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**EUROPEAN UNION AND ITS MEMBER STATES – CERTAIN MEASURES RELATING
TO THE ENERGY SECTOR**

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE RUSSIAN FEDERATION

The following communication, dated 11 May 2015, from the delegation of the Russian Federation to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

My authorities have instructed me to request the establishment of a panel, pursuant to Article 6 of the DSU, Article XXIII of the General Agreement on Trade in Services ("GATS"), and Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), with respect to certain measures maintained by the European Union ("EU") and its Member States, and implemented within EU territory by the EU and its Member States, including through the so-called "Third Energy Package" and related legal instruments, as described below.

On 30 April 2014, the Russian Federation requested consultations with the EU and its Member States pursuant to Articles 1 and 4 of the DSU, Article XXIII of the GATS, Article XXIII of the GATT 1994, Articles 4.1, 7.1 and 30 of the Agreement on Subsidies and Countervailing Measures and Article 8 of the Agreement on Trade-Related Investment Measures, with respect to certain restrictions and requirements adopted, maintained and implemented by the EU and its Member States within their respective territories, including Croatia, Hungary and Lithuania, through the so-called "Third Energy Package" and related legal instruments. The request was circulated on 8 May 2014 as document WT/DS476/1, S/L/409, G/L/1067, G/SCM/D102/1, G/TRIMS/D/40. On 23-24 June and 10 July 2014, the Russian Federation held consultations with the EU and its Member States with a view to reaching a mutually satisfactory solution. Unfortunately, the consultations failed to settle the dispute.

The EU adopted the Third Energy Package ("TEP") in July 2009. The TEP's principal component regarding gas, Directive 2009/73/EC (the "Directive"),¹ establishes what it describes as common rules for the transmission, distribution, supply and storage in the EU of natural gas, including LNG.² The Directive also states that the TEP repealed and replaced the legal acts making up the Second Energy Package ("SEP"), even though certain SEP measures related to exemptions remain in effect. As such, the TEP is the latest in a series of legal instruments and policy initiatives designed to tighten and centralize control over the EU energy market, including the rights of Russian suppliers of natural gas and natural gas services, as well as imported Russian gas as a source of supply to the EU market. The Russian Federation considers that the TEP, like the EU's natural gas and broader energy policy overall, unjustifiably restricts imports of natural gas originating in Russia and discriminates against Russian natural gas pipeline transport services and service suppliers.³

¹ Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94 of 14.8.2009 ("Directive 2009/73/EC" or the "Directive").

² "Natural gas" includes liquefied natural gas ("LNG"), consistent with the provisions of the Directive.

³ "Natural gas pipeline transport services" (or "pipeline transport services") include, but are not necessarily limited to, the transmission (or transport) and supply of natural gas, including LNG, and the services related to the transmission and supply of natural gas, including LNG services.

Accordingly, the Russian Federation respectfully requests that, pursuant to Article 6 of the DSU, the DSB establish a Panel, with the standard terms of reference contained in Article 7.1 of the DSU, to examine the following matter:

1. Unbundling, Third-Country Certification and Infrastructure Exemption Measures

The Directive requires "vertically integrated natural gas undertakings" ("VIUs") to undergo "unbundling" and to separate their transmission system assets, or the transmission system operator ("TSO"), from assets relating to production and supply. The Directive grants Member States discretion to select from among three alternative unbundling models: ownership unbundling, independent system operator ("ISO"), and independent transmission operator ("ITO").⁴ Ownership unbundling is the most restrictive model. It precludes the same person or persons from exercising control over an undertaking performing any of the functions of production or supply and exercising control or any right over the TSO or the transmission system, and *vice versa*. Among the rights that ownership unbundling precludes is the holding of a majority share.⁵ The ISO model, in contrast, permits the VIU to retain full ownership of the TSO upon designation of an outside entity, the ISO, to operate the TSO.⁶ The ITO model is even less restrictive and permits VIUs to maintain control and operate the TSO through a separate subsidiary.⁷

The implementing laws of Croatia and Hungary permit all three unbundling models, whereas Lithuania permits only the ownership unbundling model. In the pipeline transport services sector, as set out in their GATS Schedules of Specific Commitments on Services (the "Schedules"), Croatia, Hungary and Lithuania undertook commitments under Articles XVI and XVII of the GATS with respect to pipeline transport services. In light of these commitments, the Russian Federation considers that the unbundling measures, as implemented in the laws of Croatia, Hungary and Lithuania, are inconsistent with these Members' market access obligations under GATS Article XVI:1 to accord services and service suppliers of any other Member treatment no less favorable than that provided for in their Schedules, and that all three Members are each maintaining or adopting measures set out in GATS Article XVI:2.

