The Price is Right?

Energy dual pricing in Russia’s negotiations to join the WTO

Fride Hoff

Institutt for statsvitenskap

UNIVERSITETET I OSLO

23.05.2014
The Price is Right?

Energy dual pricing in Russia’s negotiations to join the WTO

Fride Hoff

Institutt for Statsvitenskap

Universitet i Oslo

Spring 2014
© Author: Fride Hoff

2014

The Price is Right? – Energy dual pricing in Russia’s negotiations to join the WTO

Fride Hoff

http://www.duo.uio.no/

Print: Fridtjof Nansens Institutt, Polhøgda

IV
Abstract

As one of the first big energy exporting states, Russia acceded to the WTO in 2012 after 17 years of negotiations. The distribution of power in the WTO accession process is considered to be asymmetrical in favour of the incumbent members. This is because the member states can demand commitments from the applicant country on a wide range of issues in exchange for granting membership. The EU did not, however, manage to get the desired commitment from Russia regarding the country’s practice of energy dual pricing, despite the fact that it was an issue of great importance to the EU.

In this thesis, I examine the following research question: How can the power distribution between the EU and Russia explain the negotiation outcome on the issue of energy dual pricing in Russia’s accession to the WTO?

Since Russia is one of the first big energy exporters to accede to the WTO, the country’s accession process can shed light on the WTO as a forum for settling difficult energy issues. The energy dual pricing debate between the EU and Russia can illustrate a basic conflict of interest between the acceding energy–exporting countries and the energy-importing members over who will shape the understanding of the WTO rules concerning energy.

In this case study I have used Hernes’ model of power to systematize the analysis of the distribution of power between the EU and Russia. As an alternative explanation of the negotiation outcome I will look at the effect of the EU’s ability to argue their case in accordance with the WTO legal framework. As a last possible explanation I will examine whether the EU believed that it had other possible venues of cooperation outside the WTO where the EU had better chances to settle the issue.

I found that that the power distribution in the WTO accession to a large degree can explain the outcome on energy dual pricing. The EU had substantial power to get commitments from Russia in the WTO accession, but the possibility for issue linkages gave Russia power as well. This is because it could concede in sectors of less importance, in exchange for lenience on energy issues like energy dual pricing. The fact that the EU had weak legal backing for its claim and the possibility to settle the issue outside the WTO could also have had some effect on the negotiation outcome.
Acknowledgments

Many people have contributed to the work on this thesis.

First I would like to thank my advisor Olav Schram Stokke for always giving me thorough and extensive feedback, and for guiding me through the process.

I will also like to thank everyone at the Fridtjof Nansen Institute for letting me be a part of a social and inspiring environment when writing this thesis, and for always taking the time to answer my questions and provide much-needed advice. I would like to direct a special thanks to Arild Moe and Svein Vigeland Rottem for reading the thesis and giving valuable input, Per Ove Eikeland and Torbjørn Jevnaker for giving advice on how to get in touch with people in Brussels, and Iselin Stensdal for helping me with the title. Another thanks goes to my fellow students and FNI for being a wonderful group to share the ups and downs of these last months with.

I would like to thank all the people in Brussels and Oslo who agreed to talk to me and share their knowledge.

For helping me with the language I would like to thank Terje Hellem-Hansen, Katherine Noelle Atkinson, Nadia Yegorovna-Johnston and Alexandra Dennett.

I would also like to thank Anne Grete for lifting a weight of my shoulder by helping me with the practical things, and for always giving me confidence in this project, Astrid for reading the text and pointing out the solutions I could not see, and Arvid, Edvard and Erlend for your support and encouragement.

Thank you to Ida and Thea for coping with me as a roommate during this process, and to all my other friends for support and advice.

And last but not least, thanks to Skogfrisk for giving me a break from energy dual pricing every Thursday.

Fride Annesdatter Hoff
Polhøgda, 2014

Wordcount: 38 822
### List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASCM</td>
<td>Agreement on Subsidies Countervailing Measures</td>
</tr>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
</tr>
<tr>
<td>DCFTA</td>
<td>Deep and Comprehensive Free Trade Agreement</td>
</tr>
<tr>
<td>DG</td>
<td>Director General</td>
</tr>
<tr>
<td>EEAS</td>
<td>European External Action Service</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>EurAsEC</td>
<td>European Asian Community</td>
</tr>
<tr>
<td>ECU</td>
<td>Eurasian Customs Union</td>
</tr>
<tr>
<td>ECT</td>
<td>Energy Charter Treaty</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>FPC</td>
<td>Foreign Policy Concept</td>
</tr>
<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>LTMC</td>
<td>Long Terms Marginal Cost</td>
</tr>
<tr>
<td>MNC</td>
<td>Multi National Coorperation</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs</td>
</tr>
<tr>
<td>PCA</td>
<td>Partnership and Cooperation Agreement</td>
</tr>
<tr>
<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
</tr>
<tr>
<td>STE</td>
<td>State Trading Enterprise</td>
</tr>
<tr>
<td>TRIMS</td>
<td>Trade-Related Investment Measures</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
</tr>
<tr>
<td>USTR</td>
<td>United States Trade Representative</td>
</tr>
<tr>
<td>WP</td>
<td>Working Party</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
# Index

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>1.1</td>
<td>The research question</td>
<td>1</td>
</tr>
<tr>
<td>1.2</td>
<td>The contribution of this thesis</td>
<td>6</td>
</tr>
<tr>
<td>1.3</td>
<td>Thesis outline</td>
<td>7</td>
</tr>
<tr>
<td>2</td>
<td>Energy dual pricing – the debate and the agreement</td>
<td>8</td>
</tr>
<tr>
<td>2.1</td>
<td>Introduction</td>
<td>8</td>
</tr>
<tr>
<td>2.2</td>
<td>What is energy dual pricing?</td>
<td>8</td>
</tr>
<tr>
<td>2.3</td>
<td>Consistency with WTO rules</td>
<td>9</td>
</tr>
<tr>
<td>2.4</td>
<td>The different views of the EU and Russia on energy dual pricing</td>
<td>11</td>
</tr>
<tr>
<td>2.5</td>
<td>The accession negotiations</td>
<td>14</td>
</tr>
<tr>
<td>2.6</td>
<td>What did Russia agree to?</td>
<td>15</td>
</tr>
<tr>
<td>2.7</td>
<td>Summary and implications</td>
<td>17</td>
</tr>
<tr>
<td>3</td>
<td>The theoretical framework and research design</td>
<td>18</td>
</tr>
<tr>
<td>3.1</td>
<td>Introduction</td>
<td>18</td>
</tr>
<tr>
<td>3.2</td>
<td>Rule of power or rule of the law?</td>
<td>18</td>
</tr>
<tr>
<td>3.3</td>
<td>The dynamics of the WTO accession process</td>
<td>20</td>
</tr>
<tr>
<td>3.4</td>
<td>How power has been measured in previous literature on the WTO</td>
<td>22</td>
</tr>
<tr>
<td>3.5</td>
<td>A Relational Model of Power</td>
<td>23</td>
</tr>
<tr>
<td>3.6</td>
<td>The effect of legal backing</td>
<td>26</td>
</tr>
<tr>
<td>3.7</td>
<td>The analysis in four steps</td>
<td>27</td>
</tr>
<tr>
<td>3.8</td>
<td>Research design</td>
<td>30</td>
</tr>
<tr>
<td>3.9</td>
<td>Summary</td>
<td>34</td>
</tr>
<tr>
<td>4</td>
<td>The EU’s power over Russia in the accession negotiations</td>
<td>35</td>
</tr>
<tr>
<td>4.1</td>
<td>Introduction</td>
<td>35</td>
</tr>
<tr>
<td>4.2</td>
<td>How to measure control and interest</td>
<td>36</td>
</tr>
<tr>
<td>4.3</td>
<td>How great was the control of the EU over Russia’s accession?</td>
<td>38</td>
</tr>
<tr>
<td>4.4</td>
<td>How much interest did have Russia in the outcome of WTO accession?</td>
<td>40</td>
</tr>
<tr>
<td>4.5</td>
<td>Summary and implications</td>
<td>49</td>
</tr>
<tr>
<td>5</td>
<td>The power of Russia in the WTO Accession Process – Possibility for Issue linkages</td>
<td>50</td>
</tr>
<tr>
<td>5.1</td>
<td>Introduction</td>
<td>50</td>
</tr>
<tr>
<td>5.2</td>
<td>EU’s interest in Russia joining the WTO</td>
<td>52</td>
</tr>
</tbody>
</table>
1 Introduction

In a speech given by former Director-General of the WTO, Pascal Lamy, to the Workshop on the Role of Intergovernmental Agreements in Energy Policy organized by the Energy Charter Secretariat on 29 April 2013 at the WTO, he stated:

Energy is an essential enabler of human wellbeing. It is therefore incumbent upon us in the international community to explore every possible avenue to maximize the benefits of international co-operation to achieve our energy policy objectives. In a previous speech on the topic of energy and trade, my main message was that a stronger WTO rule book could lead to significant benefits for the energy sector. This message is as valid today as it was when I voiced it two years ago (Lamy 2013).

He went on to say that this could change now that several of the big energy exporters would become members of the WTO. One of the biggest energy exporters to join the WTO in recent years is Russia. Russia’s accession to the WTO was completed in 2011. The accession process took 17 years and the Russian Federation conducted several rounds of negotiations. The last report of the Working Party on the Russian accession called the process “a remarkable school of practical trade policy” (WTO 2011a). As with the accession of other energy exporting states like Ukraine and Saudi-Arabia some energy importing members took this as an opportunity to demand commitments from Russia relating to the energy sector (Selivanova 2007:32).

1.1 The research question

In this study I will look at one central aspect of Russia’s accession negotiations relating to Russia’s practice of energy dual pricing. This means that Russia sells natural gas at lower prices domestically than abroad. The EU had great interest in this issue because the low domestic gas prices in Russia, gave Russia’s energy intensive export industries\(^1\) a competitive advantage vis-à-vis their European counterparts. The EU was therefore one of the WTO members which took the lead regarding this issue in Russia’s accession negotiations (Selivanova 2004:561; Zimmermann 2007:825; Van der Loo 2013:19). The EU claimed that energy dual pricing was an illegal subsidy under the WTO legal framework. Russia disagreed and refused to change its practice. In the end the EU got a weak commitment from Russia,

\(^1\) Energy intensive industries are industries where one of the key inputs of production is energy and therefore the gas prices are important in determining production costs (Zimmermann 2007:825). In the EU, particularly the fertilizer industry was hit by the competition from cheaper products imported from Russia. I will discuss the EU’s position further in Chapter 2.
where Russia did not agree to impose unified pricing of gas like the EU originally demanded. The research question is therefore: *How can the power distribution between the EU and Russia explain the outcome on the issue of energy dual pricing in Russia’s accession to the WTO?*

There are several reason why this in an interesting question. An understanding of the factors leading to the negotiation outcome regarding energy dual pricing will shed light on the WTO as a forum for settling disagreement regarding trade in energy. It will also give us some insight in what role the WTO can play in the energy relations between the EU and Russia. Finally the distribution of power in the accession process could tell us something about the incumbent members’ ability to get concessions from applicant states on important issues in the WTO accession process.

As defined in the research question I will concentrate on two actors, the EU and Russia. Several of the incumbent members, among them the US, also claimed that Russia should abolish energy dual pricing.

In the WTO accession negotiations the applicant state has to complete bilateral negotiations with each member state which requests this as well as multilateral negotiation in a working group. The WTO negotiations involve multiple actors that each had some effect on the final negotiation outcome, and also on the issue of energy dual pricing. It will therefore involve some difficulty to single out which parts of the outcome can be linked exclusively to the interactions between the EU and Russia. I will, however, try to limit the analysis to the issues that can be linked to the bilateral negotiations between the EU and Russia, and focus on the interests of these two actors. At some points, however, I will mention the perspective of other WTO members when it can give some insight into our case.

The aim of this study this analysis is to explain what lead to the final agreement on energy dual pricing. I will therefore, not try to make any predictions about whether Russia will comply with the agreement or not, as it is outside the scope of this analysis. Since the Russian membership is quite new it will also be hard to tell at this point. Before I present the theoretical framework I plan to use, I will elaborate on why the research question is worth examining.

---

2 In chapter 2 I will show, however, that Russia’s final negotiation outcome on energy dual pricing can be linked to the bilateral deal with between the EU and Russia which was completed in 2004.
What the negotiation outcome on energy dual pricing can tell about energy in the WTO

For a long time there was a conception that energy was not a part of the GATT-agreement. A background note from May 2010 claims that trade in energy is within the scope of the WTO, but since the existing framework is poorly equipped to deal with the field of energy, the answer should be to create a separate framework for trade in Energy in the WTO (WTO 2010). Dyker (2004:5) on the other hand writes that the WTO will never be a forum to discuss energy issues. This perception may come from the fact that most of the major energy exporters were not members in the early years of the WTO (Selivanova 2007:4). Now that several energy exporting countries like Russia, Saudi-Arabia and Ukraine have recently become members and Kazakhstam, Azerbaijan, Algeria, Libya, Iran, Iraq and Sudan are in the accession process, this is expected to change (Lamy 2013).

The negotiations about energy dual pricing between the EU and Russia are interesting because it was an example of an energy issue which was an important bone of contention in the bilateral negotiations between the two parties during the accession negotiations (Van der Loo 2013:17; Spanjer 2007). The case of energy dual pricing is an example of an energy issue where the existing legal framework can be applied, but the interpretation is contested (Selivanova 2004). It is therefore necessary to interpret the existing rules to fit the issues concerning trade in energy. Another aspect that makes energy dual pricing an interesting case regarding the place of energy issues in the WTO, is because it illustrates a basic conflict of interests between energy importing countries and energy exporters like Russia. In his speech cited above Pascal Lamy also noted that:

Given the two-way relationship between energy and trade, it is paradoxical that the multilateral trading system has not done more for energy. Several factors underlie this paradox. Some of them are permanent: deeply-rooted sovereignty and strategic concerns that cause some reluctance on the part of resource-rich countries to commit to international disciplines. (Lamy 2013)

The sensitive strategic importance of energy resources sets them apart from other traded goods in the view of some states. Behn and Pogoreetskyy (2012) claim energy dual pricing represents a perfect example of this debate. While the resource-dependent states like the EU promote market liberalization and therefore unified pricing of gas, resource endowed-countries emphasizes their right to govern their natural resources and see the ability to provide gas at cheaper prices domestically as their comparative advantage.
Since Russia is the second of the big energy exporting countries to complete its membership negotiations in recent years, the result of Russia’s negotiations in the field of energy could create precedence for how questions regarding energy will be dealt with in the WTO in general. Maksim Medvedkov, chief negotiator for Russia, did also express this view in an interview to World Trade Review in 2003. He claimed that if Russia accepted EU’s claim that Russian gas pricing could be looked upon as dumping, it would set an extremely negative precedent for the discussion about energy in the WTO later on (World Trade Review 2003). The energy dual pricing debate can therefore illustrate the contest between the acceding energy–exporting countries and the energy-importing members over who will shape the understanding of the WTO rules concerning energy.

**Energy dual pricing and the energy relations between the EU and Russia**

The relations between the EU and Russia can be said to be one of interdependence as well as a potential for conflict (Van der Loo 2013; Milov 2007; Leonard and Popescu 2007). How this relationship can change to the worse due to unexpected events is illustrated by the conflict in between Russia and Ukraine beginning in the fall of 2013, which was sparked by Ukraine’s potential turn towards the EU (Silke 2013). Despite this severe setback, the relationship between the EU and Russia remain important strategically and economically for both parties. Russia is EU’s third biggest trade partner and the EU is Russia’s biggest trading partner (European Commission 2014a). Energy is an important part of this relationship. In 2014 Russia launched two trade disputes against the EU in the WTO, and both are related to energy. The first dispute concerns the EU’s anti-dumping measures against energy intensive products imported from Russia. Russia claims that the EU’s method of calculating the proper price of energy input into the production of these goods are incorrect (WTO 2014b). The second dispute concerns several aspects of the EU’s 3rd energy package which Russia claims to be against the WTO legal framework (WTO 2014a). These cases indicate that the WTO have a potential to be an arena for energy disputes in the future and that it therefore was of great interest to the EU to settle an important issue like energy dual pricing during Russia’s accession. In the accession negotiations, however, the issue of energy dual pricing competed with a wide range of other energy and trade related issues. The final outcome on this issue can thus tell us something about the priority of the EU in its trade relations with Russia. I will also

---

3The European Commission (EC) adopted the third package of legislative proposals for electricity and gas markets in 2007. This package includes several provisions which will have implications for 3rd parties like Russia (WTO 2014a).
compare the WTO accession to other possible venues for the energy relations with Russia. The way the issue of energy dual pricing in the accession negotiations was settled will therefore give an indication of the role WTO could play in future EU-Russia relations.

**The WTO accession process**

One central aspect of the research question is the role of the power distribution between the EU and Russia. The negotiations between the EU and Russia about energy dual pricing can shed some light on the ability of incumbent WTO members to demand concessions from applicant members. The WTO accession process is often characterized as asymmetrical, because it is only the incumbent members which can make demands on the new member and not the other way around (Pelc 2011; Jones 2009; Cattaneo and Primo Braga 2009). As mentioned above, the final commitment made by Russia concerning energy dual pricing was weak compared to the EU’s original demand. The bid for unified gas prices was an important issue for the EU, and it tried to use the opportunity of the WTO accession to settle it. This case shows that the power of the incumbent members has some limitations. This study explains the reason for these limitations and which factors gives the applicant member the possibility to withhold concession on issues of importance to them.

**The theoretical framework**

The details of the bilateral negotiations between the EU and Russia, which led to the agreement on energy dual pricing, were closed to the public, and the details are not available to outside observers. It is therefore necessary to use the context in which the negotiation have proceeded and the facts that are known as a basis for the inferences about the negotiation outcome on energy dual pricing. To answer the research question I have used Hernes’ model of power. This is a theoretical model well suited for its purpose because of its simplicity and diversity. This model gave the analysis a useful basis because it gives the tools needed to measure power in the specific context of the accession negotiations. Because the contested legality of energy dual pricing also could have an effect on the negotiation outcome, I will expand Hernes’ model by using the concept of determinacy introduced by Tomas M. Franck (1988) to assess the effect of the legal backing of the EU’s claim about energy dual pricing. Hernes’ model presumes that the actors are unified and goal-driven. This is a simplification

---

*In chapter 3 I will explain further the dynamics of WTO accession.*
when you talk about states or international organizations. I will, however, for analytical purposes mainly consider the EU and Russia as unified actors, but when it is necessary to get insight into the interests and motivation of these actors, I will use information about domestic factors to support the analysis. In chapter 3 the hypotheses which I have derived from the theory will be presented.

