

## CHAPTER 11

### TRADE-RELATED ENERGY PROVISIONS

#### ARTICLE 210

##### Definitions

For the purposes of this Chapter:

- (a) "energy goods" means crude oil (HS code 27.09), natural gas (HS code 27.11) and electrical energy (HS code 27.16);
- (b) "energy transport facilities" means high-pressure natural gas transmission pipelines; high-voltage electricity transmission grids and lines, including interconnectors used to connect different gas or electricity transmission networks; crude oil transmission pipelines, railways and other fixed facilities handling the transit of energy goods.
- (c) "transit" means the passage of energy goods across the territory of a Party, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, where such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the Party across whose territory the traffic passes.
- (d) "unauthorised taking" means any activity consisting of the unlawful taking of energy goods from energy transport facilities.

## ARTICLE 211

### Transit

The Parties shall ensure transit, consistent with their international commitments in accordance with the provisions of GATT 1994 and the Energy Charter Treaty.

## ARTICLE 212

### Unauthorised taking of goods in transit

Each Party shall take all necessary measures to prohibit and address any unauthorised taking of energy goods in transit through its territory by any entity subject to that Party's control or jurisdiction.

## ARTICLE 213

### Uninterrupted transit

1. A Party shall not take from or interfere otherwise with the transit of energy goods through their territory, except where such taking or other interference is specifically provided for in a contract or other agreement governing such transit or where a continued operation of the energy transport facilities without prompt corrective action creates an unreasonable threat to public security, cultural heritage, health, safety or the environment, subject to the requirement that such action is not carried out in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction of international trade.

2. In the event of a dispute over any matter involving the Parties or one or more entities subject to the control or jurisdiction of one of the Parties, a Party through the territory of which the transit of energy goods takes place shall not, prior to the conclusion of a dispute resolution procedure under the relevant contract or of an emergency procedure under Annex XVIII to this Agreement or under Chapter 14 (Dispute Settlement) of Title IV (Trade and Trade-related Matters) of this Agreement, interrupt or reduce such transit, or permit any entity subject to its control or jurisdiction, including a state trading enterprise, to interrupt or reduce such transit, except under the circumstances provided in paragraph 1.

3. A Party shall not be held liable for an interruption or reduction of transit pursuant to this Article where that Party is unable to supply or to transit energy goods as a result of actions attributable to a third country or an entity under the control or jurisdiction of a third country.

## ARTICLE 214

### Transit obligation for operators

Each Party shall ensure that operators of energy transport facilities take the necessary measures to:

- (a) minimise the risk of accidental interruption or reduction of transit;
- (b) expeditiously restore the normal operation of such transit, which has been accidentally interrupted or reduced.

## ARTICLE 215

### Regulatory authorities

1. Each Party shall designate independent regulatory authorities empowered to regulate the gas and electricity markets. These regulatory authorities shall be legally distinct and functionally independent from any other public or private enterprise, market participant or operator.
2. The decisions of and the procedures used by a regulatory authority shall be impartial with respect to all market participants.
3. An operator affected by any decision of a regulatory authority shall have the right to appeal against that decision to an appeal body which is independent of the parties involved. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

## ARTICLE 216

### Organisation of markets

1. The Parties shall ensure that energy markets are operated with a view to achieving competitive, secure and environmentally sustainable conditions and shall not discriminate between enterprises as regards rights or obligations.

2. Notwithstanding paragraph 1, a Party may impose on enterprises, in the general economic interest, obligations which may relate to security, including security of supply; regularity, quality and price of supplies; and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, proportionate and verifiable.

3. Where a Party regulates the price at which gas and electricity are sold on the domestic market, that Party shall ensure that the methodology underlying the calculation of the regulated price is published prior to the entry into force of the regulated price.

## ARTICLE 217

### Access to energy transport facilities

1. Each Party shall ensure on its territory the implementation of a system of third party access to energy transport facilities and Liquefied Natural Gas and storage facilities applicable to all users and applied in a transparent, objective and non-discriminatory manner.

2. Each Party shall ensure that the access tariff to energy transport facilities and all other conditions related to access to an energy transport facility are objective, reasonable, transparent and shall not discriminate on the basis of origin, ownership or destination of the energy good.

3. Each Party shall ensure that all technical and contracted capacity, both physical and virtual, is allocated through transparent and non-discriminatory criteria and procedures.

4. In case of refusal to grant third party access, the Parties shall ensure that, upon request, the energy transport facility operators provide a duly substantiated explanation to the requesting party, subject to legal redress.

5. A Party may exceptionally derogate from the provisions in paragraphs 1 to 4 according to

objective criteria laid down in its legislation. In particular, a Party may implement in its legislation a possibility to grant, on a case-by-case basis, for a limited period of time, an exemption to the third party access rules for major new energy transport facilities.

## ARTICLE 218<sup>1</sup>

### Relationship with the Energy Community Treaty

1. In the event of a conflict between the provisions of this Chapter and the provisions of the Energy Community Treaty or the provisions of the Union legislation made applicable under the Energy Community Treaty, the provisions of the Energy Community Treaty or the provisions of the Union legislation made applicable under the Energy Community Treaty shall prevail to the extent of such conflict.

2. In implementing this Chapter, preference shall be given to the adoption of legislation or other acts which are consistent with the Energy Community Treaty or are based on the legislation applicable in the Union. In the event of a dispute as regards this Chapter, legislation or other acts which meet these criteria shall be presumed to conform to this Chapter. In assessing whether the legislation or other acts meet these criteria, any relevant decision taken under Article 91 of the Energy Community Treaty shall be taken into account.

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<sup>1</sup> For the purposes of the implementation of this Chapter by Georgia, this Article shall apply only if and when Georgia has become a party to the Energy Community Treaty and to the extent the specific provisions of the Energy Community Treaty or of the Union legislation made applicable under the Energy Community Treaty are applicable to Georgia.