

# Questioning the (In)Consistency of the EU's Third Energy Package with the Undertaken WTO Obligations

UDK: 349.6(4)EU  
339.5(100):349.6(4)EU  
339.9:349.6(4)EU

## Summary

The subject-matter of this paper is the relation between the European Union and the Russian Federation with regard to energy trade. In 2014, Russia put forward the request for consultation with the European Union with regard to the EU's Third Energy Package (TEP) which aims to liberalize markets in energy services. Before the Panel of the World Trade Organization (WTO), Russia has invoked numerous provisions of the General Agreement on Tariffs and Trade, as well as of General Agreement on Trade in Services.

After the Russian accession to the WTO, the European Union gained the possibility to challenge certain Russian legislative policies, e.g. the dual pricing policy. On the other hand, Russia has been the first to challenge the EU's Third Energy Package before the Panel of the WTO. According to Russia and certain authors, the TEP contains several provisions which are controversial in terms of their compliance with the rules of the WTO, even though the TEP, *prima facie*, aims at liberalizing markets in energy trade. The paper analyzes arguments put forward by both Russia and the EU. Finally, it provides the reader with the potential outcome of the dispute settlement procedure that should had been put to an end no later than December 2017.

*Key words:* Third Energy Package – energy trade – GATS – third-party access – unbundling

## 1. EU-Russia energy trade relations background and the EU's Third Energy Package

### *a) A brief overview of energy trade relations between the EU and the Russian Federation*

For many years, the European Union [hereinafter: the EU] relations with Russia were governed by the Partnership and Cooperation Agreement [hereinafter: the PCA].<sup>1</sup> The PCA

<sup>1</sup> AGREEMENT ON PARTNERSHIP AND COOPERATION establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, 24 June

provided for “an appropriate framework for political dialogue, to promote trade and investment based on the principles of market economy and to support Russian efforts to consolidate its democracy and to complete the transition into a market economy”.<sup>2</sup> However, the major deficiency of the PCA – as seen by the EU – was the lack of a solid legal instrument to challenge and settle the numerous trade disputes that arose between the two sides since the PCA’s entering into force in 1997.<sup>3</sup> Taking into account the fact that Russia is the EU’s fourth largest trading partner and that the EU is Russia’s biggest trading partner,<sup>4</sup> the absence of such legal instrument represented a serious problem until Russia became the member of the World Trade Organization [hereinafter: the WTO] on 22 August 2012.<sup>5</sup> Prior to the Russian accession to the WTO, the way of promoting energy cooperation was the Energy Dialogue launched on 30 October 2000 in Paris, which ultimately failed in 2012.<sup>6</sup> Since then, both the EU and Russia have the possibility to settle trade disputes that fall within the scope of the WTO law through dispute settlement mechanisms with decisions of binding nature.

Russian accession to the WTO offers other Member States of the WTO the possibility to challenge certain Russian trade policy features. For instance, one of the EU’s eyesores was the energy dual pricing policy under which Russia charges domestic consumers lower energy prices compared to the prices it imposes when exporting that same energy.<sup>7</sup> On the other hand, Russia was given the opportunity to object to the EU’s Third Energy Package [hereinafter: the TEP] – a comprehensive legislative package that promotes liberalization of the EU’s gas and electricity market. The TEP became a hurdle in EU-Russia trade relations resulting in Russia’s launching of a claim against the EU.<sup>8</sup> What is interesting is that the TEP became the first legislative product of the EU against which Russia threatened to use the WTO Agreements, and not the other way around, as it used to be the case in EU-Russia trade relations.<sup>9</sup> The main features of the TEP, the dispute over it and its potential outcomes and consequences are the topic of this paper.

#### *b) The TEP’s cornerstone provisions explained*

The TEP is the EU’s legislative package in force since 3 March 2011 that consists of two directives and three regulations. For the purposes of this paper, only the relevant parts of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in gas [hereinafter: the Directive 2009/73/EC] will be discussed. The paper will not deal with features of the electricity market.

The TEP represents the most recent step towards the EU’s energy market (particularly gas market) liberalization that started as early as in 1991. Back then, the EU’s aim was to

1994, Official Journal of the European Union, L327, 28/11/1997, p. 3. online at: < <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=643>>.