1.2 The contribution of this thesis

Russia’s accession negotiations to the WTO have been studied extensively. Anders Åslund (2010) and David A. Dyker (2004; 2009) have looked at how domestic factors in Russia can help explain the length and difficulty of the process and concludes that strong lobbies against membership and Putin’s waning interest in the process had been the main reason for this. Several scholars have also tried to estimate the economic implications of Russia’s membership (Tarr and Thomson 2004; Jensen, Rutherford, and Tarr 2003; Rutherford and Tarr 2008; Rutherford and Tarr 2010; Rutherford, Tarr, and Shepotylo 2005). Zimmermann (2007) claims that the EU has acted as a realist power in Russia’s and China’s accession negotiations. Thus we see that there have been many attempts to explain the aggregate outcome of Russia’s accession negotiations. There are however few studies where scholars try to explain the outcome of one issue in the process, compared to the process at large, like I do in this case.

Several scholars have also analyzed energy issues in Russia’s WTO accession from a legal perspective. Milthorp and Christie (2011) have made a comparative analysis of energy issues in the WTO accession process. Yulia Selivanova (2004; 2007) has written several articles and a book on the issue of energy dual pricing in the WTO, and in Russia’s accession negotiations. She concludes that if the practice is not directed towards a specific company or sector it cannot be considered an illegal subsidy. Russia’s practice of energy dual pricing has also been studied from an economical perspective. Tarr and Thompson (2004) and Spanjer (2007) have estimated the potential costs for Russia if it were to change their practice. What is new about this study is that I will aim to explain the reason for the final outcome on energy dual pricing in the accession negotiations, by incorporating both the legal and economical perspective into the analysis.
Finally there have been a number of studies of the dynamics of WTO accession, aiming to analyze the factors leading to a varying degree of commitment from applicant countries. Pelc (2011) concludes that market size has a curvilinear effect on the depth of commitments made by the applicant countries. Jones (2009) finds that the incumbent members’ demands have increased over time and that new members face a higher level of commitment than earlier. Neumayer (2013) claims that the determining factor explaining the incumbent members’ self-selection into the working party of the applicant member. These have been quantitative studies of general tendencies in accession negotiations. This study will contribute to the understanding of the accession negotiations by doing an in-depth study of one case of accession guided by a theory that systematizes the effect of power and of the law in a more specific way than the previous studies.

1.3 Thesis outline

This thesis consists of eight chapters including this introduction. In Chapter 2 I will give background information about the debate surrounding energy dual pricing, and the final commitment made by Russia regarding this issue. In Chapter 3 the theoretical framework and the hypotheses will be presented. In Chapter 4 the power of the EU in the context of Russia’s accession negotiations will be analyzed using Hernes’ basic power model. In Chapter 5 Russia’s power in the accession will be analyzed and the possibility for issue linkages will be introduced to the model. Chapter 6 explores the effect of legal backing on the outcome of energy dual pricing. Chapter 7 looks at the EU’s possibility for utilizing other venues of cooperation with Russia to settle the issue of energy dual pricing. In Chapter 8 the findings will be presented and the possible implications of these findings will be discussed.
2 Energy dual pricing – the debate and the agreement

2.1 Introduction

Before I proceed with the analysis I will explain what energy dual pricing is and how this practice can be interpreted according to the WTO’s legal framework. I will also give an overview of the main points in the debate between the EU and Russia about this issue. Finally I will look at the final accession agreement and how one can interpret the degree of Russia’s commitment on energy dual pricing. The core of this commitment is that Russia will increase its domestic gas prices to a level which ensures recovery of costs, but not introduce unified gas prices in the export and domestic market. Therefore, I conclude that the commitment was weaker than what the EU originally demanded.

2.2 What is energy dual pricing?

Energy dual pricing is a term used to describe a system of energy pricing where there are different prices for different types of consumers. In reality energy produces often operate with numerous levels of prices for a multitude of different consumers, and not just a system with two different prices. The Russian pricing system consists of minimum three different price levels. There is one price for domestic consumers, one price for consumers in CIS countries like Belarus and Ukraine and one price for consumers in other countries like the countries of the EU (Pogoretskyy 2011:181). For the sake of convenience, I will continue to call this practice energy dual pricing.

There could be different reasons for applying dual pricing in energy. The practice could be a part of a state’s national plan for developing its domestic industry, a social subsidy for private households or a matter of food security (Selivanova 2004:561)\(^5\). Energy dual pricing has been a widespread tool used by countries in the face of early industrial development but has later been abandoned by many countries as a part of the liberalization of their energy markets.

\(^5\) By offering low prices on energy to energy intensive industries, the government in question can provide fertilizer at lower costs to the domestic agricultural production (Selivanova 2004:561).
(Pogoretskyy 2011:183). In Russia, the institutions responsible for setting the upper price limit for wholesale energy goods like gas and electricity are the Federal Energy Commission and the Regional Energy Commissions. In theory, economic considerations, like estimates of cost, are supposed to be the basis for price calculations. Commentators claim, however, that in reality they are just as much a political decision, because it is a part of the Russian authorities’ strategy to provide the domestic economy with cheap natural gas (Selivanova 2004:566; Spanjer 2007:2).

Thus we see that the practice of energy dual pricing in Russia is similar to strategies used by many resource endowed countries to develop their own industry. Below we will look at how the legal framework of the WTO can apply to energy dual pricing, and the main accusations against it.

2.3 Consistency with WTO rules

Energy dual pricing is covered by several WTO instruments, such as the rules on subsidies, state trading enterprises and anti-dumping (Pogoretskyy 2009:314). According to Vitaliy Pogogretsky the case of energy dual pricing is such a complex one that the legality of it under the different agreements of the WTO remains an “open question which has not been settled through negotiations or WTO adjudicators” (Pogoretsky 2011:182). One of the most frequent arguments against energy dual pricing within the WTO is that it can be defined as an illegal subsidy. During the Doha negotiations in 2003, the US brought forth a concern that if the practice of dual pricing, was left unchecked, it could lead to serious trade distortion. The claim was that energy dual pricing was de facto the same as giving a cash grant to the domestic industry for purchasing gas below market value (WTO 2003). The access to cheap energy then gives the energy intensive industry in the country in question the ability to produce and export goods at an artificially low price.

The WTO Agreement on Subsidies and Countervailing Measures (ASCM) Article 3 establishes that subsidies, which in law or in fact influences export prices, are illegal. This

---

6 The WTO legal framework consists of three main agreements; the General Agreement on Tariffs and Trade (GATT) (for goods), the General Agreement on Trade in Services (GATS), and Trade-Related Aspects of Intellectual Property Rights (TRIPS). In addition to this there are several extra agreements and annexes like the Agreement on Subsidies and Countervailing Measures (ASCM), and the agreement on Sanitary and Phytosanitary Measures (SPS). For more information see: http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm
could support the claim that energy dual pricing is this kind of illegal subsidy. On the other hand ASCM Article 2 states that for this practice to be an illegal subsidy it has to be directed at a specific company or industry (WTO 1995:230). Thus we see that even though energy dual pricing is considered a subsidy, this alone does not make it illegal according to the WTO legal framework. For a subsidy to be illegal one has to prove that it targets one specific sector or industry, which is hard to do in the case of Russia, since the low energy prices apply to the whole economy (Selivanova 2004:570).

GATT Article XVII about State Trading Enterprises (STE’s) is also relevant for energy dual pricing. One of the provisions of this article is that STE’s should operate in accordance with “commercial consideration” (WTO 1994). Some WTO member states claim Gazprom\(^7\) is acting against this principle, because the company sell natural gas at a price that is under their long time marginal cost (Marceau 2012:85). Thus the question is whether the gas sold in the domestic market can be calculated to be below this price level. There is no agreement between the EU and Russia on how this should be measured.

Since Russia is one of the first big energy exporting countries to accede to the WTO there is not much precedence to how one should settle the issue of energy dual pricing in the accession negotiations. The other major energy exporter to accede to the WTO in recent years is Saudi-Arabia. The question of dual pricing was, like in the case of Russia, an important topic in the Saudi-Arabia’s accession. Saudi-Arabia gave the commitment that: “producers in Saudi Arabia would operate, within the relevant regulatory framework, on the basis of normal commercial considerations, based on the full recovery of costs and a reasonable profit” (WTO 2005b:14). Some researchers claim that in contrast to Russia, Saudi-Arabia was compelled to change its practice (Van der Loo 2013:20, Marceau 2010:88.) Others claim that Saudi-Arabia only gave a confirmation that it will continue with their current practices (Mithorp and Cristie 2012:277). This shows that it is hard to find clear precedence in the WTO accessions which could support the EU’s claim that Russia had to change its practice.

In the accession process to the WTO, the member countries scrutinize the trade regime of the new member, but they can also try to make the new member commit to so-called WTO-plus commitments. These are commitments, which go beyond the WTO legal framework. Even though the EU claims that Russia’s practice of energy dual pricing is against the WTO

---

\(^7\) Gazprom is one of Russia’s biggest energy companies and is partially owned by the Russian state. It has a 72% share in the Russian reserves of natural gas and monopoly on export of gas from Russia (Gazprom 2014).
provisions mentioned above, the fact that the EU tried to make Russia eliminate their dual pricing ahead of accession could be an indication that the EU actually do not believe the practice is inconsistent with the WTO rules (Van der Loo 2013:19).

This shows that there are several rules in the WTO which can be applied to energy dual pricing. It is, however, hard to find concrete evidence that energy dual pricing, the way that it is practiced in Russia, is inconsistent with these rules. It is neither much precedence to be found in other accessions negotiations, which gives support to the EU’s claim. There is however a practice in the WTO that incumbent members can make demands on new members to give concessions which go beyond the WTO legal framework. This means that even though energy dual pricing is not clearly inconsistent with the WTO, Russia still could have had to change this practice to become a member of the organization.

2.4 The different views of the EU and Russia on energy dual pricing

One way to explain the disagreement between the EU and Russia on the topic of energy dual pricing is that it is rooted in different approaches to natural resource governance. This is what Daniel Behn and Vitaly Pogoretsky (2012) calls the tension between the European approach of liberalism and the Russian approach of statism to energy governance. They write that “in essence, it appears that resource-dependent states tend to promote ideals of market liberalization, while resource-rich states often pursue policies involving state domination over their natural resource sector” (Behn and Pogoretskyy 2012:45). These different approaches can be explained by different material interests. In their view the disagreement between Russia and the EU over energy dual pricing is a perfect example of how the different outlooks can create tensions. Below we will see that the EU and Russia have clearly diverging interests when it comes to this issue

The EU’s incentive to demand unified gas prices

The European council mentions Russia’s accession to the WTO as an event that will strengthen EU’s future relationship with Russia when it comes to investment and trade in energy. Energy was also mentioned as one of the core interests of the EU in its relations with Russia (Council of the European Union 2011). The European fertilizer industry was one of the
lobbies putting energy dual pricing on the agenda of the Commission. As previously mentioned, the question of energy dual pricing fits within the larger discussion about principles of energy governance between the EU and Russia. The EU sees market liberalization as a prerequisite for a stable energy supply and fair prices for consumers of energy. In a press release published in connection with the launch of EU’s 3rd Energy Package it is stated that:

The European Commission has adopted a third package of legislative proposals[1] to ensure a real and effective choice of supplier and benefits to every single EU citizen. The Commission’s proposals put consumer choice, fairer prices, cleaner energy and security of supply at the center of its approach. (...) A competitive market will also ensure greater security of supply, by improving the conditions for investments in power plants and transmission networks, and thus help avoid interruptions in power or gas supplies. Guarantees of fair competition with third country companies are also strengthened. (European Commission 2007)

One of the provisions of the 3rd Energy Package is that suppliers of energy will have to unbundle (European Commission 2007). This means that the same company cannot be involved in production and supply of energy and at the same time own and operate the transmission network. This will have consequences for Gazprom, since the company produces and sells gas to Europe, and controls the pipeline infrastructure. This is a question where the conflict runs along the same lines as in the question of energy dual pricing. The EU wants liberalization while Russia wants Gazprom to keep its position in the market (Milov 2007:132). Thus we see that the issue of energy dual pricing is one issue among many in a larger debate between the EU and Russia about different views on how the energy market should be governed.

The original demand posed by the EU was that Russia should eliminate its practice of energy dual pricing and bring the price levels up to what the EU claims is the world market price for gas (Konoplyanik 2005:30). In strictly economic terms the EU has a great incentive to make Russia change its practice of energy dual pricing. The main concern for the EU is that the low domestic gas prices give Russian energy intensive industries the ability to produce and export goods to the EU at an artificially low price. In the years before the WTO accession, the EU used anti-dumping duties towards Russian energy intensive products like fertilizer and steel (Van der Loo 2013:18).

The EU also has an interest in lower prices of gas for European consumers. Tarr and Thompson (2004) estimates that if Russia were to move towards unified pricing of gas, which would be to sell gas to Europa at its full long-run marginal cost plus transportation cost,
Gazprom would lose between $5 billion and 7.5 billion per year, and Europe would gain between $7.5 billion and $10 billion per year. This would mean that Russia in practice would transfer between $5 billion and 7.5$ per year from Gazprom to European customers (Tarr and Thomson 2004:1174). One reason for this is that Russian gas producers will have more capital to invest, and the production will increase. Then there will be more gas flowing to Europe, which will lead to cheaper gas for European consumers (Spanjer 2007:12). Therefore, unified prices for Russian gas could lead to leveling of the competition between Russian and European energy intensive goods, as well as a possibility for cheaper gas for European consumers.

**The Russian perspective**

From the Russian point of view, the practice of energy dual pricing falls within the country’s right to exercise its own comparative advantage. In 2002, after a meeting with WTO Director-General Supachai Panitchpakdi in Geneva, Russia’s chief negotiator Maxim Medvedkov stated that Russia was not close to an agreement with the EU even though the Russian energy sector had to be liberalized. In this statement he claims that; "Dual pricing exists in all countries of the world; without it, trade would stop the next day. Through dual pricing, each country implements comparative advantage and can sell goods on foreign markets. It is quite normal" (The Russia Journal 2002). In other words he claims that Russia is not alone in wanting to protect its right to regulate its own national resources. According to him this is the strategy of several resource rich countries, as this is their way to economic development (Behn and Pogoretskyy 2012:46). Thus we see that the right to govern its natural resources could be looked upon as a principle for Russia. This principle could be part of the reason for the country’s reluctance to bind itself to a commitment to change energy pricing policies.

There is also a clear economic reason for Russia not to change its current practice in a significant way. According to Tarr and Thompson (2004) Russia should raise its internal gas prices, but there is no rationale for unified prices. If Russia sold more gas to Europe the price would decrease. Russia thus has a price setting power in the European gas market, and will therefore have an incentive to calculate a price that will give an optimal trade-off between additional revenue for additional sales and the lowering of the price the additional sales would give (Tarr and Thompson 2004:1177). In other words, from the point of view of Russia there is no correct world market price for gas, which Russia must conform to.
The other argument put forth by Mevedkov in his statement from 2002 is that Russia has higher energy consumption per capita than other countries and is therefore dependent on access to cheap energy. The energy consumption per capita was twice that of Canada, which has a similar climate (The Russia Journal 2002). The Russian side also has expressed concern that whatever is decided in the negotiation could set precedence for the understanding of energy in the WTO in general. In an interview to World Trade Review in 2003 Maxim Medvedkov stated that if Russia accepted EU’s claim that Russian gas pricing can be looked upon as dumping, this will set an extremely negative precedent for the discussion about energy in the WTO later on (World Trade Review 2003). These arguments show that Russia is against committing to anything which goes against the principle of self-governance over natural resources. Also, introducing unified gas prices will have concrete economical disadvantages for Russia.

### 2.5 The accession negotiations

As previously mentioned energy dual pricing played an important part in the bilateral negotiations between the EU and Russia. While the EU claimed this practice was illegal and had to be abolished, the Russian WTO negotiators claimed that the demand for unified gas prices goes beyond the rules of WTO. According to the Russian position there should be no need to address this question before Russia is a member. If this is a break with the WTO rules it should be settled with the dispute settlement mechanism. Then the fertilizer producers of other countries could bring this case in front of a WTO Dispute Settlement Panel, and the case could be settled in a fair and legal way (Tarr and Thompson 2004:1174).

The case of energy dual pricing was settled during the bilateral negotiation between Russia and the EU, which were completed in 2004. The US was also active in the negotiations about energy dual pricing in Russia’s accession negotiations. The issue is not mentioned however in the bilateral deal between the US and Russia which were completed in 2006 (USTR 2006). This indicates that the US did not get a further commitment on energy dual pricing than the EU and that the commitment by Russia in the final accession agreement quite likely reflects the deal reached between the EU and Russia.

In 2011 Russia and the EU concluded a new round of bilateral negotiations on what if defined as key outstanding elements in the accession of the Russian Federation to the WTO. Energy is
not mentioned here (European Commission 2014b). This indicates that the talk about energy dual pricing was concluded in 2004, and that neither of the parties decided to open the talks on this issue again closer to the end of Russia’s accession talks.

2.6 What did Russia agree to?

The final agreement between EU and Russia has two components. First we have the bilateral negotiations where Russia’s agreed to gradually increase its domestic gas prices from $27-28 to $49-57 (European Commission 2004). This was in line with Russia’s own energy strategy and would mean that the domestic gas prices would be about half of the export price to the EU. In the final accession agreement Russia gave a commitment of more general character. In the Working Party Report in paragraph in 132 it is stated that:

Producers and distributors of natural gas in the Russian Federation would operate on the basis of normal commercial considerations, based on recovery of costs and profit (...) The Russian Federation would continue to regulate price supplies to households and other non-commercial users, based on domestic social policy considerations. (WTO 2011a:32).