The Directive also provides that, when the owner of the VIU is the Member State or another public body, two separate public bodies exercising control over the TSO and over an undertaking performing production or supply functions shall be deemed not to be the same person or persons.⁸ In reality, this measure permits a Member State government to own and control both the TSO and the production or supply portions of the VIU, whereas third-country service suppliers, including those of Russia, may not. Croatia, Hungary and Lithuania have each implemented versions of this measure in their respective legislation. The Russian Federation considers that these measures are inconsistent, *de jure*, with the obligations of Croatia, Hungary and Lithuania under GATS Article XVII to accord services and service suppliers of any other Member treatment no less favorable than they accord to their own like services and service suppliers. Moreover, the governments of Croatia and Lithuania both own and control the TSO and production or supply portions of the single VIU supplying pipeline transport services in their respective territories. Therefore, the Russian Federation considers that these measures are inconsistent, *de facto*, with the obligations of Croatia and Lithuania under GATS Article XVII.

In addition, in certain Member States that have adopted implementing legislation requiring ownership unbundling, including Lithuania and Estonia, the Russian supplier of pipeline transport services has been required to cede control in the TSO or will be required to do so in the future on the basis of existing legislation. In other Member States that permit the ISO and/or ITO models, VIUs that are owned or controlled by a person or persons of other third-countries have been permitted to adopt either of those unbundling models, and thus to maintain ownership and varying degrees of control over both the TSO and production or supply portions of the VIU. The Russian Federation considers that these measures result in less favorable treatment being accorded to pipeline transport services and service suppliers of Russia than to like services and service

⁴ Directive, Article 9. Article 9(9) of the Directive provides for a fourth ownership unbundling model. For the sake of clarity, the Russian Federation notes that the references to specific provisions of legal instruments in this request are for explanatory purposes and without prejudice to the examination in the proceedings of other relevant provisions of the specific legal instruments cited herein.

⁵ Directive, Article 9(2)(c).

⁶ Directive, Article 14.

⁷ Directive, Chapter IV.

⁸ Directive, Article 9(6).

suppliers of other third-countries, contrary to the EU's obligations under GATS Article II:1. Moreover, contrary to the requirements of Article I:1 of GATT 1994, the fact that third-country natural gas suppliers in certain Member States have been permitted to adopt the ISO or ITO unbundling models grants an advantage, favor, privilege or immunity to the natural gas imported from those third-countries that is not immediately and unconditionally accorded to natural gas originating in Russia, which is transported and placed on the market in Member States that require ownership unbundling. Such Russian-origin natural gas is also accorded less favorable treatment than domestic natural gas that is transported and placed on the market in Member States permitting the ISO and/or ITO models, contrary to the EU's obligations under Article III:4 of GATT 1994.

Next, the Directive requires that TSOs in each Member State be certified as complying with the relevant unbundling requirements. However, when certification is requested by a transmission system owner or TSO controlled by a person or persons from a third-country, the Directive requires that the request be refused unless it is demonstrated that certification "will not put at risk the security of supply" of the Member State and the EU.⁹ No similar requirement applies to certification requests by domestic persons. Croatia, Hungary and Lithuania have implemented versions of this "third-country certification measure" in their respective legislation. The Russian Federation considers these measures to be inconsistent, *de jure*, with the obligations of Croatia, Hungary and Lithuania under GATS Article XVII to accord services and service suppliers of any other Member treatment no less favorable than these three Members' like services and service suppliers. In addition, pursuant to the Directive, requests for certification by a transmission system owner or TSO located in one EU Member State, but controlled by a person or persons of another Member State, are not subject to the third-country certification measure. 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. This is despite the fact that the EU and each such Member State is also a Member of the WTO. The Russian Federation considers this measure to be inconsistent, *de jure*, with the EU Member States' obligations under Article II:1 of the GATS to accord immediately and unconditionally to services and service suppliers of each Member treatment no less favorable than that it accords to like services and service suppliers of any other country.

In the same sense, given the general applicability of the certification requirement, Croatia, Hungary and Lithuania do not administer the third-country certification measure in a reasonable, objective and impartial manner, contrary to these Members' obligations under GATS Article VI:1. Likewise, Russia considers the third-country certification measure as constituting a licensing and qualification requirement that nullifies or impairs the specific commitments of Croatia, Hungary and Lithuania in the pipeline transport services sector, in a manner inconsistent with GATS Article VI:5(a).