<sup>2</sup> Guillaume Van der Loo, EU-Russia Trade Relations: It Takes WTO to Tango, 40 *Legal Issues of Econ. Integration* 7 (2013) at 10.

<sup>3</sup> *Ibid.* at 12.

<sup>4</sup> Online at the official website of the European Commission: <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/russia/>>

<sup>5</sup> Online at the official website of the World Trade Organization page concerning accessions: <[https://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_russie\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/a1_russie_e.htm)>.

<sup>6</sup> Lars-Christian U. Talseth, *The Politics of Power – EU-Russia Energy Relations in the 21st Century* (Oslo: Palgrave Macmillan, 2017) at 86, 248.

<sup>7</sup> Van der Loo, *supra* note 2 at 18.

<sup>8</sup> WTO, European Union and its Member States - Certain Measures Relating to the Energy Sector, Request for consultations by the Russian Federation (30 April 2014) G/L/1067, G/SCM/D102, G/TRIMS/D/40, S/L/409, WT/DS476/1.

<sup>9</sup> Van der Loo, *supra* note 2 at 21.

benefit consumers by providing them with a more competitive energy market, as well as to ensure higher standards of environmental protection.<sup>10</sup> Nowadays, a far more pressing issue becomes energy security in general – the issue that is not only an economic one, but also in great amount of geopolitical nature.

The most relevant principles that have become controversial in terms of their consistency with the EU's WTO obligations are third party access, the so-called unbundling methods and exemptions provided therefrom and the certification system applied to “third countries” only. This paper will deal with them in turn.

According to the third party access [hereinafter: TPA] principle, the operator of a transmission network must allow non-discriminatory access to the transmission network to supply customers to any gas supplier which may request so.<sup>11</sup> This principle is contained in Article 32 of Directive 2009/73/EC and it stands on the frontier of the guarantee of a competitive gas market. Some authors see the TPA as crucial for “attracting investments in energy infrastructure, since it allows private investors to participate in project funding and gain revenues”.<sup>12</sup> While there is no doubt that new investors might be attracted to invest in new gas transmission networks, it has to be noted that the TPA obligation imposed on the already existing investors (such as the case with major Russian company – Gazprom and its existing investment in the EU) puts them in a position in which they have to open their networks to others while they remain the ones that bear the costs of the initial investment.

The so-called unbundling represents a “separation of the competitive segments of the energy industry (production and supply) from the regulated segments (network activities)”.<sup>13</sup> It is contained in Article 9 of Directive 2009/73/EC. Unbundling actually stands as a component of the principle of non-discrimination since it prevents the network operator from providing preferential treatment to “its own” supplier. The most radical type of unbundling is ownership unbundling. Under this method, “the vertically integrated energy company must divest either its network or production/supply assets”.<sup>14</sup> It is also the preferred unbundling option of the European Commission.<sup>15</sup>

Third controversial issue that emanates from Article 11 of Directive 2009/73/EC is the one dealing with the certification system in relation to third countries. Namely, in order to obtain certification which allows them to participate in the provision of transmission services, investors from third countries have to demonstrate that they “will not put at risk the security of energy supply of the Member State and the Community”.<sup>16</sup> This requirement “introduces additional certification requirements for non-EU companies in the EU energy market”<sup>17</sup> thereby raising humongous concern over its consistency with the WTO law, especially its sacrosanct national treatment principle.

<sup>10</sup> Anatole Boute, *Toward an EU-Russian Energy Agreement: Principles of Liberalization under EU and Russian Energy Law*, 40 Rev. Cent. & E. Eur. L. 109 (2015) at 116.

<sup>11</sup> Questions and Answers on the third legislative package for an internal EU gas and electricity market, online at: <[http://europa.eu/rapid/press-release\\_MEMO-11-125\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-125_en.htm?locale=en)>.

<sup>12</sup> Michael Hahn & Kateryna Holzer, “Special Agreements and Energy: Filling the Gaps” in Mitsuo Matsushita & Thomas J. Schoenbaum (ed.), *EMERGING ISSUES IN SUSTAINABLE DEVELOPMENT* (Tokyo: Springer, 2016) at 262.

<sup>13</sup> Anatole Boute, *supra* note 10 at 131.

<sup>14</sup> *Ibid.* at 132.

