indicative Prices and Restrictions on Ports of Entry (Colombia—Panamá) wt/DS366/R (27 April 2009).

10 Disputes between Russia and Ukraine, which occurred in 2006 and 2009, led to major interruptions in the supply of natural gas to multiple countries in Europe. These disputes erupted, in part, over the calculation of Ukrainian transit tariffs. A similar dispute between Russia and Belarus, which occurred in 2010, threatened to affect 6.2% of gas