Moreover, various Member States have issued certification decisions, most of which the European Commission ("Commission") has approved. Yet the Commission refused to approve Poland's certification of Gaz-System S.A. as an ISO for the Polish section of the Yamal-Europe Pipeline ("Yamal"). Having found that Yamal's owner, Europolgaz, is jointly controlled by the Polish gas incumbent and a Russian pipeline transport service supplier, the Commission required Poland to conduct a security of supply assessment. Previously, however, the Commission approved certification of at least two TSOs in Member States in which other third-country persons owned up to 100 percent interests, without any control or "security of supply" assessments having been conducted. In so doing, contrary to its obligations under GATS Article II:1, the EU accorded Russian services and service suppliers less favorable treatment than like services and service suppliers of those third-countries.

The Directive further requires Member States to ensure implementation of a system of third-party access ("TPA") to the transmission and distribution system and LNG facilities in the EU.¹⁰ The Directive permits "major new gas infrastructure, i.e. interconnectors, LNG and storage facilities," to be exempted from the unbundling, TPA and other requirements under certain conditions. The same exemptions are also permitted for "significant increases of capacity in existing infrastructure and to modifications of such infrastructure which enable the development of new sources of gas

⁹ Directive, Article 11.

¹⁰ Directive, Article 32.

supply."¹¹ The conditions to be examined in assessing such requests permit Member States and the Commission significant discretion in determining whether to grant infrastructure exemptions.

A number of infrastructure exemptions have been granted under these provisions of the Directive. Similar exemptions remain in effect that were previously granted pursuant to comparable provisions of Directive 2003/55/EC, as part of the SEP.¹² A Russian pipeline transport service supplier controls the *Ostseepipeline-Anbindungsleitung* ("OPAL") pipeline. After being categorized as an "inter-connector," the Germany authority granted the OPAL pipeline owners a limited infrastructure exemption for capacity used to transport natural gas from Griefswald, where gas enters Germany from the Nordstream Pipeline ("Nordstream"), to Brandov, where gas exits Germany and enters the Czech Republic. However, the Commission imposed a 50 percent cap on the ability of the Russian supplier operating the OPAL pipeline, described as a "dominant undertaking," to acquire exit capacity at the Czech border. The Russian supplier may exceed this cap only by implementing a "gas release" program and selling 3 billion cubic meters ("bcm") of its gas annually at a government-set, fixed price to competing gas suppliers on the Czech market, regardless of what amount of additional capacity is booked by the Russian supplier. No similar gas release requirement was imposed in decisions granting infrastructure exemptions concerning pipelines defined as interconnectors and controlled by other third-country suppliers of natural gas and pipeline transport services.

In addition, the *Nordeuropäische Erdgasleitung* ("NEL") pipeline is intended to transport Russian gas westward through Germany from Griefswald, the Nordstream entry point, to Rehden in Germany. The owners of the NEL pipeline, which include a Russian service supplier, requested an exemption from the requirements of the Directive. Germany denied this request on the basis that the pipeline does not qualify as an interconnector. Although the definition of interconnector in the Directive was interpreted strictly in denying an exemption for NEL, exemption requests were granted to the third-country service suppliers or owners of other pipelines, which also do not meet the definition of an interconnector in the Directive (and in the SEP).

The Russian Federation considers that, contrary to its obligations under GATS Article II:1 in the case of both the OPAL and NEL decisions, the EU accorded Russian services and service suppliers less favorable treatment than it accorded to like services and service suppliers of other third-countries pursuant to relevant decisions granting exemptions to those suppliers. As a result of these measures, natural gas originating in Russia is not accorded immediately and unconditionally any advantage, favor, privilege or immunity granted to natural gas originating in certain third-countries, contrary to the EU's obligations under Article I:1 of GATT 1994.

In addition, requiring that the operator of the OPAL pipeline adopt the 3 bcm gas release program has a limiting effect on the volume of Russian gas being imported into the EU market. The measure thus maintains or institutes a *de facto* restriction on importation, contrary to the requirements of Article XI:1 of GATT 1994. The Russian Federation also considers that the OPAL gas release requirement also violates Article X:3(a) of GATT 1994. Specifically, by imposing the 3 bcm gas release requirement under the conditions described above only on imported Russian gas, but not third-country gas transported through pipelines subject to other exemption decisions, the EU has failed to administer the infrastructure exemption provisions in the Directive and the SEP in a uniform, impartial and reasonable manner, including with regard to the sale, distribution and transportation of natural gas.