<sup>15</sup> See *Unbundling under the EU Third Energy Package*, online at: <<http://www.kwm.com/en/knowledge/insights/unbundling-under-the-eu-third-energy-package-20150414#>>.

<sup>16</sup> Directive 2009/73/EC, Article 11(3)(b).

<sup>17</sup> Anatole Boute, *supra* note 10 at 134.

## 2. Claim of the Russian Federation before the WTO – the course of the proceedings

On 30 April 2014, Russia requested consultations with the EU and its Member States concerning certain measures relating to the energy sector. Among several EU's legal documents invoked by Russia, the greatest concern was expressed regarding the aforementioned Directive 2009/73/EC. Russia claims that the EU and its Member States appear to be acting inconsistently with the EU's obligations under, *inter alia*, Articles II, VI, XVI and XVII of the GATS and their Specific Commitments under the GATS, Articles I, III, X, and XI of the GATT and Article 3 of the Agreement on Subsidies and Countervailing Measures. Finally, Russia said the EU was acting in breach of Article XVI:4 of the Agreement Establishing the World Trade Organization.<sup>18</sup>

On 11 May 2015, Russia brought the dispute before the Dispute Settlement Body and further clarified its views in the Request for the Establishment of a Panel by the Russian Federation.<sup>19</sup> After the Panel was established, it was expected to issue its final report to the parties in May 2017.<sup>20</sup> However, on 4 April 2017 the Panel communicated that it will not be possible to issue its final report by May 2017, but rather until the end of 2017, "due to the complexity of the dispute and the large volume of evidence".<sup>21</sup> The Panel has still not issued its final report at the time of the writing of this paper.<sup>22</sup>

## 3. The TEP's (in)consistency with the EU's WTO obligations

The analysis of the (in)consistency of the TEP with the WTO law will be examined with due regard to the Russia's claims and the aforementioned principles enshrined in the TEP. Due to limited amount of space for argumentation, the paper will deal with certain EU Member States specific commitments under the GATS and the inconsistency of the TEP with the GATS arising therefrom. As a question that concerns all the EU Member States, the system of certification system under Article 11 of the Directive 2009/73/EC will be examined.

### *a) Is the TEP contrary to some EU's Member States specific commitments and the national treatment principle?*

First and foremost, Russia expressed its concern regarding the unbundling requirement, particularly in connection to its non-compliance with certain EU Member States specific commitments. With regard to Croatia, Hungary and Lithuania, Russia claims that those countries undertook market access commitments under Articles XVI and XVII of the GATS with respect to pipeline transport services.<sup>23</sup> According to Article XVI:1, "each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and

<sup>18</sup> Request for consultations by the Russian Federation, *supra* note 8.

<sup>19</sup> WTO, European Union and its Member States - Certain Measures Relating to the Energy Sector, Request for the Establishment of a Panel by the Russian Federation (11 May 2015) WT/DS476/2.

<sup>20</sup> WTO, European Union and its Member States - Certain Measures Relating to the Energy Sector, Communication from the Chairperson of the Panel (18 August 2016) WT/DS476/4.

<sup>21</sup> WTO, European Union and its Member States - Certain Measures Relating to the Energy Sector, Communication from the Chairperson of the Panel (4 April 2017) WT/DS476/5.

<sup>22</sup> See the official website of the WTO – Certain Measures Relating to the Energy Sector <[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds476\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds476_e.htm)>.

<sup>23</sup> Request for the Establishment of a Panel by the Russian Federation, *supra* note 19.