The statement that prices of gas will be set in accordance with commercial considerations and the recovery of costs and profits, does not give a clear definition of what this would mean in practice and will therefore give the parties room for disagreement about the interpretation. If the EU would have to bring Russia in front of the dispute settlement panel in the case of eventual lack of compliance with the commitment, the outcome will therefore not be certain.

Thus we see that Russia did make a commitment regarding energy dual pricing. Most commentators, however, claim that the EU let Russia off easy when it came to this issue. In a way the outcome could be looked upon as some sort of middle agreement. The EU dropped the original demand, and Russia stated that the price of gas for the industrial user would cover the marginal cost (Van Der Loo 2013:20). This could according to Van Der Loo not be considered a real concession since this was already a part of Russia’s energy strategy. Keith Bush of US-Russia Business council also agrees that the EU eventually settled for less than the original goal. Zimmermann (2007) claims that the bilateral deal between the EU and Russia all together was very lenient, and that the commitment on energy dual pricing undertaken by Russia was vague at best (Zimmermann 2007:826). Timothy Meyer on the other hand seems to interpret that Russia in fact agreed to increase its gas prices to the level of the European net of transport prices by 2014. According to him this was a unilateral commitment by Russia, which does not establish that energy dual pricing is inconsistent with
WTO rules (Meyer 2013:2). Thus we see that most commentators agree that the commitment made by Russia was weaker than the demand originally posed by the EU.

Talks with respondents from the EU indicate that the EU sees the agreement as the best compromise it could get given the circumstances. They are aware that the agreement is formulated in such a way that it will be hard to verify whether Russia complies or not, since there is not a clear common understanding of what can be considered 'long term marginal costs.' On the other hand Russia committed to lower the prices below a certain level, which will have some practical implications that will benefit the EU.

Russian commentators seem to be confident that Russia did not give any important commitments on the issue of energy dual pricing. In an article in the Russian newspaper, Vedomosti, with the telling title “After 18 years, in reality Russia entered the WTO on its own terms” it is written that Russia will become a member of the WTO with the right to continue to regulate domestic gas prices. To be in line with WTO demands, Gazprom would have to make profit on the domestic market. Since that has been the reality in the last couple of years, the prices will not have to increase very much (Vedomosti 2011). In an interview with the newspaper, Itogy, the Russian minister of energy, Alexander Novak states that even though prices for consumers in Russia might go up, this is not a because of a commitment from the WTO (Ministry of Energy of the Russian Federation 2012).

Thus we see that there are two aspects of these negotiations, which may be of significance for the further discussion of this topic in the WTO. First, there is no wording which testifies to the fact that the practice of energy dual practice is against the rules of the WTO. According to this agreement there will still be a system of energy dual pricing in place, but it will be modified. This makes it harder to point to this agreement to create precedence in future accession negotiations.

Second, there is no definition of what constitutes proper recovery of costs. In other words it all comes down to how one calculates the numbers. As was mentioned in the introduction, the Russian Federation, launched a dispute against the EU for anti-dumping measures against energy intensive goods like ammonium nitrate and aluminum products. The method of how

---

8 Based on interviews with respondent from DG Trade interviewed 05.03.2014, hereafter referred to as (DG Trade [Interviewed 05.06.2014]) and respondent from the EU interviewed 10.04.2014, hereafter referred to as (The EU [Interviewed 10.04.2014]). The selection of respondents and the method used in the interview will be presented in section 3.8.

9 Translation by the author
the cost of these inputs should be calculated will be a central part of this dispute (Weaver and Spiegel 2013). The fact that Russia has brought this issue in front of the dispute settlement mechanism can indicate that it feels confident that the accession agreement as well as the WTO rules will support their claim.

We can see from the discussion above that the commitment on energy dual pricing made by Russia is widely interpreted as weak, and that the wording of the agreement gives little room for the EU to bring Russia in front of the WTO dispute panel in the case of any future lack of compliance.

### 2.7 Summary and implications

In this chapter we have seen that the issue of energy dual pricing has been one of the most prominent topics of discussion between the EU and Russia during Russia’s accession negotiations to the WTO. The conflict is rooted in economic differences as well as different outlooks on what constitutes proper energy governance. The consistency of energy dual pricing with the WTO legal framework is a complex question and the answer remains unclear. It does seem, however, that the leading interpretation is that the Russian practice is not illegal in the WTO. In the final agreement Russia agrees to increase energy prices for domestic consumers, but only with a vague reference to recovery of costs. The commitment from Russia was weaker than the EU’s original demand. Since it does not involve introduction of unified gas prices the practical implications will be less than what the EU originally was aiming for. Russia, on the other hand, seems confident of the legality of their current practice. This is indicated by the first dispute Russia launched against the EU.
3 The theoretical framework and research design

3.1 Introduction

We have now looked at the different aspects of the debate surrounding the issue of energy dual pricing. Here we will outline the theoretical framework that will be used to answer our research question: How can the distribution of power between the EU and Russia in Russia’s WTO accession negotiations, explain the outcome on the issue of energy dual pricing in Russia’s accession to the WTO? In the previous chapter we learned that the issue of energy dual pricing was an important point of disagreement in the bilateral negotiation between the EU and Russia during Russia’s accession negotiations. From this we can interpret that this was an issue of great importance to both the Russia and the EU, but also an issue of diverging interests.

In the analysis I will examine how the distribution of power between the EU and Russia in the accession process has had an effect on the negotiation outcome. I will therefore need a theoretical framework which will help to operationalize power and measure it in the context of the accession negotiations. Here I will use Gudmund Hernes’ (1978) relational model of power. Key components of this model are that power is an attribute of the social relation between at least two actors, and that one actor’s degree of power can be defined in accordance with the amount of control this actor has over outcomes of interest to the other actor. To define the possible effect of the temporary character of EU’s power over Russia I will use the concept of obsolescing bargain (Vernon 1971). I will also expand Hernes’ model to include the effect of legal backing as a possible explanatory variable of the outcome. To examine this I will use Tomas M Francks (1988) concept of determinacy.

3.2 Rule of power or rule of the law?

Before I start mapping out a suitable theoretical framework for the question we will investigate, I will start with an overview of how the system of the WTO is described in the literature regarding the role of power and legal norms. One of the returning debates about the WTO, which will also be relevant for our analysis, is whether its proceedings are mainly rule
based or power based. Some scholars claim that one of the WTOs main achievements is to move the international trade regime away from the power politics, which characterized the GATT regime (Hilf 2001:114–115). One of the indicators which supports this claim is the high compliance of members towards the dispute settlement mechanism. Wilson (2007:400) finds that even the powerful WTO members like the United States and the European Communities comply with adverse rulings in the dispute settlement procedures in most cases.

The opposing view, however, is that power based bargaining plays an important part in the outcomes that are reached in the WTO. Steinberg (2002) distinguishes between two modalities of bargaining when he analyzes outcomes in the GATT/WTO. One is bargaining in the shadow of law, the other one is bargaining in the shadow of power. The first modality entails that bargaining power derives from substantive and legal procedures (Steinberg 2002:342). This could be linked to the logic of appropriateness defined by March and Olsen (2006) as a perspective on how human action could be interpreted where: “rules are followed because they are seen as natural, rightful, expected and legitimate” (March and Olsen 2006:689). If one presumes that the members of the WTO act according to this logic they have accepted the rules and norms of the WTO as legitimate and follow them because it is the right thing to do. The other modality defined by Steinberg is bargaining in the shadow of the law. In this type of bargaining the outcome is a function of power and interests (Steinberg 2002:342). This type of behavior could be linked to the logic of consequentialism where the actors are seen as rational and have a clear set of goals and interests which they try to realize through strategic behavior. The rules are then a reflection of power and interest or irrelevant and they are therefore not influencing the actors preferences (March and Olsen 2006:691). Thus we see that the bargaining in the shadow of the law and bargaining in the shadow of power could be linked to two contrasting forms of logic. Complex negotiations like the WTO accession negotiations will most likely contain both modes of behavior (March and Olsen 2006:701; Müller 2004:401).

The distinction between the effect of the law and the effect of power will play a role in this analysis. As mentioned in the previous chapter there has been a common understanding that the WTO legal framework is not well suited to apply to energy issues. An important aspect of the debate about energy dual pricing has been how it could be interpreted under the GATT. Therefore an important part of our analysis will be to distinguish between power and the law
as variables explaining the final agreement on energy dual pricing. Later it will be explained how power and legal argumentation will be operationalized in the analysis, but first we will look at the special form of bargaining which characterizes the WTO accession process.

3.3 The dynamics of the WTO accession process

If power is present at the table in the WTO as a whole it is especially so in the accession negotiations. Neumayer (2011:5) claims that the accession negotiations are unapologetically power based. In contrast to the non-discrimination principle of the WTO at large, the existing WTO-members can demand of possible entrants that they have to make commitments, which lie outside the scope of the WTO rules (Neumayer 2013:674). Some commentators claim that the fact that the accession negotiations remain power-based could be a danger to the legitimacy of the entire ruled-based system of the WTO (Grynberg and Joy 2000:173). Below we will look at which features of the WTO accession process that forms the basis for these claims.

One of the features of the WTO accession process is that it is very demanding and time consuming on the applicants (Neumeyer 2013:670). During the early GATT years 14 states joined the GATT without any extra protocol. An article XXXVI:5 of the former GATT also gave the former colonies of GATT members the right to accede without any extra commitments. The forming of the WTO in 1995 put a stop to these modes of accession, and now every new member has to go through what has been called a ‘rigorous and complicated process’ (Kavass 2007:453). There are few guidelines protecting the applicant states from excessive use of power from the existing members in the accession process. Some have claimed that “from an organization which prides itself on being ‘rule based’, the accession process is remarkably vague” (Neumayer 2013:672). WTO article XII States that countries may accede ‘on terms to be agreed between it and the WTO (WTO 2014c). This is a very general provision and beyond this, there is no agreement on accession to the WTO, which states what the terms of accession should be or maybe more importantly what they cannot be (Cattaneo and Primo Braga 2009:13). In July an addendum to the guidelines from 2003 to protect LDC was approved however, which specified certain benchmarks when it comes to goods and services, and calls for greater transparency (WTO 2012).
If a country decides to join the WTO it launches a formal application. After the application is submitted a working party (WP) is formed, which is open for all existing members. They vary in size and there is no limit to how many members can join. It is the practice that the big trading countries like the EU, the US, Japan, Canada and China join every Working Party. The WP then scrutinizes the trade regime of the applicant state. Parallel with the multilateral negotiations in the working party, the acceding member engages with each and every member of the working party in bilateral negotiations. While the multilateral negotiations usually deals with the compatibility with the trade regime of the acceding country and the existing WTO rules, the bilateral negotiations deal with market access. Here the existing members can obtain benefits from the new member, in exchange for ‘opening the doors to the organization’. These negotiations are usually secret and sometimes the results remain secret. This would probably especially be true of issue linkages that are outside the scope of trade negotiations. But usually the terms that are agreed upon in the bilateral negotiations will end up as a part of the cumulated accession package and be subject to the most favored nation clause and the dispute settlement mechanism (Neumayer 2013:673).

Another feature of the accession process is that it is considered highly asymmetrical. This is because all concessions fall entirely upon the new member, and the demands for change in the new members trading regime go only one way. Thus, we see that the logic of reciprocity which underlines the multilateral trading system is lost in the context of accession (Pelc 2011:641). The acceding members are not only asked to change their trade regime so that it fits with the legal framework of the WTO, the incumbent members can also demand concessions from the applicant countries that go beyond the rules of the WTO, the so-called WTO-plus commitments. The commitments that fall within this category are just as binding as the commitments made which are in accordance with the WTO legal framework. The acceding members can therefore end up with more commitments than existing members have. This asymmetry of power is merely temporarily, as long as the accession process lasts. As Neumayer (2013:669) claims “the accession process offers members a unique opportunity to leverage issues against the applicant country to a degree which they will probably not be able to do again.” When the new member is welcomed into the organization it will at least on paper have equal rights as the other members to let its voice be heard in the WTO bargaining rounds. This creates the incentive for the existing members to try to get as many concessions as they can before the new member is accepted (Cattaneo and Braga 2013:674). The accession
process is identical for all acceding members, but some countries like Russia have claimed that it was facing especially hard demands (Kavass 2007:468).

So far we have seen that the accession process is both very demanding for applicant members as well as asymmetrical. Judging from the discussion above one gets the impression that the incumbent members can get any concession they want from the applicant states. Because of this it would be tempting to conclude that the EU should be able to get the commitment it wants regarding the issue of energy dual pricing. However, as we will see from the final outcome, and the overall lenient accession package which Russia ended up with, the power of the incumbent member over the acceding one is not absolute. Van Der Loo (2013) notes that EU’s success in realizing their goals in the Russian accession process are rather mixed. Pelc (2013:666) also points to the fact that more developed economies with better negotiation expertise usually give up less.

As we see the accession process is defined to be more power based than the negotiations taking place within the WTO. We also see, however, that the law plays a role in the multilateral negotiations of the accession since the aim here is to assess whether the trade regime of the applicant country is in accordance with WTO law. Because of this it will be important to both include the effect of power and the effect of the law in the analysis. Below we will look at how power has been operationalized in the study of the WTO.

### 3.4 How power has been measured in previous literature on the WTO

Since a central point of this analysis of the outcome regarding energy dual pricing is the role of distribution of power on the negotiation outcome it is especially important to find a suitable operationalization of power as a variable in our analysis. There are some suggestions to how one can empirically define power in the case of WTO accession negotiations.

In a way the procedure of accession in itself is seen as a source of power for incumbent members of the organization, because it gives them the opportunity to put pressure on the prospective member. Neumayer writes: “Self-selection into the Working Party of applicant countries gives existing members the option to do one of two things: to strategically delay the entrance of the newcomer and/or extract concessions beneficial to themselves.” This also shows that the opportunity to be member of a working party gives the opportunity to wield a
specific kind of power for a moment in time (Neumayer 2013:670). All these claims about the power of incumbent members do not give a specific definition of how this power works, and how one can measure it. It is not sufficient to say that power is something that could be defined simply by whether the country is an incumbent member or not. There is most likely a difference in power between the incumbent members. And the power of the incumbent members will most likely vary depending on which country is acceding to the WTO and between the different issues in the accession process.

Steinberg (2002) suggests using relative market size as a measure of bargaining power in the GATT/WTO. Measuring power is notoriously difficult, but he claims that market size is the best first approximation of bargaining power in this situation. He claims that the opening or closing of market access is important leverage. Therefore larger developed markets have more to offer than smaller markets. They also have greater opportunity for internal trading. He admits, however, that the possibility for issue linkage across areas limits the usefulness of using relative market size as an indicator of bargaining power. This is especially true if the parties are willing to link to non-trade related issues (Steinberg 2002:348). A problem with using relative market size as an indication of power is the fact that market size seems to have the opposite effect in accession negotiations. Pelc (2011) notes that the greater the market size of applying states, the more incentives it is for the incumbent members to demand concessions from the new member ahead of accession. This is because the potential value of export to this country is higher than in the case of smaller potential export markets, and the incumbent members will therefore have potential higher gains from demanding concessions ahead of accession than in the case of smaller economies.

We see from this that market access alone is not a sufficient indicator of a country’s relative power in the WTO accession process. What we need is a concept of power that can be tested and measured and which can capture the different aspects of power in the accession negotiations.

### 3.5 A Relational Model of Power

In this analysis I will make use of Gudmund Hernes’ (1978) model of power. He builds on Emerson’s (1962) work on power-dependence relations. According to Emerson; “power is a property of the social relation and not an attribute of the actor” (Emerson 1962:32). Hernes
also sees power as a relational concept. The key components are actors and outcomes. What ties these components together is that different outcomes are of different consequences to the actors and therefore they connect different interests to them. The actors also have a different share of control over the outcomes in question (Hernes 1978:20). Like Hernes, we will assume that the actors are goal-driven. This is a less strict assumption than that of rational actors, since it only presumes that the actors have a set of goals and interests, but not that they have knowledge of all the actions that are open to them nor the consequences of all of their actions (Hernes 1978:23).

Since the WTO accession negotiations is by many referred to as an asymmetrical bargaining process, an alternative approach would be to use Mark William Habeeb’s (1988) framework for analyzing asymmetrical bargaining processes. Habeeb’s concept of issue specific power would be especially relevant. This is in many ways similar to Hernes’ assumption that power is an attribute of the specific social relationship. There are however two reasons why I conclude that Hernes is better suited to analyze this case. One reason for this is that as we will see in this analysis, the distribution of power between the EU and Russia is in many ways not that asymmetrical, because of the size of Russia’s economy and EU’s relative dependence of Russia. The other reason is that Habeeb’s model also has an element of tactical behavior within the negotiation process itself. Since details of the negotiations I study remains secret, these elements of Habeeb’s framework will not be possible to apply to this case. Because of these factors, Hernes’ model is thus better suited for this analysis.

**Power defined by the relationship between control and interest**

In Hernes’ model the distribution of power between two or more actors is conceptualized as a social relationship, and more specifically as an exchange. To analyze power in this sense there has to be at least two actors and two outcomes. What determines one actor’s power over another is the one actor’s relative control over one outcome and the other actor’s interest in this outcome. Let’s presume that we have two actors A and B, and two outcomes X and Y. Actor A has control over X and actor B has control over Y. If the outcome of X is of interest to B and the outcome of Y is of interest to A, we will have incentive to an exchange where actor A can grant outcome X to actor B on exchange for outcome Y. This will then be of benefit to both actors (Hernes 1978:41). This can be shown in Figure 1 below
In this example the control and interests of the actors are distributed equally and the power distribution is therefore equal. This is seldom the case in the real world. The greater interest one actor has in the outcome in question, the greater the power of the actor who controls this outcome. Interest is defined as the difference in consequences the actor will experience in regards to the different outcomes connected to the situation in question (Hernes 1978:33). Control is defined as the circumstances which determine one actor’s ability to influence the outcome of one situation. Hernes also introduces a third variable, value. The definition of value is that if more actors have great interest in one outcome, the more value control over this outcome has (Hernes 1978:69). This variable is mostly relevant when multiple actors are involved in the situation. This case is limited to only two actors, the EU and Russia. Value will therefore not be relevant to the analysis. Hence the two components control and interest will be sufficient to measure the power in this case.