Furthermore, the definition of "transmission" in the Directive expressly exempts "upstream pipeline networks," which are defined separately. The Directive also defines the functions of transmission and LNG as separate from the functions of natural gas production and supply. The unbundling provisions, in turn, apply only to the transmission system and TSO, which must be separated from the production and supply portions of the VIU. Domestic and third-country pipeline transport service suppliers are thus exempt from the unbundling requirements with regard to their upstream pipeline networks and LNG facilities. As a result, contrary to the EU's obligations under Article I:1 of GATT 1994, natural gas originating in third-countries that is transported and placed on the EU market through either of these types of infrastructure is accorded an advantage,

¹¹ Directive, Article 36.

¹² Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, Article 22, OJ L 176, 15.7.2003, pp. 57-78 ("Directive 2003/55/EC").

favor, privilege or immunity that is not immediately and unconditionally accorded to natural gas originating in Russia, which is transported and placed on the market by pipeline transport service suppliers that are subject to the unbundling requirements. Such Russian-origin natural gas is also accorded less favorable treatment than domestic natural gas that is transported and placed on the market through upstream pipeline networks, and possibly LNG facilities, in a manner inconsistent with Article III:4 of GATT 1994.

The Russian Federation understands that these measures are enacted and implemented through the following legal instruments:

- Directive 2009/73/EC;
- Directive 2003/55/EC;
- Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 ("Regulation (EC) No 715/2009");¹³
- Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators ("Regulation (EC) No 713/2009");¹⁴
- Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC;¹⁵
- Certification decisions and opinions pursuant to Articles 10 and 11 of the Directive by the Commission, and certification decisions and opinions by national regulatory authorities of the EU Member States pursuant to their implementing laws, including but not limited to:
 - Commission Opinion, 6.9.2012, C(2012) 6255, Certification of jordgas Transport GmbH (Germany), pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC;
 - Commission Opinion, 11.12.2012, C(2012) 9575, Certification of NABUCCO Gas Pipeline International GmbH (Austria), pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) of Directive 2009/73/EC;
 - Commission Opinion, 9.9.2014, C(2014) 6463, Certification of Gaz-System S.A. as the operator of the Polish section of the Yamal-Europe Pipeline, pursuant to Article 3(1) of Regulation (EC) No 715/2009 and Article 10(6) and 11(6) of Directive 2009/73/EC;
- Infrastructure exemption decisions and opinions pursuant to Article 36 of the Directive and its predecessors, including the SEP, by the Commission and national regulatory authorities of the EU Member States;
- Member State legislation implementing the TEP, including but not limited to:
 - Austria, Natural Gas Act of 2011 (Gaswirtschaftsgesetz), FLG I no 107/2011 (National Council: GP XXIV RV 1081 AB 1128 p. 124. Federal Council: 8581 AB 8593 p. 801);
 - Belgium (Federal), Act of 8 January 2012, amending the Federal Gas Act of 12 April 1965; Government of Belgium (Flanders), Decree of 8 July 2011, amending the Energy Decree of 8 May 2009; Government of Belgium (Brussels Capital

¹³ OJ L 211, 14.8.2009, pp. 36-54.

¹⁴ OJ L 211, 14.8.2009, pp. 1-14.

¹⁵ OJ L 295, 12.11.2010, pp. 1-22.

Region), Edict of 20 July 2011, amending the Gas Edict of 1 April 2004; Government of Belgium (Wallonia), various amending decrees and governmental orders implementing the Directive;