specified in its Schedule”.<sup>24</sup> Indeed, according to the Schedule of Specific Commitments of the Republic of Croatia, it can be concluded that Croatia committed not to impose limitations on market access in the sub-sector of “pipeline transport services”.<sup>25</sup> Therefore, the list of measures which a Member shall not maintain or adopt listed in Article XVI:2 applies to Croatia. The unbundling regime introduced by the TEP is, *prima facie*, inconsistent with the provision forbidding a Member to adopt “limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding”.<sup>26</sup> Pursuant to Article 9(6) of the Directive 2009/73/EC, it is possible for a Member State to own and control both the transmission system operator and the production or supply portions of the vertically integrated undertaking.<sup>27</sup> While on the contrary, the same is not applicable for third-country service suppliers. For instance, Russian Gazprom is not entitled to own and control gas transmission pipelines while at the same time being the owner of a gas production facility. From the competition law standpoint, there seem to be no controversy in terms of forbidding Gazprom from controlling both transmission systems and production facilities. On the other hand, Croatia undertook specific commitment that it will not adopt measures that fall within the scope of those listed in Article XVI:2 of the GATS. Therefore, allowing the state to retain such privilege does seem contrary to the provisions set forth in GATS. Furthermore, Article XVII:1 states that “each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers”.<sup>28</sup> Is it then in accordance with this provision to deny access to the ownership rights of the gas transmission systems to third country service suppliers? Even though GATS does not cover the so-called governmental services and it does not in any part impose upon Members to privatize certain sectors of the economies, the case with the pipeline transport services does fall within the scope of the WTO law. Governmental services are defined as “those that are not supplied commercially and do not compete with other suppliers.”<sup>29</sup> The supply of energy – in particular – gas, does not fall within the scope of this carve-out. Therefore, it is the author’s opinion that Article 9(6) of the EU’s Directive 2009/73/EC is indeed contrary to the EU’s, in this regard Croatia’s, market access commitments under the GATS.

How could the EU defend its energy policy and – in particular – Article 9(6) of Directive 2009/73/EC? One way would certainly be by means of Article XIV of GATS which provides for a list of exemptions that can be used if their adoption does not represent a disguised restriction on trade in services.<sup>30</sup> It has been observed that “the extensive GATT 1994 case law is to be applied *mutatis mutandis* for the interpretation of Article XIV GATS”.<sup>31</sup> In *China – Publications and Audiovisual Products*, the Panel held that if “the measures at issue have the effect of prohibiting foreign service suppliers from wholesaling imported reading materials, while like Chinese suppliers are permitted to do so, these measures clearly

<sup>24</sup> General Agreement on Trade in Services, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 UNTS 183 [hereinafter: GATS].

<sup>25</sup> WTO, Schedule of Specific Commitments – the Republic of Croatia, GATS/SC/130 (22 December 2000) at 33.

<sup>26</sup> GATS, Article XVI:2(f).

<sup>27</sup> Directive 2009/73/EC, Article 9(6).

<sup>28</sup> GATS, Article XVII:1.

<sup>29</sup> WTO, Understanding the WTO: The Agreements, Services: rules for growth and investment, online at: <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm)>.

<sup>30</sup> GATS, Article XIV.

<sup>31</sup> Thomas Cottier, Sofya Matteotti-Berkutova & Olga Nartova, Third Country Relations in EU Unbundling of Natural Gas Markets: The „Gazprom Clause“ of Directive 2009/73 EC and WTO Law, Working Paper No 2010/06, May 2010, NCCR Trade Regulation, Swiss National Centre of Competence in Research [The Gazprom Clause – Working Paper].

modify the conditions of competition to the detriment of the foreign service supplier and thus constitutes less favourable treatment...".<sup>32</sup> In case of Article 9(6) of Directive 2009/73/EC, it is the author's opinion that the TEP did not hamper foreign service suppliers from supplying Croatian consumers with gas originating from their respective countries. Even though the mode of supply has been modified, it does not preclude it.

*b) Does the TEP fall within the scope of security exceptions under the GATS?*

The same issue, albeit from a different perspective, is whether foreign person(s) may or may not take control of the transmission network system anywhere in the EU. This issue relates to ownership rights and direct consequence of unbundling. According to Article 9(6), the government is allowed to retain control over both transmission system and the sector of production/supply of gas. In author's opinion, such standing may be successfully defended under the national security exceptions enshrined in Article XIVbis. This Article covers even those "measures that serve a Member's essential security interests only in part".<sup>33</sup> Can energy security fall within the scope of the *security exceptions* enshrined in Article XIVbis? According to *Cherp and Jewell*, "energy security concerns are largely shaped by experiences of disruptions and perceptions of risks".<sup>34</sup> Adding the fact that the first energy security issues were raised "in connection with supplying oil for armies" back in the early 20<sup>th</sup> century, it is reasonable to conclude that energy security relates in great amount to a general term of security (of the Community). The other consequence of gas supply disruptions is that it causes serious disruptions in all industry sectors that use gas as energy. This further causes economic downturns and weakening of gas importing states. Its negative influence for households should also not be forgotten. Therefore, it can be concluded that energy security is nowadays crucial for the normal functioning of industries and society in general. According to *Cottier and Delimatsis*, "trade liberalization and international regulation do not prevail over Member's vital interests in maintaining the core of sovereignty...".<sup>35</sup> Therefore, it is the author's opinion that the Panel might be keen on accepting that the previously discussed TEP provisions fall within the scope of security exceptions under Article XIVbis. Of course, it is still a question whether the EU would be acting in accordance with the principle of good faith when invoking Article XIVbis. Even though it covers rather broad security questions of the WTO Members, unbundling regime and exemptions therefrom do remain controversial because of their, *prima facie*, connection with some form of expropriation. Or in words of some third country leaders – a *robbery*.<sup>36</sup>