As I mentioned above, according to Hernes’ framework, power is an attribute of the social relations and not a feature of the actor. This will entail that the distribution of power between two actors will also vary between different specific situations. The power the EU has over Russia in the accession negotiation is only temporary because it is derived from the relationship between the EU as an incumbent member and Russia as an applicant. This could therefore be defined as a case of obsolescing bargain. The term was coined by Raymond Vernon (1971) and is originally created to explain the bargaining situation between governments and Multinational Companies (MNC) getting established in a new country. The
core of the theory is that time brings a change in power distribution between the host government and the MNC. At first the power lies with the MNC because the host government has a lack of resources and is often dependent on the incomes they will get from the MNC. After time however, the income of the host government will increase as a result of the MNCs activities and more importantly the MNC have invested so much in the country in question that they are willing to give larger concessions to be able to stay in the country in question (Jenkins 1986:141).

This type of bargaining situation bears similarities with the WTO accession process. After the new member is accepted into the organization the relationship between the actors will change and the asymmetry that the incumbent member derives from the accession process will cease. This gives the incumbent members the incentive to make as many demands as possible in the accession process which goes beyond the legal framework of the WTO, because the opportunity to settle these issues will be lost when the applicant country becomes a member. The lack of legal basis in the demands made will according to this premise not matter and we will see persistence from the incumbent member to settle these issues ahead of accession.

3.6 The effect of legal backing

Above we have looked at how one can make a distinction between bargaining in the shadow of law and bargaining in the shadow of power in the negotiations within the WTO. So far we have concentrated on power as it is defined by Hernes’ as the explanatory variable influencing outcomes in the accession process. We will however also look at what effect bargaining in the shadow of the law has had on the negotiation outcome on energy dual pricing as well. According to the logic of appropriateness the incumbent members will have greater a chance of getting a concession from the applicant country if they can show that these demands are in accordance with the legal framework of the WTO. Hernes acknowledges the role of the rules the actors submit to when they make decisions and the fact that these rules can have an impact on the outcome of these decisions (Hernes 1978:29). Control as it is defined by Hernes has some elements of the law since the legal rights and obligations of an actor help determine the actor’s control over an outcome. In this analysis I will, however, separate between the law as procedural rules which gives the actor control in the form of decision-making power and the law as a source of legitimacy.
The aspect that is often mentioned as a problem with the place of energy issues in the WTO is the lack of clarity regarding the proper interpretations of the WTO legal framework when it comes to these issues. This could be defined as the indeterminacy of these rules when it comes to energy. Determinacy can be defined as the level of clear meaning which can be derived from a legal rule (Franck 1988:713). I will use this term both as a feature of the legal text itself and a question of common understanding of the meaning behind it. Legal backing will therefore be defined as dependent upon the determinacy of the rule upon which the actor bases its claim. These terms will be used in the analysis as an expansion of Hernes’ model so that the effect of bargaining in accordance with the law can be properly included in the analysis.

3.7 The analysis in four steps

Above we looked at the basic features of the theoretical framework which will be used in this analysis. I will now explain how each of these components will be used to examine the research question based on four hypotheses.

First step – EU’s power over Russia in the accession negotiations

As was discussed above, it is a common conception that the process of WTO accession gives the incumbent member power over the applying member. The first step of our analysis will therefore be to determine how great the power of the EU which was derived from control over Russia’s accession was, and how this affected the agreement on energy dual pricing. Therefore the first hypothesis is:

H1: EU did not have the power over Russia in the context of the accession negotiations to gain the concession it wanted on the issue of energy dual pricing.

This is our starting point and it will be important to establish the validity of this statement before we look at the alternative explanations. This is a situation with two actors and two outcomes like in the example referred to above. The two actors are the EU and Russia, and the outcomes in question are Russia’s accession to the WTO and Russia’s commitment to change its practice of energy dual pricing. The first chapter will therefore be used to determine how great Russia’s interest in joining the WTO is and how great control the EU has over the decision to let Russia join the organization. For Russia to change its practice of energy dual
pricing keeping this practice must be of less interest to Russia than joining the WTO. I will therefore try to compare the disadvantages Russia will experience from changing its practice regarding energy dual pricing with the benefits from joining the WTO. As previously mentioned, the WTO accession process is a very complicated set of negotiations and the model we have set up above is a great oversimplification. The next part of the analysis will therefore be to introduce a wider range of issues to the analysis.

**The second step – Issue linkages and the power of Russia**

So far the analysis only contains two actors and two possible outcomes. In reality the WTO negotiations are a big package deal containing negotiations on a wide range of different issues. It would therefore be impossible to make any meaningful inferences about the outcome on energy dual pricing without placing it in the context of other issues in the accession negotiations. This will also be important when it comes to determining how this can give us an understanding about the role of WTO accessions in resolving disagreements regarding energy issues. If two actors have strong divergent interests in one case it could lead to a stalemate situation where it is hard to come up with a solution. If more issues are introduced, the negotiation situation could be easier since it gives the actors the opportunity to concede on issue of less importance to them, in exchange for leniency on issues of greater importance. In this way an actor which loses an amount of welfare because of one outcome can be compensated by another outcome (Hernes 1978:49). This strategy is often called issue linkages. The negotiation outcome of one issue is linked to the negotiation outcome on another issue (Haas 1980). Our second hypothesis is therefore:

**H2: Russia had control over other outcomes of great value to the EU, and the EU therefore settled on a less satisfactory outcome on the issue of energy dual pricing in exchange for other commitments.**

In the previous section we defined the general power of the EU over Russia in the accession process as the relationship between Russia’s interest in joining the WTO and EU’s control over the decision to let Russia in. As was mentioned earlier Hernes defines power as an exchange, and even though there is a certain level of asymmetry in a social relation, the other actor will also have some degree of control over issues of importance to the first actors. In the context of accession we will therefore look upon the possible commitments Russia can make on different issues as outcomes which Russia can control and which will be of interest to the
EU in a varying degree. According to the logic of the power model the EU will then be willing to be lenient on issues of less interest in exchange for commitments on issues of greater importance.

**The third step – The effect of legal backing**

Above we determined that the WTO accession negotiation is a package deal, and there are several outcomes that will be determined of varying interest to the actors. Another explanation of the varying degree of commitment is that they were perceived with a varying degree of legitimacy. As mentioned in chapter 2, the interpretation of the legality of energy dual pricing within the framework of the WTO is contested. Therefore it will be relevant to examine whether the degree of legal backing of the EU’s claim have had an effect on the negotiation outcome. Therefore our third hypothesis is:

*H3: The weak legal backing of the EU’s claim about energy dual pricing was the reason for the outcome of the negotiations on this issue.*

As was mentioned above the temporary power distribution between the EU and Russia in the context of accession could be a case of an obsolescing bargaining situation. This gives the incumbent members like the EU the incentive to focus on settling issues with an unclear legal standing within the WTO. If there is a strong correlation between legal standing and the commitments we will see that bargaining in according to the law matter for the outcome of the accession negotiations and this would give less weight to the premise of the obsolescing bargain theory.

**Fourth step – Other possible venues of cooperation**

So far we have looked at the negotiation about energy dual pricing within the WTO. The WTO is not however the only forum where EU and Russia can raise issues concerning energy. One possible option that the EU settled for this agreement without the WTO is that it deemed other forums more suited than the WTO for settling this issue.

Therefore H4 is: *The EU meant that it had better venues of cooperation to settle this issue outside the WTO.*
To examine this hypothesis I will look at the other options the EU had to raise the issue of energy dual pricing in accordance to the power model. This would indicate that the EU sees the power distribution on other venues more beneficial or that it has stronger legal backing of the demand in these venues. This would shed light on the research question because it will give insight in the power distribution between the actors in the WTO compared to other possible venues and the EU’s dependence on the WTO to settle this issue.

I have now presented the four hypotheses on which I will base the study. Before I proceed to the analysis I will give an outline of the research design and the methodological considerations that will be taken into account.

### 3.8 Research design

I have now formulated four hypotheses describing different scenarios that could lead to the negotiation outcome on energy dual pricing. In other words it is one case with comparison between different possible paths to this outcome. The method applied in this study is therefore process-tracing. The purpose of this study is to examine which factor led to the negotiation outcome regarding energy dual pricing. The use of theory is for systematizing the empirical evidence, and single out which possible explanations should be tested. This case is therefore what Beach and Pedersen (2013:18) call explaining-outcome process tracing.

This type of process tracing, is the one which mostly resembles historical writing. It could still, however, be classified as social research since one makes use of more generalized theoretical claims than in historical research (Beach and Pedersen 2013:20). This is true in this analysis where I have used general theories of power and the law in international relation to specify the hypotheses about the outcome of the negotiations regarding energy dual pricing. Based on the sources available it is unlikely that it will be possible to rule out all explanations but one. It is rather of interest to discover the most plausible combination of explanations which led to the outcome in question. To find out which factors I should include in the analysis I made use of a bottom-up approach. This means that that the starting point is the empirical sources, and one has to conclude all the sources that are needed to have a minimally sufficient explanation (Beach and Pedersen 2013:21). In contrast to a comparative case where one can test the differences or similarities in the dependent variable against each other, one
will in a single case study like this one test evidence found in this case against new facts and findings within the same case (George and Bennett 2005:220).

Some scholars like King, Keohane and Verba (1994:210–211) claims that validity cannot be achieved without comparison, because it makes it harder to exclude alternative hypotheses and omitted variables. This is, however, partially based on the definition of a single case study as having only one observation on the dependent variable, which in this case will not be true, since I will map out the changes in the dependent variable and which other evidence which will be linked to this change (George and Bennett 2005:222). One turning point of interest will be the conclusion of the bilateral negotiations between EU and Russia in 2004, and I will therefore in the examination of the four possible paths to the outcome try to compare the situation before 2004 with other points in time.

One difficulty with making a detailed narrative over the process leading to the negotiations outcome regarding energy dual pricing is the fact that not all the data required to follow the process step by step will be available, since the actual proceedings of the negotiations remain secret. This gives a higher rate of uncertainty and one will be less able to make an undisputed conclusion about which explanation has the most weight. I have therefore used the broadest possible selection of sources to be able to prioritize between the different explanations.

The main source of information about the accession process itself and the negotiation package Russia ended up with, will be official documents from the WTO website. The multilateral negotiations and terms of agreement are well documented here. The WTO website is also the main source regarding discussions about energy in the WTO in general, legal documents of relevance for the case and current WTO events. The European Commission’s website is the mains source for documents about the result of the bilateral negotiations between Russia and the EU, as well as the general trade and energy relations between Russia and the EU. The Ministry of Foreign Affairs of the Russian Federations website is the main source for statements from the Russian authorities on the WTO process. In addition to these sources I have made use of newspaper articles to map out public statements from both sides, as well as news of relevance to the case. I have also used secondary sources to get different views on the important mechanisms behind Russia’s accession to the WTO. Secondary sources have also been important to get an understanding of the most common interpretations of the legal texts of relevance to this case as well as economical estimates connected to the process. To
strengthen the validity of the inferences I make in this study I will support each claim with more than one source if possible.

To support the information found in the written sources I have done five interviews. I have interviewed two people in the European Commission, one person in the Permanent Mission of Russia to the EU, one person in the Norwegian Ministry of Foreign Affairs, and one well informed source in the EU. The respondents were selected based on their involvement with the Russian accession negotiations. The department of European Commission responsible for coordinating the EU’s trade negotiations are The Directorate-General for Trade (DG Trade) and one of the respondents I have interviewed works here. I came in contact with the person by sending a request to DG Trade. I interviewed the respondent from DG Trade on the 5th of March in Brussels. The second respondent works in the European External Actions Service (EEAS). I was referred to this person by the Permanent Delegation of Norway to the European Union. This interview took place on the 6th of March in Brussels. The final respondent I talked to in the EU preferred to be referred to as a source from the EU and was interviewed on 10th of April by phone. The respondent from the Permanent Mission of Russia to the EU was interviewed by phone on the 20th of March. The respondent from the Norwegian Ministry of Foreign Affairs were involved in the Russian accession negotiations on behalf of Norway and were interviewed for background information about the Russian accession process in general. Because most of the respondent wished to remain anonymous I will refer to all the respondents by place of work and date. The first time the respondents are mentioned I will refer to them in a footnote and after that in brackets throughout the text.

The purpose of the interviews is to shed further light on the events leading to the negotiation outcome. The method of process tracing usually requires collecting a wide range of different sources. The interviews with people involved in the process I am investigating was therefore be a valuable addition to the data-gathering process (Tansey 2007:765). The types of interviews I have done fall within the category of elite interviewing, because the respondent all have professional positions which gives them great knowledge about the subject at hand. If one wants to investigate the attitudes and beliefs of a certain group of civil servants, the aim should be to select a representative sample. The aim of this analysis was to investigate and learn as much as possible about a specific process. (Tansey 2007:765). I was therefore not important to sample a representative population of civil servants, but rather to talk to people with the best possible knowledge about this process in particular.
One weakness relating to the validity of the interviews is that I interviewed relatively few respondents, and my ability to compare between different respondents was therefore limited. To get as high validity as possible it would be purposeful to interview several people from each department. This was, however hard to do in practice. Based on the European Commission Directory I contacted the head of each department by mail, which then directed me further to the person in the department deemed to be the most knowledgeable about the subject I inquired about. One of the problems that can occur when one wants to do elite interviews is to get access to busy officials with a tight schedule (Aberbach and Rockman 2002:673). I got the impression that the departments preferred if I just talked to one of the officials working out of concern for time efficiency. I assessed that it was more important to talk to a few people greatly involved with the process than to get a wide sample. Because of the limited possibility to compare between the respondents I have put emphasis on comparing the information I got in the interviews against written sources, which in this case will be official documents, media comments and secondary sources like academic articles.

The type of interviews I used was semi-structured interviews with open-ended questions. One of the reasons behind this was my level of knowledge about the subject. I had a fairly good understanding of the issue before I conducted the interviews, but there were still matters that were unclear to me. Open ended questions gave the respondents the opportunity to include aspects and issues which I didn’t know about and therefore would not be able to ask directly about. Giving the respondents the opportunity to organize their answers themselves increased the validity of the answers since they were able to answer with their own words. This increased the probability that they answered in accordance with their actual conception about the events we discussed. The last reasons is that the respondents, which are very knowledgeable about the issues at hand is often more comfortable with being allowed to articulate the answers more freely and will therefore be more willing to share their knowledge (Aberbach and Rockman 2002:674). A downside with open-ended questions is that it will be more difficult to compare the answers of the different respondents. This is, however not a great disadvantage in this study since the question will differ somewhat regardless because the different respondents occupy different positions and are therefore able to give information about different pieces of the puzzle.

One problem with the validity of the answers I received during the interviews was that the respondents could feel the need to present their end of the negotiation result as more favorable
than it actually was, or that they had more influence over the situations than they actually had. This increased the necessity of comparing the answer received with other sources, as mentioned above.

3.9 Summary

In this chapter we have seen that Gudmund Hernes’ model for power is well suited to measure the power relationship between the EU and Russia in the accession process. I will use the framework to examine the hypothesis in different steps. First I will look at how much power the EU has over Russia which can be directly linked to the negotiating process. I will therefore measure the power the EU has over Russia as a function of the EU’s control over the decision of to let Russia in and Russia’s interest in joining. Then I will build on this model by introducing the other issues in the negotiation process as outcomes which Russia has control over and which are of interest to the EU. This gives Russia the opportunity to make commitments in some sectors in exchange for leniency in other. The temporary power of the EU in the accession process will be eliminated in the moment Russia joins the WTO. This could give way to a situation similar to that of obsolescing bargain where the EU would have incentives to get as much commitments from Russia as possible before this power is gone. This would especially give an incentive to focus on issues that will be hard to settle after accession because their legal basis is disputed in the WTO. On the other hand we will examine the effect of legal backing as an alternative explaining variable of the outcome. This would mean that the EU’s lack of ability to argue their viewpoint with basis in the WTO legal framework was part of the explanation of the outcome. Finally I will look at other possible venues where the EU could have hope to settle this issue, and compare them to the WTO accession process in terms of power distribution and legal backing.

In the final section of this chapter it was explained that this is a case of outcome-explaining process-tracing study which means that the main aim is to explain the specific outcome in the chosen case. This does not, however, mean that I will not try to draw some implications that might be valid for other cases.
4 The EU’s power over Russia in the accession negotiations

4.1 Introduction

As was mentioned in the previous chapter the WTO accession process is by many considered to be a power game. This means that the applying member is subjected to the temporary power of incumbent member and therefore can be pressured into making concession on a wide range of issues. This is based on the assumption that it is of great interest to the applying country to become a member of the WTO, and that the country making the demands has control over the decision to let the applicant state enter the organization. A possible explanation of why the EU did not manage to extract a stronger commitment from Russia in the field of energy dual pricing could be that the power the EU had over Russia on the context of accession was not sufficient to get the commitment it wanted. In this chapter we will therefore examine the first hypotheses, which states that the EU did not have the power over Russia in the context of the accession negotiations to gain the wanted concession on in the issue of energy dual pricing. In chapter 3, power is defined as the control an actor has over an outcome which is of interest to another actor (Hernes 1978:56). In the most basic model there are two actors and two outcomes. In this chapter we will stick with this basic premise. The two actors are the EU and Russia and the two outcomes are Russia’s WTO accession and Russia’s commitment on energy dual pricing. Figure 2 illustrates how Hernes’ basic model looks if one fills in these components.

Figure 2: The accession of Russia as Hernes’ basic power model
I have determined in the previous chapter that the issue of energy dual pricing is of interest to both actors. In this chapter I will therefore concentrate on the other outcome in Figure 2, Russia’s accession to the WTO. To examine the validity of H1, I will examine how much control EU had over the decision to let Russia accede to the WTO, and how great interest Russia had in this outcome. This model with two actors and two outcomes is a severe oversimplification of the complex WTO accession process. I will therefore introduce more possible outcomes and the possibility for issue linkages in the next chapter.

First I will look at how much control the EU really had over the decision to let Russia enter the WTO. To determine this I will analyze to what degree the formal aspects of the accession process gives the EU control, which other actors the EU had to share the decision with, and which capacities the EU have to participate in the process. Then I will analyze how great interest Russia has in this outcome. I will use two main indicators for Russia’s interest, economic gains and the wish for increased influence in the international trading system. What we find in this chapter is that despite the factors reducing the power of the EU, and Russia’s varying interest in WTO accession in the last ten years EU’s power over Russia could be measured as substantial at the time of conclusion of the first round of bilateral negotiations. This means that H1 is not a sufficient explanation of the weak commitment made by Russia regarding energy dual pricing.

