

# Kazakh Ablai Khan University of International Relations and World Languages

## PROJECT WORK Freedom of transit under GAAT

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Almaty  
2016

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# Actuality of the theme

- The relevance of research. Today, scientists and practice a lot of talk about global interdependence in the world. Of course, this most succinctly explains the processes taking place in modern economic relations. Time and costs of transportation and communication is so reduced that almost ceased to serve as natural barriers to global trade and financial flows.
- In the XXI century world trade scale energy will increase substantially. This will lead to the fact that increasing amounts of energy will cross more boundaries by way of extractive regions to consumer markets. Accordingly, increase the number of international transit systems, which in the future may be exposed to a variety of technological, political and economic risks. The guarantee to ensure smooth and reliable operation of international transit routes should be the development of an appropriate international legal framework, both on a bilateral and on a multilateral basis

# Introduction

- The distribution of hydrocarbons, which are still considered to be the main source of energy, is quite uneven around the world. This has led to a significant expansion of their world trade in the recent decades. At the same time characteristics of main energy resources are quite different compared with traditional commodities. Gas, electricity and oil are often transported only through fixed infrastructure objects such as pipelines and power grids. Different issues arise in connection with this type of transportation. One of the most problematic of them is the issue of their free transit through the territory of third countries. [ii] The Russia – Ukraine transit gas disputes, which have regularly threatened to the energy security of the European Union in the last decade, demonstrate the importance of regulation of international transit of energy resources.[i]

## Two main multilateral international legal instruments

which are applicable to the international transit of energy.

- There are two main multilateral international legal instruments which are applicable to the international transit of energy. The first one is the World Trade Organization ('WTO') **General Agreement on Tariffs and Trade** ('GATT'). The second is the **Energy Charter Treaty** ('ECT'). The ECT is considered to be a specialized international treaty on xdue to the vast membership of the WTO the scope of the GATT is considerably broader. For example, Russia has recently acceded to the WTO and Kazakhstan is at the final stage of the accession process. Therefore, the issue of the applicability of the GATT provisions for the resolution of energy transit disputes appears to be a topical question and it is discussed in this project work.

## II ARTICLE V of the GATT

- GATT Article V facilitates trade by establishing free transit rules through the territories of the GATT signatories. The right to freedom of transit is encapsulated in Article V (2), first sentence which is the core provision of Article V. It stipulates that ‘[t]here shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties.’

- Fundamental provisions of GATT as most-favoured nation and national treatment principles stipulated in GATT articles I and III respectively, are not applicable to transit. It is because of the text of these provisions which stipulate that they apply only in relation to *importation and exportation* of goods and, consequently, that they are not applicable to *transit*. However, this does not mean that there is only a basic freedom of transit right provision in the GATT; seven paragraphs of Article V establish rules by which this right may be applied. They include non-discrimination principles as well as limitations and restrictions on its application

# Coverage of Energy Resources by the GATT

- The first question to be resolved in this paragraph is the coverage of energy resources by the GATT. This question arises because there is an opinion that energy resources are not covered at all by the provisions of this treaty. This opinion is based on the assumption that energy resources are of strategic importance and, therefore, they should have been explicitly included in it.
- However, in contrast, the GATT covers trade of all types of goods unless some of them, such as textile or agricultural products, are explicitly excluded from its application. There is no special agreement between GATT contracting parties on the exclusion of energy resources and, therefore, it is believed that energy resources fall within the scope of GATT application. Moreover, in support of this position there is even a WTO case which deals with petroleum



- Argument often raised is whether energy resources may be considered as traditional goods because of their particular characteristics. The main characteristic which is of importance for the WTO Secretariat is the storability of goods.[xxviii] Gas and oil are storable and, therefore, are considered to be traditional goods. However, the physical characteristics of electricity are quite different. As it is difficult to be stored some commentators consider it to be a service rather than a good.

# Article 5. Third paragraph

- 1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this Article " traffic in transit ".
- 2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.
- 3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
- 4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

- 5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.
- 6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.
- 7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

# List of literature

- <https://www.marxists.org/history/capitalism/gatt/ch05.htm>
- [http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc\\_129898.pdf](http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc_129898.pdf)
- <http://tfig.unece.org/contents/gatt-v.html>
- <http://group-global.org/ru/node/4884>
- <http://jiel.oxfordjournals.org/content/16/2/313.abstract>