*c) Is the TEP's certification system enshrined in Article 11 of the Directive 2009/73/EC contrary to the most-favoured-nation principle?*

As explained above, the certification procedure laid down in Article 11 requires that the transmission system operator, which is controlled by a person from a third country, provides assurance that it "will not put at risk the security of energy supply of the Member

<sup>32</sup> WTO, China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, Report of the Panel (2009) WT/DS363/R, paragraph VII.996.

<sup>33</sup> The Gazprom Clause – Working Paper, *supra* note 31.

<sup>34</sup> Aleh Cherp & Jessica Jewell, The concept of energy security: Beyond the four As, Energy Policy 75 (2014) 415 at 418.

<sup>35</sup> Thomas Cottier & Panagiotis Delimatsis, „Article XIV bis GATS: Security Exemptions“ in Rüdiger Wolfrum et. al. (eds.), MAX PLANCK COMMENTARIES ON WORLD TRADE LAW, WTO – TRADE IN SERVICES, Vol. 6 (Leiden/Boston: Martinus Nijhoff Publishers, 2008) at 329.

<sup>36</sup> Van der Loo, *supra* note 2 at 20,21.

State and the Community”.<sup>37</sup> No such obligation exists for transmission system operators controlled by domestic, or rather, intra-EU persons. In its claim, Russia contends that Croatia, Hungary and Lithuania have implemented Article 11 in their respective legislations. It further contends that “the services and service suppliers of one EU Member State are thus treated more favorably by other Member States than are the services and service suppliers of other third-countries, including Russia”.<sup>38</sup> Russia concludes that this measure is inconsistent with the most-favoured-nation principle enshrined in Article II:1 of GATS. This Article states that “each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country”.<sup>39</sup> The provision of Article 11 has been nicknamed as the “Gazprom clause”. There is no doubt that service suppliers from third countries are granted less favourable treatment. And while *Cottier et al.* contend that the additional requirement imposed in Article 11 does not violate EU’s WTO obligations,<sup>40</sup> it has to be noted that it is not the case in respect of those Member States that undertook market access commitments in their respective Schedules, which e.g. Croatia did.

As mentioned above, Article XIV of the GATS provides for exemptions thereby allowing WTO Members to adopt regulations which have some non-economic aim (e.g. protection of public order). Once again, national security exception enshrined in Article XIVbis could provide the EU with a defense against the Russian claim. It is said that a measure can be justified on the basis of Article XIVbis if it “contributes to securing essential security interests”.<sup>41</sup> Since 52 % of the EU’s energy needs comes from imports, it is obvious that energy security bears sincere part of the security of the Union in general.<sup>42</sup> According to previously stated, energy has been relied on in both everyday situations as well as in order to protect its essential military, economic and geopolitical interests. This author is of the opinion that Article XIVbis does cover Article 11 of the TEP, as long as the risk balance test provided for in it is applied objectively and uniformly. This remains to be seen since it is applied in a case by case basis.

#### 4. Potential outcomes and consequences - conclusion

In the words of the European Commission, the aim of the TEP is “to ensure a real and effective choice of supplier and benefits to every single EU citizen”.<sup>43</sup> In words of the Russian President Putin, the TEP is an archetype of – a robbery.<sup>44</sup> Both of these statements can co-exist and be perfectly true, at the same time depicting the TEP and its core provisions and aims. Their (in)consistency with the WTO law and, in particular, the GATS is another question. Since an energy dispute is a rarity in the WTO case law, it is quite ungrateful to try and predict a potential outcome. Rather, as elaborated above, it makes more sense to try and predict the Parties’ argumentation before the Panel. The author is, nevertheless, of the opinion that most of the controversies of the TEP can fall within the

<sup>37</sup> Directive 2009/73/EC, Article 9(1).