4.2 How to measure control and interest

To better be able to measure the variables of control and interest I have defined a scale for each of these variables with three levels in each. The variables are on ordinal scale, which means that one can rank the level, but not give an accurate measure of the relative difference between them. Under I have set up a table defining the relationship between control, interest and power. I divide control into three levels, low control, medium control and high control. I have not included the far ends of the scale, which would be no control and complete control. This is because neither of these two options would be likely to occur in this context, and it would therefore be an unnecessary complication of the scale. I define low control as when the actor has very little control over the outcome or some control, but not so much as to make a substantial difference on the outcome. This could for instance be when an actor is a part of a decision-making process where the final decision is taken by consensus, but informal circumstances make it hard for the actor in question to go against the opinion of the other
participants in the process. The next level is medium control. This means that the actor has some control over the outcome but is hindered by some circumstances to have high control. This could be when an actor is included in the decision-making process, but will have to take into account the opinions of several powerful actors before making a decision. The difference between low and medium control will therefore be that the actor with medium control will, despite some constraints have an independent influence over the outcome. The highest level is high control, which means that an actor has great influence over an outcome.

On the other side of the equation we have the interest one actor has in the outcome the other actor controls. I divide these into low interest, medium interest and high interest. Low interest means that the outcome is of minor or no importance to the actor, medium interest is when the outcome does have some importance to the actor, but doesn’t affect its circumstances in an essential way. This means that the outcome is important to the actor, but still not absolutely necessary. The highest level is high interest. This is when the outcome is of high importance to the actor and its wellbeing. In the figure below I have made a table which describes how control and value can be translated into one actor’s power over another. In this case the EU is actor 1 and Russia is actor 2.

<table>
<thead>
<tr>
<th>Actor 2 (Russia)</th>
<th>Actor 1 (The EU)</th>
<th>Low control</th>
<th>Medium control</th>
<th>High control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Interest</td>
<td>No power</td>
<td>Little power</td>
<td>Little power</td>
<td></td>
</tr>
<tr>
<td>Medium Interest</td>
<td>Little power</td>
<td>Medium power</td>
<td>Substantial power</td>
<td></td>
</tr>
<tr>
<td>High Interest</td>
<td>Little power</td>
<td>Substantial power</td>
<td>High power</td>
<td></td>
</tr>
</tbody>
</table>

Table 1: The relationship between control, interest and power

In this table we see that the power of the EU is dependent on the interest of Russia. For example if there is low control and low interest, the EU will have no power. This is because there will be no reason for an exchange and therefore no negotiations. If on the other hand the EU has high control and Russia has medium interest the EU will have substantial power. Substantial power gives The EU a high possibility to get the desired concessions from Russia. With little power the EU has a small chance to get the desired concession from Russia, with medium power, The EU will have a medium chance to get the concession and with high power The EU will be quite certain to get the concession.
4.3 How great was the control of the EU over Russia’s accession?

Hernes’ defines two main categories of control. One is control determined by what in juridical terms is called competence which are formal rules and decision making procedures that gives the actor an amount of influence over the outcome in question. The other category is capacities, which are the skills, abilities and resources an actor possesses. This could for instance be economic means or knowledge about the subject at hand (Hernes 1978:29). In this context the competence of the EU is defined as the formal procedures of the WTO accession process and capacities are defined as the extra influence the EU has in the WTO because of its market size and experience with the WTO accession process.

It seems clear that the EU has a certain amount of control simply by being on the side of the table with the members. The bilateral negotiations give each member control over accession, since the applicant member has to complete these negotiations with each member that requests it before it can accede. The procedural rules of the accession negotiation, gives the EU the competence to influence the decision to let Russia into the organization. This alone can indicate that the EU has high control over the outcome.

One reason, however, why the power of an actor could be reduced is that the actor has little control over which other actors will join in making the decision (Hernes 1978:93). The Working Group on accession of the Russian federation had 64 other members which the EU had to share the decision with. Every single member state can become a member of the working party and will therefore have a say in the accession process. Since decisions in the working party are taken by consensus and every member can decide to join the working party, every member in theory has the same amount of control.

In the case of Russia’s accession to the WTO the EU does not have any formal influence over which member joins the working party, since the decision to join lies solely upon the country in question. Smaller countries with fewer resources can because of the control given them by the decision making procedures stall the process of accession significantly. An example of this is Georgia’s behavior during Russia’s accession negotiations. Because of the conflict between Russia and Georgia in 2008 the government in Tbilisi stalled their approval of the Russian membership, and was the last country to conclude the bilateral negotiations with Russia. This happened only after Russia and Georgia agreed on how to control trade to the
breakaway republics Abkhasia and South-Ossetia, and after mediation from Switzerland and lobbying by the EU and the US (Eurodialog 2011). Georgia was thus the last remaining obstacle for Russia’s WTO membership (RIA Novosti 2011). Russia and the EU finished their first round of bilateral negotiations in 2004 while the final agreement between Georgia and Russia first took place in 2011.

From this we can see that the green light from the EU was not sufficient to grant Russia WTO membership. In the final stage of the agreement EU worked rather as a facilitator and lobbyist for Russia’s membership. It can thus be tempting to conclude that because EU had to share the decision between so many countries their control over Russia’s accession was decreased. On the other hand the procedures of the accession process also give the EU the power to stall the process in the same way as Georgia did.

So far we have only looked at the degree of control the EU was given by the formal procedural rules of WTO accession. But to get the full picture, we also have to look at the capacities of the EU in the context of the accession, which will be defined as market size and the resources and knowledge of the EU in connection to the WTO. It seems that the EU scores higher on these indicators than many of the other working party members. The EU, together with the US, Canada, Japan and Australia always join the working party of applicant members. Poorer countries are more selective and join working parties where they have special trade interests (Neumayer 2013:675). There are several reasons for this. On the one hand the EU has been a member of the organization for a long time and, thus has long experience with working parties. The EU also has the institutional capacity and expertise to properly scrutinize the trade regime of an applicant country. Therefore the capacities of the EU further enhance its control over the decision to let Russia accede.

Thus we see that one aspect potentially decreasing the EU’s control over the decision to let Russia in to the WTO is that the EU cannot control which other countries participates in the decision to let Russia in to the organization. Georgia’s ability to stall the process for several years shows that even smaller countries can influence this decision significantly. I conclude, however, because of the competence given by the procedural rules of the accession process and the capacity given by the status as an important and active participant in the accession processes the EU’s control over Russia’s accession could best be described as high. This is

---

10 Based on interview with respondent from the Norwegian ministry of foreign affairs 17.12.2013. Hereafter referred to as (MFA of Norway [Interviewed 17.12.2013]).
because, high control as it is defined above, does not mean that the actor has complete control over the outcome, but simply that it has enough control to influence the outcome in a substantial way. To find out how this translates to EU’s power over Russia I will now analyze how much interest Russia had in the WTO accession.

4.4 How much interest did have Russia in the outcome of WTO accession?

The first reason one’s power can be limited according to Hernes, is that the outcome one controls does not have a great relative interest to the other party (Hernes 1975:86). In this case that could mean that acceding to the WTO was not of great importance to Russia. I will look at two possible types of incentives behind Russia’s interest, the wish to gain influence in the international trade system and the economic gains that Russia will receive from membership. I will also see if there has been a development of these incentives in the course of the accession negotiations and how these have changed in accordance with the developments in Russia’s accession process, and especially the agreement reached on energy dual pricing.

**Economic gains of Russia from joining the WTO**

There are no doubts that the material gains or losses in terms of trade access and market conditions must play an important part in a country’s decision to join the WTO. We can presume that there will be some sort of cost/benefits considerations connected with a country’s decision to join the organization. The benefits from joining would have to be measured against the costs of acceding to the demands of the members (Jones 2009:281). It can be difficult to measure the actual gains one country receives from WTO membership. These economic gains come from different sources like increased market access for export goods, protection against arbitrary protectionist measures and permanent most favored nation-status. How beneficial this will be differs between countries based on the structure of the country’s economy (Cattaneo and Primo Braga 2009:5). For Russia to concede to the EU’s demand on energy dual pricing in exchange for WTO accession, the economic benefit from joining should be higher than the losses Russia will endure by introducing unified gas prices.

There are a number of different estimates predicting the economic gains and losses for Russia from joining the WTO. These estimates are only predictions based on certain assumption
about how much the Russian economy will be liberalized after accession. I will not give the economic estimates a thorough examination. The point is rather to show the relationship between potential economic benefits for the whole economy and the potential losses brought upon specific sectors. Chowdry (2003:11) notes that while the estimated gains from most analysts are overall good, the positive consequences are long term and aggregate, the negative effects are short term, but more concrete and specific. The abolishment of the practice of energy dual pricing, is an example of this dynamic.

The first reason that Russia will get economic gains from joining the WTO is that foreign trade has grown increasingly important for Russia. In 2002, two years before the bilateral negotiation with Russia was completed, foreign trade was 40% of GDP compared to 20% in the early 90s (Chowdury 2003:4). Membership would also give Russia the opportunity to dispute anti-dumping measures against them. In 2003 120 anti-dumping actions were active against Russian goods, costing the country up to $4 billion pr. year. Joining the WTO does not give Russia automatic immunity against these measures, but it gives them access to the dispute settlement mechanism (Chowdury 2003:4). To become a member of the WTO will therefore decrease Russia’s vulnerability to anti-dumping measures.

The second reason why Russia’s economy will gain from WTO accession is that it is predicted to lead to improvement of the domestic business environment. It will become more transparent and the protection of property rights will be improved. This in turn will make it more attractive for foreign companies to invest in Russia (Chowdury 2003:7). Rutheford, David and Shepotylo (2005) predict that domestic liberalization will increase Foreign Direct Investment (FDI). They predict an average 7.3% gain in welfare in Russia because of this (Rutherford et al 2005:4).

Jesper Jensen and Thomas Rutherford (2003) argue that the Russian gains from joining the WTO come from four distinct sources; improved access to other markets for certain products, reduction of Russian tariffs, liberalization of barriers to foreign direct investments in services and the growth effects from improvement in the investment climate (Jensen, Rutherford, and Tarr 2003:1–2). Their central estimates are that in the medium run, the consumption would rise with 7.2%, which means 3.3% of GDP, and in the long run the consumption could rise as much as 23.7% of GDP, which will be 11% of the GDP (Jensen, Rutherford, and Tarr 2003:3). Rutherford and Tarr (2008) also estimate that 99.9% of households will gain between 2% to 25% from Russian WTO accession (Rutherford and Tarr 2008:132). All regions will
also gain from accession, but the regions closest to Europe or East-Asia will gain the most. Robert M. Stern (2002:24) agrees that Russia will have significant economic benefits from joining the WTO. He lists Russia’s reduction of import barriers and overall liberalization of domestic policies as the main reasons for these benefits. Alekseev et. al (2004:39) use the same model as Rutherford and Tarr and agrees with their conclusion that WTO accession will lead to a general welfare increase for Russia.

What is common with all these estimations is that they presume that all agents will gain from joining the WTO, and even though the gains will be unevenly distributed they will be divided through the economy as a whole. The gains will for the most parts, however, appear in what the authors defines as the long run, like Chowdry points out. If estimates of economic gains were an important factor in the Russian decision to apply for WTO membership we could from these estimates conclude that Russia’s interest in joining the WTO should be high. To get a better understanding of the economic consequences however, one also has to look at the potential losses.

**Negative consequences of unified energy prices**

To converge the domestic gas price with what the EU claims to be the world market price, will have negative consequences for parts of the Russian economy. Russian authorities are working on raising the domestic gas prices in Russia as a part of a general strategy to restructure the domestic gas market (Henderson 2013:3) This does not mean, however that Russia would benefit from raising the prices all the way up to the level of the export market. The main stakeholders within Russia in the question of unified gas prices are Gazprom and other gas companies, energy intensive industrial gas users and the government (Spanjer 2007:5). With the Russian control over the pipeline infrastructure, and the large market share Gazprom enjoys in Europe Russian gas exporters enjoy significant price-setting power in the European gas market.\(^\text{11}\) If they for instance increase the volume of gas sold to Europe the price will decrease. Therefore they have the incentive to sell gas to Europe at a volume and price that will assure them the highest possible profit (Tarr and Thomson 2004:1177). In the domestic market it is in Russia’s interest to sell gas at the long term marginal cost (LTMC). This would according to some estimates be to raise domestic prices to about $35-40/TCM. To rise them higher than this would be too much for the economy to bear (Tarr and Thomson

\(^\text{11}\) For more information about this see Chapter 2
2004:1185). This means that unified prices would either mean that Russia would have to sell gas to Europe at a price well below the most profitable price Gazprom can obtain or raise domestic prices in Russia to a level that would be a great burden on the economy.

Since the demand for gas for industrial users in Russia are inelastic, increasing the gas price in the domestic market will most likely lead to a larger income for Gazprom. However a drawback for Gazprom could be increased non-payment. It is hard for Gazprom to cut off the supply to non-payers and then transfer the gas to export markets. The reason for this is that the pipeline system is created in such a way that transferring abundant gas from the domestic market to the European market in an effective way is not possible (Spanjer 2007:7).

To raise the domestic gas price will also likely have social consequences in Russia. The high-energy intensive industries that are directed towards export will lose their comparative advantage vis-à-vis their foreign counterparts. This could lead to decreased income and in some cases bankruptcy, which in turn would lead to unemployment. This could lead to social unease as well as lowered growth in the effected Russian industries (Spanjer 2007:9).

Judging from an economic perspective increased prices is of an interest to Russia, but if Russia would be committed to the increased gas prices to the European level, it would lose the opportunity to themselves find the right equilibrium between price increase and preserved competitiveness. Therefore we see that the impacts of unified gas pricing are likely to have a clear negative economic and social impact on Russia.

Based on the estimated economic effects I will assess that the Russian interest in joining the WTO was medium. There are economic gains to be expected from accession, but since there will also be short term negative consequences it is not enough to be assessed as high interest. It was probably hard for the Russian authorities to make a decision where one trades potential benefits which will appear in the future against losses which will have a concrete short term effect on certain groups. The basis for these economic considerations has also remained pretty constant throughout the accession process. Therefore it is hard to link this indicator to the changes in Russia’s interest in WTO accession. From this I derive that the economic effects are not the decisive factor explaining Russia’s interest in the WTO. This means that Russia’s main incentive to apply for WTO membership should be found elsewhere.
Political will in Russia to join the WTO

As was indicated above, Russia’s initial decision to join the WTO was most likely mainly a political decision and not based on clear insight in potential economic gains (Yudaeva 2002). In this section we will look at how the commitment from the Russian side to join the WTO has varied in the course of accession negotiations. I will also argue that the incentive to join can be linked to the general priorities of the Russian foreign policies and how Russia sees itself in the world. Braga and Cattaneo (2009) mention a number of different rationales for countries wanting to join the WTO, which all can be put under the label ‘better integration into the world economy.’ In addition to clear benefits like lower tariffs for Russian goods, they also point to important privileges like reduction of costs related to trade negotiations and a seat at the table when it comes to the making of global trade rules (Cattaneo and Braga 2009:5). These last types of reason put weight on one central aspect of WTO membership; one becomes a part of the club that can make the rules.

If one looks at the Foreign Policy Concepts of the Russian Federation from 2000 to 2012 one will see that the idea of Russia as an important power in international politics is prominent and has been important for Russia for a long time. Joining the WTO on the other hand has not always been specifically linked to this aim. When one looks at the Foreign Policy Concepts (FPC) of the Russian federation it is clear that Russia wants to portray itself as an important actor in the international society. Since 2000 the Russian Federation has published three Foreign Policy Concepts (FPC). One was published in 2000, one in 2008 and one in 2013. These concepts are only statements and have to be looked upon in connection to what Russia actually does in the international arena. They are however a good indication of the consensus around priorities in Russian foreign policy, and the Russian understanding of the world (Mankoff 2009:12). I will in this analysis mostly focus on the FPCs from 2000 and 2008 because they are from the period before Russia gained accession. There is continuity in the ideas presented in the FPCs but there are also some differences worth taking note of. In the FPC from 2000, the year Putin came to power it is written:

To ensure reliable security of the country, to preserve and strengthen its sovereignty and territorial integrity, to achieve firm and prestigious positions in the world community, most fully consistent with the interests of the Russian Federation as a great power, as one of the most influential centers of the modern world, and which are necessary for the growth of its political, economic, intellectual and spiritual potential (MFA of Russia 2000)

Integration of Russia into the international economic system is stated as a priority but
there is no mention of the WTO in particular. About the world trade system it is written that:

Russia shall promote the formation of a fair international trade system with a full-fledged participation of the Russian Federation in international economic organizations that ensure protection of the national interests of our country in those organizations. (MFA of Russia 2000)

This statement could almost be interpreted as a wish to create a different trade system apart from the WTO, where Russia will achieve great influence. In 2002, however, Putin mentions WTO specifically in his address to the Federal Assembly:

The WTO – I want to draw attention to this – is not an absolute evil and not an absolute good. And it is not an award for good behavior. The WTO is a tool. Those who know how to use it become stronger. Those who cannot or do not want to use it, those who prefer to sit behind protectionist quotas and tariffs are doomed. (Putin 2002)

The WTO is clearly portrayed as a tool for the advancement of Russia’s interests. To be a member is therefore to acquire a new tool in the pursuit of Russia’s foreign policy objectives.

In the FPC from 2008 the section about international economic cooperation starts like this:

Russia has been making a considerable contribution to the stability of the global economy and finance by its steadily high economic growth, which to a great extent is based on the increasing domestic demand, and by its natural and accumulated financial resources. Consequently, Russia proposes to contribute, including through joining the World Trade Organization and the Organization of Economic Cooperation and Development, to shaping a just and democratic architecture of global trade, economic, monetary and financial relations with a view to becoming a fully-fledged and efficient member of it (MFA of Russia 2008)

Here we can see that WTO membership now is mentioned specifically as an important goal, and an important part of enhancing Russian influence in international cooperation. From this passage it seems like the Russian self-perception of being an important actor in world policy is an important driving force in the bid for membership.