- Bulgaria, Energy Act (as amended through SG No. 66/26.07.2013, effective 26.07.2013);
- Croatia, Energy Act (Official Gazette 120/12); Government of Croatia, the Act on the Regulation of Energy Activities of 11 November 2012; Government of Croatia, Gas Market Act of 14 March 2013;
- Cyprus, Law for Regulating the Natural Gas Market, Law 1219(I)/2012, which amends Laws for Regulating the Natural Gas Market 2004-2007;
- Czech Republic, Amendment of the Energy Act, Act No. 211/2011 Coll., amending the Act no. 458/2000 Coll., on business conditions and public administration in the energy sectors and on amendment of certain laws (the Energy Act), as amended, and other related laws;
- Denmark, Amendments to the Electricity Supply Act and the Natural Gas Supply Act, Act no. 466 of 18 May 2011;
- Estonia, Natural Gas Act, Maagaasiseaduse muutmise seadus, seaduse parandus, RT I, 28.06.2012, 2; Elektrooniline Riigi Teataja (MNE(2012) 52911);
- Finland, Act to amend the Natural Gas Market Act (laki maakaasumarkkinalain muuttamisesta 589/2013); Electricity and Gas Market Supervision Act (laki sähkö- ja maakaasumarkkinoiden valvonnasta 590/2013); and Act on the Energy Market Authority (laki energiamarkkinavirastosta 591/2013);
- France, Ordonnance no 2011-504 du 9 mai 2011 portant codification de la partie législative du code de l'énergie;
- Germany, Energiewirtschaftsgesetz (Gesetz über die Elektrizitäts- und Gasversorgung (Energiewirtschaftsgesetz – EnWG) i.d.F. von Artikel 2 des Gesetzes vom 16.1.2012, BGBl I S. 74.);
- Greece, Law 4001/2011, "For the operation of the energy markets of Electricity and Natural Gas, for research, production and transmission networks of hydrocarbons and other arrangements" (Official Gazette A'176/22.08.2011);
- Hungary, Act No. XXIX of 2011 amending the Gas Supply Act; Act No. XL of 2008 on Natural Gas Supply;
- Ireland, S.I. No. 463 of 2011, European Communities (Internal Market in Electricity and Gas) (Consumer Protection) Regulations 2011;
- Italy, Legislative Decree, 1 June 2011, no. 93, "Attuazione delle direttive 2009/72/CE, 2009/73/CE e 2008/92/CE relative a norme comuni per il mercato interno dell'energia elettrica, del gas naturale e ad una procedura comunitaria sulla trasparenza dei prezzi al consumatore finale industriale di gas e di energia elettrica, nonché abrogazione delle direttive 2003/54/CE e 2003/55/CE;
- Latvia, Energy Law (amended as of 25.03.2014);
- Lithuania, Law on Natural Gas, No VIII-1973, 10 October 2000 (amended as of 13 March 2014 – No XII-772); Law Implementing the Law Amending the Law on Natural Gas, No. XI-1565, 30 June 2011; Resolution No. 1239 of 28 October 2011, on Approval of the Plan for Performing the Unbundling of Activities and Control of Natural Gas Undertakings That Do Not Conform to the Requirements of the Law on Natural Gas of the Republic of Lithuania; Plan for Performing the

Unbundling of Activities and Control of Natural Gas Undertakings That Do Not Conform to the Requirements of the Law on Natural Gas of the Republic of Lithuania, Approved by Resolution No. 1239 of 28 October 2011 (Official Gazette, 2011, No. 130-6170);

- Luxembourg, Loi du 7 août 2012 modifiant la loi modifiée du 1er août 2007 relative à l'organisation du marché du gaz naturel;
- Malta, Subsidiary Legislation 423.21, Natural Gas Market Regulations, 5 May 2011, Legal Notice 167 of 2011, as amended by Legal Notice 189 of 2012;
- Netherlands, Dutch Gas Act (Gaswet) (amended as of April 2013);
- Poland, The Energy Law of 10 April 1997 - consolidated text (Journal of Laws of 2012, item 1059, as amended).;
- Portugal, Decreto Lei 77/2011, de 20 de Junho (20 June 2011);
- Romania, Propunere ANRE de transpunere a Directivei CE si PE nr.73/2009;
- Slovakia, Act No. 251/2012 Coll. on the Energy Industry and on Amendment and Supplement of several acts;
- Slovenia, Energy Act;
- Spain, Legal Decree (Real Decreto-ley) 13/2012, 30 March 2012;
- Sweden, Natural Gas Act (2005:403) (amended as of 1 January 2012);
- United Kingdom, Electricity and Gas (Internal Markets) Regulations 2011;
- as well as any amendments or extensions, any replacement measures, any renewal measures, any other implementing measures or legal instruments, and other related measures of the foregoing.