<sup>38</sup> Request for the Establishment of a Panel by the Russian Federation, *supra* note 19.

<sup>39</sup> GATS, Article II:1.

<sup>40</sup> The Gazprom Clause – Working Paper, *supra* note 31.

<sup>41</sup> *Ibid.*

<sup>42</sup> Rafael Leal-Arcas; Andrew Filis, Conceptualizing EU Energy Security through an EU Constitutional Law Perspective, 36 *Fordham Int’ L.J.* 1225 (2013) at 1235.

<sup>43</sup> Energising Europe: A real market with secure supply, online at: <[http://europa.eu/rapid/press-release\\_IP-07-1361\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-07-1361_en.htm?locale=en)>.

<sup>44</sup> Van der Loo, *supra* note 2 at 20.

scope of Article XIVbis – security exceptions, but only if the application of the TEP remains consistent with the principle of good faith, as required under international law.

As for the consequences of the Panel's decision, it is certain that we can expect a dissatisfied party to appear before the Appellate Body trying to reverse the findings of the Panel. Should the Panel rule in favor of Russia, European Union's energy security policy might find itself in a dead-end alley with serious challenges ahead. The question will be *how to reduce dependency on the third country energy, Russian (=Gazprom) in particular*. Furthermore, the ruling of the Panel might provide other energy importing countries with a clear guideline whether they can embark on similar policies under the auspices of the security exception contained in Article XIVbis of GATS.

On the other hand, should the Panel find that the unbundling regime under the TEP is not contrary to the WTO law, gas markets in general might face serious distortions. The question will arise *why would gas giants want to invest in new gas transmission networks if they are forced to allow any other gas supplier access to "its own" pipelines*. The fact is that they are those with the fullest potential and investment capability to handle such strategic infrastructure projects. For instance, Nord Stream twin pipeline system that is laid through the Baltic Sea is 1224 kilometres long and has been used since October 2012 for transportation of gas from Russian Vyborg to German Lubmin. Total investment in Nord Stream amounts up to 7.4 billion euros. The major investor and, today, shareholder is OAO Gazprom (51 %).<sup>45</sup> The questions discussed represent a multi-layered issue with consequences in economic, geopolitical and everyday dimensions.

## **Pitanje (ne)usklađenosti Trećeg energetskeg paketa Europske unije s pravilima svjetske trgovine**

### **Sažetak**

Glavna tema ovog rada je odnos Europske unije (EU) i Ruske Federacije u području trgovine energijom. 2014. godine Rusija je uložila zahtjev za konzultacijama s Europskom unijom u svezi posljednjeg u nizu, Trećeg energetskeg paketa (TEP), kojim Europska unija nastoji liberalizirati tržište energetskeg usluga, a koji Rusija vidi kao pokušaj minimiziranja vlastite uloge u opskrbi Europske unije energentima. Pred Panelom Svjetske trgovinske organizacije (STO), Rusija je invocirala brojne odredbe Općeg sporazuma o carinama i trgovini, kao i Općeg sporazuma o trgovini uslugama.

Nakon pristupanja Rusije u STO, Europska unija stekla je mogućnost osporavanja određenih ruskih zakonodavnih paketa pred Panelom STO-a poput politike dvojnih cijena. S druge strane, Rusija je bila prva koja je pred Panelom podigla pitanje Trećeg zakonodavnog paketa koji, prema mišljenju Rusije i određenih autora, sadrži brojna kontroverzna pravila koja, prima facie, smjeraju na liberalizaciju tržišta energetskeg usluga. Rad se bavi kritičkom analizom argumenata Rusije i Europske unije te predviđa mogući ishod spora koji, iako je najavljen za kraj 2017. godine, još uvijek nije poznat.

*Ključne riječi:* Treći Energetski Paket – trgovina energijom – GATS – pravo pristupa treće osobe – razdvajanje (vlasništva)

<sup>45</sup> For more information on Nord Stream, see <<https://www.nord-stream.com/>>.