From the passages quoted above we see that there is a dividing line between 2000 when the WTO is not mentioned specifically and 2002 when the WTO is mentioned as an important tool for advancement. In the foreign policy concept from 2008 the link between Russia as an important actor in the global economic system and membership in WTO is stated explicitly. We see that the shift in rhetoric was apparent in 2002, which is before the bilateral negotiations between the EU and Russia were concluded in 2004 and the issue of energy dual pricing was settled. Looking at the consistency of rhetoric between Putin’s speech in 2002 and the FPC in 2008 one could conclude that the Russian interest has been consistently high in this period. One cannot, however, use these kinds of statements as the only indicator of the
level of political will of Russia to join the WTO. The rhetoric in the 2008 FPC has not changed much since Putin’s speech in 2002, but there have still been ups and downs in the actual commitment from the Russian side.

There is a perception on the side of the incumbent members that Moscow’s interest in the process or its lack thereof has been the most decisive variable influencing whether the process of Russian accession has moved forward or not (MFA of Norway [Interviewed 17.12.2013]; DG Trade [Interviewed 05.03.2014]). The Russian interest in the process has varied and this has coincided with the important points of progress or slowdown in the accession process. In the last years of the Yeltsin administration, the interest in the WTO accession process could best be characterized as low (Selivanova 2004:559; Dyker 2004:3). This changed when Putin became president. He made Russian WTO membership an important foreign policy objective (Åslund 2010:49). In 2000 the process picked up pace as the new Ministry of Economic Development and Trade of the Russian federation was formed and Maxim Medvedkov became Russia’s chief negotiator. He stayed in this position until the conclusion of the negotiations in 2011. Between 2000 and 2002 several rounds of negotiations in the Working Party was undertaken. In 2001 Russia circulated a communication urging Working Party members to engage in bilateral negotiations (WTO 2001). In 2002, the same year as Putin made his speech cited above a draft Working Party Report was released (WTO 2002). This is an indication that the Working Party assessed that the Russian commitment was constructive and that there had been made significant progress. The Russian interest in the WTO accession could therefore best be described as high at this point.

In 2003 the process slowed down some, partly due to a range of difficult negotiation topics, among them the issue of energy dual pricing (Selivanova 2004:559; Åslund 2010:49). Despite this Russia managed to conclude bilateral negotiations with several countries in 2004. Among them were the EU, Norway, Latvia and Malaysia. By 2005 Russia could report to the WTO that it had up until that point concluded bilateral negotiations with 29 countries (WTO 2005a). In 2005 president Putin and President Busch made a joint statement saying that they would intensify the bilateral negotiations between the US and Russia (The White House 2005). In 2006 Russia and the US concluded these negotiations. Some commentators claim that Putin in his second term as president lost interest in market reform and therefore also WTO accession. This also coincided with a period of cooler relations with Russia and the West (Mankoff 2009:15; Lucas 2009). Given the frequency of bilateral deals that Russia concluded in this
time period and the commitments the country undertook in this period it will not be correct to claim that the Russian interest was low. I will therefore characterize it as medium in the first part of Putin’s second term.

From 2008 one can detect skepticism from the Russian part toward the accession process. One strategy mentioned by Hernes (1978:88) to decrease the power of the other actor is to reduce the interest one has in what the other party can offer. By disputing the benefits for Russia from joining the WTO, Russia decreases the power of the EU had based on the control over Russia’s accession. In August 2008 then Prime Minister Putin created a stir when he claimed that there were no advantages for Russia in joining the WTO, and that Russia wanted to renegotiate parts of the bilateral agreements the country had reached with some of the WTO members (Smolchenko 2008). This could be a sign of weariness from the protracted accession process. This coincided with Russia’s conflict with Georgia, and in the same statement Putin claimed that the accession process had been unduly politicized by the west. It also coincided with the financial crisis. In 2009 a wide range of tariff policies and subsidy measures were introduced designed to protect Russian industries, which were against the commitments made by Russia in the accession process (Gerasimenko 2012:309). Part of the reason why Russia was reluctant to move forward with the accession process could therefore be that the process limited their policy options when it came to responding to the crisis.

Another tactic an actor can use to reduce the power of the other actor is to create alternatives to outcome the other actor controls (Hernes 1978:88). Parallel with the increasing disinterest shown from the Russian side towards the WTO, the Russian economic integration with former CIS countries intensified. On 9th of June Putin declared at the Eurasian Economic Community (EurAsEC) summit in Moscow that the three countries of the Eurasian Customs Union (ECU), Belarus, Russia and Kazakhstan wanted to accede to the WTO as a single customs area (EurAsEC 2009). Igor Shuvalov, first vice prime minister in charge of accession to the WTO, also stated in an interview during the St. Petersburg economic forum that because the WTO members did not seem committed to an agreement the ECU seemed like a more realistic alternative for Russia (Gerasimenko 2009:64). This new turn in Russia’s WTO strategy was a clear break in the accession process. There is no precedence for customs unions to join the WTO as a single block and in Russia’s case this would have practical implications as the countries would have to renegotiate several of the tariff reductions already agreed upon.

Based on the events referred to above it will be right to conclude that Russia’s interest in
WTO accession in this period was low. These events occurred after the issue of energy dual pricing was settled, and hence they do not have a direct effect on EU’s power to get a commitment from Russia on this issue. I have concluded them in the analysis, however, to support the claim that while EU’s control over accession and the economic gains Russia could expect were pretty constant over time, the Russian political commitment varied over time in accordance with the Russia’s foreign policy priorities and were an important factor determining whether the accession process moved forward or not. Figure 2 above shows how Russia’s interest measured as low, medium and high correlates with important points of progress in the accession negotiations.

Figure 2: The variation of Russia’s political interest in WTO accession

We have now seen that the EU’s control over Russia’s accession were high throughout the period while Russia’s interest in the outcome has varied. At the point of the conclusion of the first round of bilateral deals between the EU and Russia and the settling of the issue of energy dual pricing Russia’s interest could best be described as medium. This will according to Table 1 mean that the combination of high control of the EU and medium interest from Russia, gave the EU substantial power over Russia in the accession process and that the EU should therefore have had a high chance of getting the commitments it wanted from Russia in this specific situation.

48
4.5 Summary and implications

In this chapter we saw that the EU’s control over the decision to let Russia into the WTO could be described as high despite some constraints in terms of lack of control over which other actors were involved in the process. This level of control has remained constant throughout the accession. To determine Russia’s interest in accession I have made use of two main indicators, the economic gains to be expected and the political will for more influence in the international community. We have seen that the economic gains for Russia to join the WTO mainly are estimated to be positive. They will however occur in the long run, while the negative impacts of specific commitments will occur in the short run. If the practice of energy dual pricing were to be changed, this could have a negative impact in energy intensive industries in the short run. This variable has remained constant over time.

The variable which has varied over time, and therefore has the highest explanatory power of variations in the EU’s power, is the Russian authorities priorities of accession based on the country’s foreign policy priorities. This is also the variable which shows correlation with progress in the accession negotiations. At the time of the settling of the energy dual pricing issue, Russia’s interest was medium. This gave the EU substantial power over Russia and the EU should have had great ability to get the commitment it wanted from Russia. EU’s lack of power in the accession negotiation can therefore not explain the weak commitment from Russia regarding energy dual pricing.

The first hypotheses which states that the EU’s lack of power over Russia in the accession negotiations is the reason for the weak commitment on energy dual pricing, is therefore not a sufficient explanation of the agreement regarding this issue. In the next chapter I will place the negotiations about energy dual pricing in the context of the other issues in the accession process. With the EU’s power being substantial and not high it is likely that the EU had to prioritize between the different commitments it wanted to extract from Russia. As we will see in the next chapter this could be a potential source of power for Russia in the accession process.
5 The power of Russia in the WTO Accession Process – Possibility for Issue linkages

5.1 Introduction

In the previous chapter we saw that the EU had substantial power over Russia in the context of the accession process at the time when the issue of energy pricing was settled. The EU should thus have been able to get the desired commitments from Russia. I therefore concluded that H1 is not a sufficient explanation of why the EU did not get a stronger commitment on energy dual pricing. It is therefore necessary to include other outcomes in the model to better understand the final agreement on this issue.

The WTO accession is a complex process which includes a wide range of different trade related issues. If more than one issue is involved, the negotiation situation could be easier since it gives the actors the opportunity to concede on issue of less importance to them, in exchange for leniency on issues of greater importance (Hernes 1978:70–71). This is called issue linkages, because the negotiation outcome of one issue is linked to the negotiation outcome on another issue. In this chapter I will examine the second hypotheses which states that Russia had control over other outcomes of great value to the EU, and therefore the EU settled for a weaker commitment on the issue of energy dual pricing in exchange for other commitments.

As in the previous chapter, this hypothesis is based on the concept of power as function between one actor’s interest in an outcome the other actors control over this outcome. The different issues where the EU wanted to get concessions from Russia can be looked upon as outcomes over which Russia had control, since it is ultimately the choice of the Russian side whether it wants to concede on the issue at hand. Even though the incumbent members are in control over the decision to let the applicant country accede to the organization, the applicant country has a certain form of control as well over which commitments it makes. We have earlier established that the issue of energy dual pricing is of great interest to the EU, as well as Russia. If two actors has strong divergent interests in one case it could lead to a stalemate situation where it is hard to come up with a solution. Issue linkages can help to resolve this
stalemate. The figure below illustrates how Hernes’ model looks when you introduce more outcomes than just one.

Figure 3: The power model with more than two outcomes

We see from this model that the introduction of more outcomes which Russia controls, can give Russia more leverage in the negotiations with the EU. To verify H2, I will therefore examine the relative difference in the interest the EU places the on the different issues in the negotiation process. If we see that the EU has gained concessions on other issue important to them in other areas of the WTO talks this would indicate that these issues were either of greater importance to the EU or of less importance to Russia, which made it possible for Russia to trade these commitment for leniency regarding energy dual pricing. This will therefore support the second hypotheses as a valid explanation of the negotiation outcome.

I have chosen the issues examined in this chapter based on the EU press releases and the statement by the respondent from the EU about the agreement reached between the EU and Russia in the bilateral negotiations (DG Trade [Interviewed at 05.03.2014; The EU [Interviewed at 10.04.2014]). The press releases about the bilateral negotiations are good indicators of which subject have been the most important issues from the EU’s point of view. This also shows which subjects which were determined in negotiations between the EU and Russia and not during other parts of the accession negotiations.

12 This model is just an illustration and as we will see in this chapter there are more than three outcomes which Russia controls in the accession process.
I will divide this chapter into three different sections. First, we will look at the other issues related to energy, then we will look at the other trade related issues and finally we will look at whether issues that are outside the scope of WTO negotiations could be linked to the process. What we find is that there are more commitments made by Russia relating to trade in goods and services in other sectors than energy. This could indicate that these issues where of greater interest to the EU and less interest to Russia. We also find that there is a possibility that Russia’s ratification of the Kyoto protocol, which took place at the same time as the conclusion of the bilateral negotiations between the EU and Russia could have had some effect on the agreement which was reached. This is, however hard to verify and does not explain the different levels of commitment undertaken by Russia in different sectors.

5.2 EU’s interest in Russia joining the WTO

In the previous chapter we have established how EU has high control over Russia joining the WTO, and that Russia had medium interest in joining in 2004. This is, however a simplification of the general picture. Since Russia is the EU’s fifth biggest trading partner, the EU also had interest in bringing Russia into the world trading system. In the EU Press Release on the conclusion of the bilateral talks with Russia in 2011 it is stated four main reasons why Russia joining the WTO is beneficial to the EU:

- It would open up opportunities in the Russian market for EU investors and exporters alike. Russia’s import tariffs would come down and there would be a limit on export duty levels for a list of essential raw materials.
- WTO accession would improve the overall business and investment climate. Russia would adopt international product standards and WTO rules in a number of areas such as customs procedures, licensing and intellectual property.
- Accession and the ensuing economic reforms would help to make Russia’s economy more transparent and predictable. This would create a strong incentive for foreign companies to boost their investments in the Russian economy – in all sectors. (European Commission 2011b)

We see from this that the overall impacts on the Russian economy that will come from WTO accession are motivation for the EU to bring Russia into the organization. Regardless of the specific commitments Russia undertakes in certain sectors, the EU predicts that WTO membership will have several effects on the Russian economy, which will be positive to the EU. With this in mind it is not likely that the EU wanted to stall the process for too long.
5.3 Other outcomes of interest to the EU related to energy

Energy dual pricing is not the only energy issue, on which the EU and Russia have a difference of opinion. In the press releases from the EU about the conclusion of the bilateral negotiations in 2004, the only specific commitment mentioned relating to energy was that Russia would increase its domestic gas prices (European Commission 2004). Also in the summary of Russia’s commitments published on the WTO website after Russia’s accession the only specific energy issue mentioned is Russia’s commitment on this issue (WTO 2011b). From these facts we get the impression that energy dual pricing was the most important energy issue for the EU which was settled in the accession process. One reason why the Russian authorities were reluctant to make commitments regarding the energy sector could be the importance of this sector in the Russian economy and political life. It is no secret that big energy companies like Gazprom is considered to have great influence on Russian foreign policy. Jeffrey Mankoff (2009:56) writes that the Russian state’s dependence on Gazprom’s export for foreign exchange earnings gives Gazprom the opportunity to impede certain aspects of Russia’s foreign policy agenda, like the bid for WTO membership.

Even though energy dual pricing was one of the few energy issues mentioned specifically as a Russian commitment, there are two issues relating to energy of importance to the EU which could have given the Russia the possibility for issue linkages. The EU’s wanted to eliminate the export monopoly of Gazprom and ensure 3rd party access to pipeline infrastructure.

**Elimination of Gazprom’s export monopoly**

One important issue for the EU in its energy relations with Russia is Gazprom’s export monopoly on natural gas, which the EU wants eliminated. The EU did not manage to get a commitment on this in the course of the bilateral negotiations (Konoplyanik 2005:30). According to Pascal Lamy, the EU trade commissioner at that time, this would likely remain a red line for Putin (Kernohan and Vinokurov 2005). One of the provisions in the GATT that could have implications for the activities of Gazprom is article Article XVII, which deals with State Trading Enterprises. Article XVII of the GATT states that these enterprises have to operate in its purchases or sales according to commercial considerations and general principles of non-discriminatory treatment (WTO 1994). STEs are defined as public or private enterprises that have been granted formally or in effect exclusive or special privileges.
Gazprom could fit this definition in several ways. The WTO members especially focused on Russian law confirming Gazprom’s export monopoly as one of the reasons for this.

In the final agreement the respondent of the Russian Federation stated that the STE’s in Russia would be notified upon Russia’s accession and that they would operate with the provision of Article XVII (WTO 2011a:27). This commitment was not unexpected as newly accepted members like Ukraine and Saudi-Arabia also had undertaken such a commitment. It is unclear, however, what this commitment would mean in practice. If Russia claims that Gazprom is already working in accordance to commercial considerations, this formal commitment would not have great implication for how Gazprom operates (Milthorp and Christy 2011:295).

Thus we see from that Russia made the minimum commitment it had to make in according to the GATT but refused to make any further specifications, which would clarify what this would mean in practice regarding Gazprom’s activities. I will therefore conclude that the EU got no commitment on the elimination of Gazprom’s export monopoly.

Transit of Energy

Another question of interest to the EU in Russia’s accession process was transit of gas through pipelines. This issue was, however, not mentioned in connection to in the first round of bilateral negotiations between the EU and Russia in 2004. Article V:2 of the GATT states that:

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. (WTO 1994)

In the accession of Ukraine, Ukraine confirmed that it would govern the rules of transit through their country in conformity with the provisions of Article V, and that this also would include trade in energy (WTO 2008b:91). In the final package the Russian federation agreed on a commitment with the same wording as the one Ukraine made. In the Report of the Working party it is stated that:

The respondent of the Russian Federation confirmed that the Russian Federation would apply all its laws, regulations and other measures governing transit of goods (including energy), such as those governing charges for transportation of goods in transit by road, rail and air, (WTO 2011a:302)
In contrast to Russia’s commitment on STEs the commitment on transit explicitly states that energy is included in this commitment. What the EU did not get, however, concerning this issue was a specification that pipelines should be considered transport (The EU [Interviewed 10.04.2014]).\textsuperscript{13} After accession Russia has claimed that pipelines could not be considered infrastructure of transport since there is no vehicle transporting goods through this infrastructure (WTO 2013). Thus we see that Russia made a minimum commitment based on precedence from Ukraine’s accession agreement, but refused to make specifications beyond this which could have clear practical implications for EU-Russia energy relations in favor of the EU.\textsuperscript{14} It therefore seems like the EU got a weak commitment on access to energy transit.

From the overview of Russian commitments in the energy sector it would not seem like the EU got any major commitments which could indicate that the EU traded this commitment against lenience on the issue of energy dual pricing. It seems like getting strong commitments related to the energy sector was hard in general and that the commitment on raising the domestic energy prices was the most specific commitment it got. Below we will look at the commitments the EU got on other trade related issues.

5.4 Outcome of interest to the EU in other sectors than energy

In this section I will consider issues in the accession process which are somehow related to increasing the access of EU goods to the Russian market. One of the issues however, Russia’s practice of export duties is more similar to the issue of energy dual pricing among other things because it is related to competition distortion rather than market access.

It seems like the EU was more successful when it came to getting commitments from Russia in other sectors than energy. According to the logic of the obsolescing bargain situation, the temporary asymmetrical power distribution of the accession process would give the EU the incentive to focus on issues which will not be easy to determine once Russia is a member of the WTO. This could be WTO plus commitments like the elimination of energy dual pricing, but the terms of market access and levels of tariff reduction negotiated with Russia during the

\textsuperscript{14} If pipelines can be considered transportation it would mean that Gazprom would have to allow access for 3rd parties to transport goods through its pipelines (Ehring and Selivanova 2011:55).
acquisition would also be hard to renegotiate once Russia became a member. The trade related issues not relating to energy was therefore also of great importance to the EU in the accession negotiations with Russia.