2. Capacity Allocation Measures

Access to transmission networks within the EU is granted by selling rights to gas suppliers for a particular volume of capacity. The TEP imposed a system of regulations concerning the manner in which capacity allocation takes place. These included Regulation (EC) No 715/2009 and Commission Regulation (EU) 984/2013, which was adopted subsequently.¹⁶ These regulations grant Member States discretion to define interconnection points ("IPs") and entry points. Capacity at IPs must be sold by auction, whereas capacity at entry points is typically sold on a first-come-first-served ("FCFS") basis. Capacity for natural gas originating in Russia is disproportionately defined as entering through IPs and thus is subject to auction, whereas domestic-origin and other third-country-origin gas is generally defined as entering through entry points, making it subject to FCFS. FCFS (a) results in a tariff freely negotiated between the contracting parties, while auctioning is subject to a tariff approved by the regulator; and (b) can be contracted for 20 or more years, while auctioned capacity is limited to 15 years.

As a result, contrary to the EU's obligations under Article I:1 of GATT 1994, natural gas originating in third-countries that is transported, placed on the EU market and made subject to FCFS is accorded an advantage, favor, privilege or immunity that is not immediately and unconditionally accorded to natural gas originating in Russia, which is transported, placed on the market and made subject to auction. Such Russian-origin natural gas is also accorded less favorable treatment than domestic natural gas that is transported, placed on the market and made subject to FCFS, in a manner inconsistent with Article III:4 of GATT 1994.

¹⁶ Commission Regulation (EU) 984/2013 of 14 October 2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) 715/2009, OJ L 273, 15.9.2013, pp. 5-17 ("Commission Regulation (EU) 984/2013").

The Russian Federation understands that these measures are enacted and implemented through the following legal instruments:

- Directive 2009/73/EC;
- Regulation (EC) No 715/2009;
- Regulation (EC) No 713/2009;
- Commission Regulation (EU) 984/2013;
- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and other related measures of the foregoing.

3. "Projects of Common Interest" Measures

The EU has also enacted regulations establishing "trans-European energy infrastructure priority corridors and areas," including four specific "priority gas corridors." The principal regulation, Regulation (EU) No 347/2013, is referred to as the "TEN-E regulation." It sets forth criteria for identifying "projects of common interest" or "PCIs," which are accorded priority status, including within priority gas corridors. The TEN-E regulation provides for the implementation of PCIs, including those concerning natural gas, to be facilitated by "streamlined and efficient permit granting procedures," "improved regulatory treatment" and EU financial assistance. In October 2013, the Commission issued an amendment to the TEN-E regulation setting out the initial list of PCIs.¹⁷ These include a number of projects that promote and facilitate the production and transportation of domestic natural gas, as well as the importation and transportation of gas from various third-countries, including numerous LNG projects. However, the list of PCIs excludes any project designed to facilitate the importation or transportation of natural gas from Russia. The Russian Federation is not aware of any such projects currently under consideration for designation as a PCI.

The Russian Federation considers that, contrary to GATS Article II:1, these measures accord Russian services and service suppliers less favorable treatment than is accorded to like services and service suppliers of other third-countries, which benefit from having projects listed as PCIs. Natural gas originating in third-countries that is transported and placed on the EU market through pipelines or other infrastructure listed as PCIs is also accorded an advantage, favor, privilege or immunity that is not immediately and unconditionally accorded to natural gas originating in Russia, contrary to Article I:1 of GATT 1994. Such Russian-origin natural gas is also accorded less favorable treatment than domestic natural gas that is transported and placed on the market through pipelines or other infrastructure listed as PCIs, in a manner inconsistent with Article III:4 of GATT 1994.

The Russian Federation understands that these measures are enacted and implemented through the following legal instruments:

- Directive 2009/73/EC;
- Regulation (EC) No 715/2009;
- Regulation (EU) No 347/2013;
- Commission Delegated Regulation (EU) No 1391/2013; and
- Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation

¹⁷ Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013, amending Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure as regards the Union list of projects of common interest, OJ L 349, 21.12.2013, pp. 28-43 ("Commission Delegated Regulation (EU) No 1391/2013").

(EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010, OJ L 348, 20.12.2013.

- as well as any amendments or extensions, any replacement measures, any renewal measures, any implementing measures, and other related measures of the foregoing.

The Russian Federation considers that the above-mentioned measures are inconsistent with the obligations of the EU and its Member States under Articles II:1, VI:1, VI:5(a), XVI, including XVI:1 and XVI:2(a), (e) and (f), and XVII of the GATS; and Articles I:1, III:4, X:3(a) and XI:1 of the GATT 1994. These measures also appear to nullify or impair the benefits accruing to the Russian Federation directly or indirectly under the cited agreements.

The Russian Federation asks that this request be placed on the agenda for the regular meeting of the Dispute Settlement Body to be held on 19 June 2015.