The relationship between energy issues and issues of market access in Russia’s accession process is described somewhat differently by the two respondents from DG Trade and the EU interviewed in this study. One claims that while energy was very important it was not a decisive point in the WTO accession negotiations. While the EU would somehow be dependent on Russia for energy without any prospect to change this situation in the medium term, the EU could rather concentrate on increasing its market access in Russia f. ex for machinery and agricultural goods (DG Trade [Interviewed at 05.03.2014]). The other respondent from the EU claimed that energy issues were among the most important issues, but that after they were settled, Russia and the EU could start to focus on other issues (The EU [Interviewed 10.04.2014]). What these two representations have in common is that they are both conscious that the EU can’t press as hard on all the issues of importance to them and therefore have to make a choice between issues. The fact that the agreement on energy dual pricing was settled in 2004 and not renegotiated in 2011, could have left room to concentrate on other issues in this round of negotiations.

Thus we see that trade issues related to other sectors than the energy sector also was of importance to the EU, and that this gave Russia the opportunity to give concessions in other sectors than energy. I will focus on four main issues; industrial goods exported from the EU to Russia, agricultural goods, the service sector, and Russia’s application of export duties for raw materials.

**Agricultural goods**

One issue which was prominent in the bilateral deal between Russia and the EU was the conditions for EU’s export of agricultural products to Russia. There was an agreement on Russian import tariff reduction in the bilateral deal between the EU and Russia in 2004, while the rules in export of agricultural products to Russia were clarified by 2011 (European Commission 2004; European Commission 2011b). EU’s export of food and live animals to Russia is not as voluminous as the export of machinery and transport equipment, which we will look at below. But it is still an important export sector for some European countries like Poland and Germany. The European Union’s export of food and live animals did in 2011
constitute 7.1% of the total EU export to Russia. The average annual growth from 2008 to 2011 was on 7% (EEAS 2014). This gives reason to assume that import tariffs reduction on agricultural products was an outcome of importance to the EU.

Dyker (2004:16) notes that the Russian position on agriculture in 2003 remained inflexible both when it came to tariff protection and subsidies. The average tariff rate would in reality be doubled from 17% in 2003 to an average of 23%. After the first round of bilateral talk with the EU, Russia agreed to set the tariffs to 11% for fishery products and 13% for agricultural goods in addition to tariff rate quotas for fresh and frozen meat and poultry (European Commission 2004c). This is a significant concession compared to Russia’s initial offer. The tariff quota negotiated by the EU for fresh and frozen meat and poultry was on 600 million euro per year which is 15% of EU’s agricultural export to Russia (WTO 2011b). All in all we can see that the EU managed to get commitments from Russia when it came to import tariffs on agricultural products. The tariffs were further decreased in the final accession agreement with the WTO.

After Russia’s accession, the EU will also have the possibility to bring Russia in front of the dispute settlement panel in cases where the EU means that Russia’s bans on import of agricultural products from the EU breaches Russia’s commitment to the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).16 Conditions for EU’s export to Russia has been an issue of dispute between the two countries in the last ten years (Van der Loo 2013:13) Russia has to commit to the SPS Agreement upon accession to the WTO, but this will not be counted in this analysis as an issue with potential for issue linkages. This is because the SPS Agreement is one of the WTO’s core agreements and Russia can therefore not use this as a potential exchange of outcomes since it does not have the option to reserve themselves against it.

We see from this that, despite the fact that the trade in agricultural products is not as big as the trade in energy or the trade in manufactured goods in the form of machinery or motor vehicles; it was still an important political issue in the relationship between Russia and the

15 A tariff quota determines the volume one country can export to another country with a certain tariff. Export which exceeds this quota will have a higher tariff.

16 The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) entered on 1 January 1995 when the WTO was established and concerns the application of food safety and animal and plant health regulations (WTO 2008a). According to the SPS agreement, article 2 (2) and article 2 (3) it is not allowed to use protection measures that are not founded in science and it is not allowed to use arbitrary measures against some countries and not others who apply the same standards (WTO 2008a)
EU. The fact that the EU achieved commitments from Russia in this sector could be part of the reason that it accepted a less favorable outcome in other issues like energy dual pricing.

**Trade in Services**

The next group of issues which we will look at is trade in services. The issue which is mentioned in connection to the bilateral talks between the EU and Russia both in 2004 and in 2011, is the question of charges for European airlines flying over Siberia. In the bilateral talks from 2004 an agreement was reached to change the system of charges applied so that the system would be cost-based, transparent and non-discriminatory by 2013 (European Commission 2004). In the conclusion of the bilateral talks between EU and Russia in 2011 it is stated that the EU got a guarantee from Russia that it would be implemented a system that will amend the costs EU airlines undertake to fly over Siberia (European Commission 2011b). Commissioner Karel De Gucht underlined the importance stated in connection to this: "The clear commitment we received from Russia to make charges for flying over Siberia cost-related, transparent and non-discriminatory helped pave the way for the EU to support Russia's accession to the WTO. Both of these developments are very good news" (European Commission 2011a).

Even though De Gucht here states that this was an important issue to get settled before the EU could fully support Russia’s WTO accession the EU does not argue that it is against WTO law. The basis in EU’s claims is that the practice is against EU antitrust law and the Chicago Convention, and that it distorts airline competition and that it is poses a burden on EU’s trade with Asia (European Commission 2011a). Thus we see that the EU managed to get a commitment on an important issue for them despite the fact that is it is not based on WTO law. This is thus an example of what we can call a WTO-plus commitment.

After the bilateral talks in 2004 the EU stated that Russia undertook commitments in several service sectors like the postal service, telecommunication, transport, financial services, postal and courier. The commitments include cross boarder provision of services and commercial

---

17 Before this agreement EU had to pay for flying over Siberia on flights to destinations in Asia. These payments were estimated by the EU to cost about €320 million per year – most of it going directly to Aeroflot (European Commission 2011a)
establishment (European Commission 2004). One of the specific commitments made by Russia within telecommunications was that it agreed to eliminate the monopoly of Rostelecom on long distance calls. Thus we see that in contrast to the case of Gazprom, Russia agreed to eliminate a state monopoly in another sector than energy.

We see from this that in addition to aviation across Siberia, the EU managed to get commitments on services in the 2004 deal. This could therefore also be considered outcomes of great importance to the EU which it in turn would be willing to trade against leniency on the issue of energy dual pricing.

**Market access for cars and heavy machinery**

One of the topics of discussion in the accession process related to trade in goods was Russia’s protection of some domestic manufacturing industries. This was an issue which was settled only in 2011 and could therefore be an example of an issue which the parties were able to settle after the difficult energy issues were out of the way. The export of machinery and transport equipment made in 2011 up a share of 48.2% of the EU total export to Russia (European Commission 2013). If the EU wanted to give priority to market access for important export sectors as was mentioned above, the car industry was likely of great priority in the accession process.

The motor industry in Russia has been benefiting from high import tariffs on imported goods, as well as other measures designed to protect investments in the industry. The original WTO offer from Russia entailed that it would keep the current rate of high tariffs, which would mean that tariffs on cars would stay at 25% for new cars and 30% to 80% on old cars (Dyker 2004:11). The Russian motor car producers lobby led by Oleg Deripaska has been one of the domestic actors in Russia which has been skeptical towards WTO membership and seems to have had some influence on Putin (Dyker 2004:17; Åslund 2010:54). The domestic car market in Russia suffered from the 2008 financial crisis and as a consequence of this, the

---

18 It was the US and not the EU that took the lead in the negotiations about the service sectors and the final accession package in this field largely reflects the bilateral agreement between Russia and the US (Cooper 2012:10). In the final accession package, Russia committed to eliminate the limit of 49% for within telecommunications. Foreign insurance companies will be able to open branches in Russia nine years after accession. Foreign banks would be allowed to establish subsidiaries. There would be no limit to the amount of foreign equity in the individual banking institution, but the overall amount of foreign capital in the Russian banking system cannot amount to more than 50% of the total capital of the Russian banking system (this does not include privatized banks). On distribution services it will be allowed with 100% foreign owned companies (WTO 2011b)
import tariffs on cars was increased to 35% (International Trade Centre 2012:3). In the final accession package of the Russian Federation, however, Russia agreed to reduce the import tariffs on motor vehicles within a time frame of 7 years. Russia committed to reduce the tariff to its previous level of 25% immediately upon accession. According to the agreement the tariffs will be reduced to 15% within 7 years (International Trade Centre 2012:4). If one compares this commitment to the original Russian offer cited above this can be looked upon as strong commitment from the Russian side. Russia wanted no change in tariffs and ended up with a 20% decrease.

In the second bilateral talks in 2011 a new issue was brought up. This was the Russian decree on car investments. This decree meant that foreign companies who wanted to produce cars in Russia received certain benefits like reduced import duties on components as long as the cars met the requirement on local content. The EU took this as a direct breach of the Agreement on Trade Related Investment measures (TRIMS). In the second agreement a compromise was reached meaning that Russia would keep up the practice, but would compensate EU if the EU’s export of car components to Russia would decrease as a result of the new agreement. Both the EU and the US stressed this issue in its bilateral negotiations with Russia, but while the US managed to extract a commitment from Russia that the program would be terminated by 2018, the EU managed to negotiate further and managed to get the deal on compensation in addition (Cooper 2012:10) Since this issue first came up after the conclusion of the first bilateral negotiations in 2004, this issue cannot be looked upon as direct issue linkage to the issue of energy dual pricing. It is still, however, an indicator of the EU’s ability to get concessions on issues of great importance to them, after the energy issue was settled.

We see from this that the EU got commitments on an issue which was of importance to its export industry. The commitment was most likely not easy to give from the Russian side, because the industrialist lobby has some leverage in domestic politics. The reduction of prices created worries domestically, which shows that the commitment was not insignificant. Viktor Khrishenko, Minister of Trade at the time of Russian accession said that WTO accession would be painful for the motor industry as well as agriculture (Autostat 2011). The Russian car industry was, however, much smaller in Russia (around 1% of GDP) than the equivalent industry in the biggest exporters in the EU (International Trade Centre 2012:3). This could indicate that even though the motor industry was of importance to Russia, the size of the industry made this a more attractive commitment to make relative to a strong commitment on
energy dual pricing. Given the size of the EU export of machinery to Russia this could be characterized as a form of issue linkage that leaves both parties with a quite satisfactory outcome.

**Export duties on raw materials**

So far we have looked at issues related to increased marked access for the EU, but the last issue we will look at in this section is more similar to the issue of energy dual pricing. Russia applies export taxes on several types of raw materials like wood, scrap material and nickel. The purpose of this from the Russian side is to ensure the availability of raw materials for the domestic industry and in some cases ensure environmental protection. The EU on the other hand claims that this is an indirect subsidy to domestic downstream users. Like in the case of energy dual pricing this practice is not exactly forbidden within the WTO legal framework. It has therefore become common for incumbent members to get new members to commit to abolish this practice in the accession process as a WTO-plus commitment (Van der Loo 2013:22–23). Here we see a clear example of an issue that is settled ahead of accession because the incumbent members know that the opportunity to settle this issue will disappear once the new member is accepted into the organization and will have the opportunity to negotiate on the same terms as the other members. In the final accession package Russia committed, after the bilateral negotiations with the EU and other members, to fix export duties on more than 700 tariff lines which included certain types of fish, oils and mineral fuel, raw hides and skins, paper and base materials (WTO 2011b). This is thus an example of the logic of obsolescing bargain.

The significance of this kind of commitment is shown by the China-Raw Materials dispute. China undertook commitments to eliminate almost all export subsidies upon WTO accession. In 2009 the US, joined by the EU and Mexico, launched a dispute against China on this issue and the panel found that China’s export duties were not in accordance with its WTO commitments. Based on the precedent from the China-Raw Materials case it will be possible to bring Russia in front of the dispute settlement panel if the country doesn’t comply with its commitments in this field. This shows that Russia gave a commitment to the EU on an outcome where the lines of arguments are quite similar to that of energy dual pricing.
We have seen from this section that the EU got concessions from Russia regarding both market access in machinery and agricultural products. In the second round of bilateral negotiations the EU even got a concession that went further than what the US managed when it comes to a compensation for the losses imposed by Russia’s protection measures for the local car industry. In the field of services the US took the lead, but EU still managed to get a commitment on one of the issue of most importance to them, namely the fees on aviation over Siberia. Also in the case of export duties the EU and the other members got a clear commitment.

Thus we see that when it comes to other trade related issues the facts indicates that the EU chose to concentrate on gaining market access rather than solving issues related to access to energy. These finding support the second hypothesis as a plausible explanation of the negotiation outcome on energy dual pricing. We see that the EU in fact have managed to get strong commitments on other issue of importance to them and therefore accepted a weaker commitment in the field of energy dual pricing. So far we have focused on issues that are in one way or another within the scope of the WTO. In the next section we will look at possible issue linkages with issues completely outside of the WTO.

5.5 Outcomes of interest to the EU outside the scope of the WTO

Even though issue linkages to issues outside the WTO are considered rare in the contexts of bargaining within the WTO, Zimmermann (2007) claims that the EU-Russia deal all together was too lenient and that one should look outside the WTO context to find the reason that the bilateral deal between the EU and Russia was concluded in 2004. According to him, it was in fact the EU’s interest in getting Russia to ratify the Kyoto protocol, which was the reason that the EU agreed to sign the bilateral deal with Russia on that given time (Zimmermann 2007:826). When one looks at the EU’s position as being a driving force in the international climate negotiations and the timing of Russia’s ratification, this claim seems to have some basis. Russia’s ratification was necessary for the Kyoto protocol to get into effect. The timing of Russia’s ratification also coincides with the conclusion of the bilateral deal between the EU and Russia in 2004. The prospect of Russia’s ratification of Kyoto protocol could therefore have had some effect on the decision of the EU to accept the terms of the bilateral deal as they
were at that time. To claim that this was the only reason, however, would be an oversimplification. First of all it would be hard to measure the exact effect on this event on the negotiation result. Since the details of the bilateral negotiations are secret and issues which were discussed, but were not within the scope of the WTO would not be announced as a part of the bilateral deal or incorporated into the final accession package, their significance will be hard to verify from the point of view of an outside observer.

Zimmermann (2007:826) writes that the EU quite surprisingly decided to sign the bilateral deal with Russia in 2004. Considering that this was a time of general progress in Russia’s accession to the WTO where Russia also concluded bilateral negotiation with several other WTO members, among them Norway, the timing of the conclusion of the bilateral deal between Russia and the EU is not that surprising. The bilateral deal between Russia and the EU might be considered lenient on some points, but the fact that the extent of Russia’s commitment varies among different issues, points to the interpretations that the EU also picked their battles according to its greatest interests in connection to the trade related issues within the scope of the WTO. The EU did therefore not exchange leniency on all issues in the WTO accession for a commitment on the Kyoto protocol.

### 5.6 Summary and implication

In this chapter I have placed the deal made on energy dual pricing between the EU and Russia within the greater context of the WTO accession negotiations. First we concluded that the EU also had a general interest in bringing Russia into the organisation. This contributes the EU’s willingness to be more lenient on some issues to in exchange for getting commitments on other of the issues of great importance. Even though we have assessed that the EU has control over the decision to let Russia into the WTO and therefore has substantial power over Russia in this context, we must also look at each possible commitment the EU wants as an outcome which Russia controls. The wide range of issues which are parts of the WTO accession gives the opportunity for issue linkages, where Russia can make strong commitments on some issues in exchange for weak commitments or no commitments on other issues.

First we looked at the other commitments Russia made in the energy sector. If we had found that Russia made clear commitments on other energy issues than energy dual pricing we could have concluded that some of the issues within this field were of greater importance to the EU
and relative less importance to Russia than energy dual pricing. We found instead that there are no other major commitments made by Russia in this sector. In the cases of Gazprom’s export monopoly and energy transit, Russia made commitments which are formulated in such a general way that it will have few clear implications for Russia’s future practises. This is also true of Russia’s commitment regarding transit of energy. Based on the findings it seems like the energy sector in general is of great interest to Russia, and that it is overall reluctant to make commitments related to it.

When it comes to other trade related issues of high interest both to Russia and the EU like access to the Russian market for EU machinery and agricultural products, the EU managed to get stronger commitments. This is also true when it comes to Russia’s export taxes on raw materials, which is an issue that in many aspects is similar to the case of energy dual pricing. We also looked at Russia’s ratification of the Kyoto protocol as an issue which could influence the negotiation outcome. This is an outcome that Russia controlled which was of great interest to the EU. It could very well have had some effect on the EU’s decision to accept the terms of the bilateral agreement, but it cannot explain the variance between the commitments made by Russia on the different issues within the final accession agreement.

All in all we can see that there are indications of issue linkages. There are a wide range of possible outcomes of interest to the EU in Russia’s accession in the WTO. This gives Russia power because it controls these outcomes and can use them as leverage against other commitments. So far I have explained the varying degree of Russia’s commitments as the result of the varying degree of interest Russia and EU places in these outcomes. We also see however that the EU used arguments with the basis in the WTO legal framework when it demanded commitments. This gives a possible alternative explanation of the variation in Russia’s commitments. In the debate about energy dual prices both sides argue their case in accordance with the WTO legal framework. In the next chapter we will therefore examine if the degree of legal backing behind the EU’s demand could be said to have some effect on the agreement on energy dual pricing.
6 The effect of legal backing on the agreement on energy dual pricing

6.1 Introduction

The third hypothesis states that the lack of sufficient legal backing of the EU claim about energy dual pricing within the WTO was the reason for the weak commitment the EU got regarding this issue. In chapter 3 I specified that legal backing of an argument is defined by the determinacy of the rules they refer to. The degree of determinacy is defined by whether the text of the rule gives clear implications, or whether they can be disputed (Franck 1988). In this case I define that determinacy can also be defined by whether there is precedence in the WTO to how these rules should be interpreted. If one’s argument refers to a rule with weak determinacy one’s argument will have weak legal backing. If one’s argument refers to a rule with clear determinacy one’s argument will have strong legal backing. If we see that legal backing had an effect on the negotiation outcome on energy dual pricing, this would mean that this agreement cannot be explained by the distribution of power as it has been defined in the previous chapters alone.

It can be difficult to measure the effect of legal backing since both sides publicly claim that their interpretation of the rules, which are relevant for energy dual pricing, is correct. First I will determine which role legal argument has played in the negotiations about energy dual pricing. To determine this I will look at the argument referred to in the Working Party Report of the Russian federation and see how the parties argue in accordance with the law, and the determinacy of the legal rules they refer to. Then the legal argument made by the EU and how this was perceived by the Russian side will be analyzed.

I will also look at the aggregate result of the accession negotiations. If the legal basis of the claims made by the EU does not have an effect on the commitments made by Russia we will have a case of obsolescing bargain and we will see that a great range of commitments are beyond the legal framework of the WTO and therefore WTO plus. If we see that the commitments made are in accordance with the legal framework of the WTO, and not WTO plus it will indicate that legal backing is an important variable when it comes to which
commitments are made. If this is a general tendency throughout the accession package we can presume that this also was relevant for the agreement about energy dual pricing.

What will see in this chapter is that there are few commitments from Russia which can be considered WTO plus. There is also a difference between energy issue and issues related to trade in other goods when it comes to Russia’s willingness to give concessions not based on the WTO law. The fact that this is a tendency in the accession negotiations as a whole helps to indicate that the lack of legal basis for EU’s claim about energy dual pricing could have had an effect on the agreement about this issue.

6.2 The role of the law in WTO accessions

Even though the WTO accession is said to be power based, there is a certain norm that the demands placed on new members should at least appear to be based on the WTO legal framework. This would mean that the concessions demanded by the EU from Russia should be based on an argument backed by WTO law. While the bilateral negotiations concerns market access, the multilateral negotiations are meant to be an occasion for the incumbent members to make sure the trade regime of the applicant member is in accordance with the WTO law (Neumayer 2013:673). Since the negotiations are public the norm of legal backing of the arguments is the most relevant in this context. This means that there are some limitations to which demands the EU can publicly pose against Russia in the course of the process. The need for backing by the WTO law is however not synonymous with incumbent members showing restraint in the accession process.

According to Krzyztof Pelc (2011) who made a comparative study of the depth of commitments made by new WTO members, it has been a long standing norm of for the incumbent members to show restraint with demanding concessions not backed by WTO law towards smaller economies. Countries like Russia, however, with a great potential market access on offer are at the other end of the scale and it was therefore not expected that the incumbent members would show any restraint in this accession process (Pelc 2011:645).

We see from this that legal arguments have a role to play in the accession process. This is especially true when it comes to the public part of the negotiations, which takes place within the Working Party. We also see however that in the case of Russia, the incumbent members were not expected to show restraint in posing demands without legal backing.
6.3 Arguments for and against energy dual pricing in the report of the Working Party of the Russian Federation

In the final report of the working party the arguments presented during the accession negotiations are summed up. Several of the standard arguments against energy dual pricing are mentioned. It is not explicitly stated in the report which WTO member that poses the argument. As I will show below, however, these demands reflect the arguments put forth by the EU in the bilateral negotiations with Russia.

The Working Party Report reflects two main types of arguments against energy dual pricing as posed by the members. The first argument is that the domestic price for gas in Russia was below the full cost of production, and that this was inconsistent with commercial considerations. This argument reflects GATT Article XVII about State Trading Enterprises (STEs), which states that State Trading Enterprises should operate in accordance with commercial consideration (WTO 1994). The second argument is that energy dual pricing could be considered a subsidy because it makes it possible for Russian industries with a heavy gas input to produce and export goods at a price below the normal production value (WTO 2011a:30). These arguments reflect article 3 of the SCM agreement which establishes that subsidies, which in law or in fact influence export prices for specific industries are illegal (WTO 1995).

In paragraph 122 of the report, it is stated that: “they (the members) requested a confirmation from the Russian Federation that gas suppliers would act on the basis of commercial considerations, based on full recovery of costs and a reasonable profit. They are still concerned that the producer of gas, Gazprom, in the long term does not recover its marginal costs” (WTO 2011a:30). In paragraph three, the respondent of the Russian federation used the argument that the natural resources of Russia are in the end the property of the Russian state and that the pricing policies are not so different from the practices of other WTO members. One reason for the pricing policies is to hinder the abuse of monopoly power from the side of the producer.

In paragraph 124 of the report, the respondent of the Russian federation replies to the

19 For more information about this legal provision see section 2.3 and section 5.3.
20 For more information about this see section 2.3
concerns that the pricing of natural gas could be considered a subsidy. According to the representative from Russia, this is not the case, because the favorable price is not limited to a single industry. In a monopoly situation it is in fact against the law of the Russian federation to give certain advantages to a specific industry or a group of industries. The representative also stated that the method for the setting of the prices for gas was officially published and transparent (WTO 2011a:30). In the past the prices for the fertilizer industries were subsidized beyond the prices for other consumers, but this was just during a short period of time in 1999. Concerning the external price of gas, Russia is skeptic to the notion that there is something called a world market gas price, and that the export price is calculated on the basis of supply and demand in the importing country. A substantial part of the price in the export market also includes the price of transportations and distribution. The representative form also points to the Energy Strategy of the Russian federation up to 2030, where it is stated that the Russian Federation will deregulate prices in the domestic market, and that the price between the domestic market and the export market will converge.

We see from this that there is a disagreement between the incumbent members and Russia on how the relevant legal provision should be interpreted. The difference of opinion regarding the interpretation of central terms like “commercial considerations” and “specific subsidy” shows that there is a lack of determinacy in the rules that the arguments of the incumbent members and the EU are based on. I will therefore conclude that there is weak legal backing in the EU’s claim about energy dual pricing. To try to determine which effect this has had on the negotiation outcome I will look at the statements from respondents from the European Commission and the Permanent Delegation of Russia to the EU.

6.4 The effect of legal backing

The talks with respondents from the EU support the conclusion that the arguments used by the EU to convince Russia that energy dual pricing is against the WTO legal framework are the same as was referred to in the Working Party Report. According to a respondent from the EU this was a strategic tool. He says that it was the interests of European businesses competing with Russian businesses benefiting from low energy prices and not legal considerations that compelled the EU to raise this issue. Despite this it was important for the EU to construct the argument around the legal norms of the WTO legal framework. This need arose from the impression that Russia had a strong aversion to everything which could be considered WTO
The EU’s main argument can be summed up like this; energy dual pricing is a trade distorting practice which hinders free trade flows. The EU bases this claim on their view that it is an illegal export contingent subsidy (DG Trade [Interviewed 05.03.2014]). The Russians side refuted these arguments by the fact that it is not illegal since it benefits the whole economy. According to the respondent from the Permanent Delegation of Russia to the EU, the Russian is of the clear opinion that the arguments used by the EU in this case were not sufficient to show that the Russian practice of energy dual pricing is illegal and should be eliminated. This is especially true of the EU’s definition of the practice as an illegal subsidy. This therefore serves as a justification for Russia’s decision not to comply with the EU’s demand. The respondent from the EU also confirmed that the EU had not given in without a stronger commitment on energy dual pricing if it had a stronger legal backing for their claim.

Thus we see that the weak legal backing of the EU’s arguments likely had some effect on the final outcome, both when it came to what Russia were willing to commit to and what the EU were willing to settle for. Below we will look at how legal backing had an impact on the aggregate outcome. If we find that this is a tendency in the total sum of the commitments made by Russia this would support the claim that this played a role on the agreement on energy dual pricing.

The effect of legal backing on the aggregate agreement between the EU and Russia

If we presume that the WTO accession process is similar to the obsolescing bargain model we could expect the EU to focus on the issues without a clear legal foundation in the accession process because they will be harder to settle with Russia once the country has acceded. If this is true we will see that the EU has prioritized to get commitments in the issues that do not have a clear legal backing. If we see that it is the other way around, that Russia gave stronger commitments on cases with a clear legal backing, we will see that this had an effect on the final agreement. I have chosen the same issues in this part of the analysis as in Chapter 5 because they were the important issues in the negotiations between the EU and Russia.

21 Interview with respondent from the Permanent Mission of Russia to the EU (20.03.2014).
22 For a summary of the level of commitment on these issues see summary of chapter 5
<table>
<thead>
<tr>
<th>Issues</th>
<th>No commitment</th>
<th>Weak commitment</th>
<th>Strong commitment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Strong legal backing:</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Import tariffs on cars and machinery</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Agriculture</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Services</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td><strong>Medium legal backing</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gazprom export monopoly</td>
<td></td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Energy dual pricing</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Energy transit</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Aviation over Siberia</td>
<td></td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Export tariffs on raw material</td>
<td></td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Table 2: The correlation between legal backing and depth of commitments

In this table I have defined two categories of legal backing, strong and weak. The issues are sorted after the legal backing of the demand the EU made in these issues. Traditional WTO issues like the reduction of tariffs quotas like cars and heavy machinery, agriculture and access to the service sector are defined as having high legal backing because of the determinacy of the rules on which they are based, and because there is precedence in the WTO of how these rules should be interpreted (Van der Loo 2013:13).

Issues where the EU bases its claim on a legal provision in the WTO with weak determinacy regarding the specific issue at hand are placed in the table as having weak legal backing. This is the case when it comes to the issues of Gazprom’s export monopoly, energy transit, and energy dual pricing. One could say that the rules these claims are based on have high determinacy. Article V states that WTO members have to ensure transit through their territory, and article Article XVII of the GATT about STE’s is a core principle of the WTO, which the applicant states has to comply to (Milthorp and Christy 2011:292–204). I will however conclude that these articles have weak determinacy when it comes to how they apply to energy issues. This is among other things evident in the claims made by Russia after its accession that pipelines should not be considered energy (WTO 2013). Issues where there is
lacking in legal provision in the WTO are also defined as having weak legal backing, like the case of aviation over Siberia and export tariffs on raw materials.

We see from the table above that the material is not quite conclusive. On the one hand we can see a correlation between legal backing and the level of commitment. But we can also see that there is a correlation between the energy sector and a weak commitment. What is common with the energy issues with weak legal backing such as energy transit and Gazprom export monopoly is that Russia committed to comply with the specific article of the WTO dealing with these issues, but failed to make any specification to how this would affect their energy policy. This is also true in the case of energy dual pricing. Russia in reality only committed to the same level of price increase that within the country’s own energy strategy, and the commitment made is formulated in a way that makes it hard for the EU to verify compliance.

The only clear WTO plus commitments we have detected in this discussion is Russia’s commitment on export tariffs on raw materials, and aviation over Siberia. These practices are not against the legal framework of the WTO, but still the EU managed to get a commitment on this issue. What distinguishes this issue on export taxes on raw materials from the issue of energy dual pricing is the fact that there is precedence in the WTO for committing to this issue in the accession process. Even though I have sorted this issue under weak legal backing, this precedence could constitute a form of determinacy lacking in the case of energy dual pricing. Here we can also detect an element on the obsolescing bargain logic. The EU focuses on this issue in the accession process because it knows that it will have no opportunity to raise this issue after Russia accedes.

After looking at the aggregate agreement between the EU and Russia we have seen that that there was a certain correlation between level of commitment and legal backing of the demands. We saw however, that the level of commitment was especially low in the energy sector, which was established in the previous chapter as a sector of special importance to Russia. Thus, when it comes to energy it seems that the Russian aversion against WTO plus is extra prominent. The aggregate outcome presented in Table 2 could therefore support both the hypothesis about the effect of legal backing as well as the findings in the previous chapter.
6.5 Summary and implications

In this chapter we saw that it was important for the EU to construct an argument to convince Russia that energy dual pricing was against WTO law. When we looked at the aggregate outcome on all the issues in the accession negotiations we see that there is a tendency for that the EU, with some exceptions, to be most successful in getting commitments when their argument had a strong legal backing. We see however that this tendency also correlates with issues in the energy sector, which is a sector of great importance to Russia. The two issues where the EU got a strong commitment without legal backing are aviation over Siberia and export tariffs on raw material. There is in the case of export tariffs, however, precedence from previous accession negotiations that the applicant members concede to the demand to abolish these export tariffs when they accede to the WTO.

Based on the report of the Working Party and the interviews it is some basis to presume that the lack of legal backing of the EU’s demand for unified gas prices has had some effect on the legal outcome. In the previous chapter I concluded that a possible explanation for Russia’s weak commitments in the energy sector could be explained by the sector’s importance for Russia and that the Russian authorities therefore traded a weaker commitment against stronger commitments in other sectors. Based on the findings in this chapter one could say that agreement on energy dual pricing can be explained both by Russia’s ability to trade weak commitments in this sectors against stronger commitments in other sectors and the weak legal backing of the EU’s demand in this field. The energy sector is of importance to Russia and therefore the Russian authorities use the lack of legal basis on these issues as an extra foundation for their decision not to concede to these demands. It could therefore seem like Russia uses the indeterminacy of the rules related to energy and makes commitments where the practical implications of these commitments could be disputed, and Russia’s compliance therefore will be hard to verify.

So far we have looked at the negotiations taking place within the WTO. In the next chapter we will look at other venues, where the EU might have had the opportunity to settle the issue of energy dual pricing with Russia. Since the EU faced difficulties in getting commitments on energy dual pricing in the WTO, the possibility to settle this issue in another venue could also have influenced the decision to accept a weaker commitment in the accession process.
7 Other possible venues of cooperation as the alternative to the WTO

7.1 Introduction

We have now seen that the possibilities for issue linkages in the accession process as well as the weak legal backing for the EU’s demand, limited the ability of the EU to get a strong commitment from Russia regarding energy dual pricing. Up to this point I have concentrated on the EU’s possibilities to influence Russia within the accession process to the WTO. This is however not the only venue the EU could use to cooperate with Russia when it comes to energy dual pricing. In this chapter I will look at other possible channels which the EU could use to get an agreement with Russia on this issue. The fourth and last hypothesis states that the EU meant that it had better venues of cooperation to settle this issue outside the WTO. This will give insight into how the power distribution in the WTO accession as well as the legal backing behind the EU’s claim on energy dual pricing is compared to other forums of cooperation between the EU and Russia. If the EU meant that it had other possible venues for getting a commitment from Russia on energy dual pricing this could also explain why the EU prioritized to get other commitments from Russia in the WTO accession.

Since the agreement on energy dual pricing was settled in 2004 I will focus on venues of cooperation which were relevant at that time. One of these possible venues is the Energy Charter Treaty, which there was still some hope that Russia would ratify in 2004. Other possible venues are the bilateral initiatives like the EU-Russia Energy Dialogue and the Partnership Cooperation Agreement (PCA). I will analyze the other forums of cooperation in accordance with Hernes’ power model, and try to determine whether the distribution of power in these venues gives the EU the ability to get the commitments from Russia on the issue of dual pricing, which it could not get in the WTO accession. I will also look at the possible legal backing for the EU’s claim about energy dual pricing in these venues.

What I find is that neither the ECT, the current PCA nor the EU-Russia Energy dialogue was better suited for the EU to get a commitment on energy dual pricing. One possible exception is the negotiation about the new and updated PCA agreement between the EU and Russia. In
2004 the plans for updating the PCA were known, which could have had some impact on the EU’s willingness to settle the issue in the WTO in a less satisfactory manner. It can be seen however that the EU has less power over Russia in this context even though there will be possibilities for issue linkages also here.

### 7.2 The Energy Charter Treaty

The first possible forum for cooperation we will look at is the Energy Charter Treaty. This is the forum for energy governance that is most similar to the WTO in that it is a multilateral organization with a legal framework and a dispute settlement mechanism. Dyker (2004) claims in his article from 2004 that the EU will put great pressure on Moscow on issues like gas prices and transit when Russia ratifies the Energy Charter Treaty. One contracting party to the ECT can bring another member in front of a dispute settlement panel much like the one found in the WTO (Energy Charter Secretariat 2004:76). We see from this that the result of a dispute settlement under the ECT is binding and therefore it would at first glance look like the perfect alternative to the WTO when it comes to settling difficult energy issues.

There are however two reasons why the ECT could not be considered a suitable alternative venue for the EU to get Russia to abolish energy dual pricing. The first one is the structure of the organization. If both Russia and the EU were full members of the ECT the power of the EU that is derived from the WTO accession process is not present here. The scope of the ECT is limited to trade in energy. Since the EU is dependent on Russia for energy imports, there will be few outcomes of interest to Russia which the EU controls within the scope of the ECT. In other words the power of the EU in relation to Russia within the ECT would be less than in the WTO accession.

This means that the EU would be dependent on strong legal backing if it was going to settle the issue of energy dual pricing within the ECT. As mentioned earlier the case of dual pricing is considered by the EU as a trade and competition issue (DG Trade [Interviewed at 05.03.2014]). Article six of the Energy Charter deals specifically with competition distortion. It does not, however, establish a common competition regime between the contracting parties. It rather confirms the applicability of the parties’ domestic competition rules (Selivanova

---

23 Article 27 (g) of the ECT states that: “The tribunal shall decide the dispute in accordance with this Treaty and applicable rules and principles of international law.” Article 27(h) states that: “The arbitral award shall be final and binding upon the Contracting Parties to the dispute” (Energy Charter Secretariat 2004:76).
If the EU would try to bring up Russia’s practice of energy dual pricing as anti-competitive conduct under the energy charter the EU would have to bring the case to the Russian authorities and have them look into the matter. This provision leaves it up to the Russian competition authorities to define whether the dual energy pricing could be considered anti-competitive conduct. We see from this that the rules of the ECT which could be applicable to energy dual pricing are quite indeterminate. Therefore the ECT would not give the EU strong legal backing behind their claim that energy dual pricing should be abolished.

The second reason that the ECT was not thought of by the EU as a relevant alternative venue to settle the issue of energy dual pricing is that when the bilateral agreement was reached, the EU did not know whether Russia would ratify the ECT. In 2004 when the bilateral agreement between the EU and the WTO was completed Russia still applied the energy charter on a provisional basis. This meant that the country had not ratified the charter but still participated in the meetings and followed the rules of the ECT. In 2009 Russia withdrew completely.²⁴ The respondent from DG Trade points to the fact that the hopes that Russia would finally ratify were not that high. The respondent from EEAS also claims that the EU greatly wishes for Russia to join the ECT, but that it was not relying on it in their energy relations with Russia (DG Trade [Interviewed 05.03.2014]; EEAS [Interviewed 06.03.2014]).

We see from this that even though the ECT is the most apparent multilateral alternative to the WTO when it comes to multilateral energy governance it does not seem that relevant for settling the issue of energy dual pricing between the EU and Russia. This is both because the ECT legal framework does not give the EU strong legal backing for their claim and because the EU did not know whether Russia would ratify the ECT. The EU and Russia also have extensive bilateral energy cooperation. In the following section we will look at whether the issue of energy dual pricing has been raised by the EU in the different forums for bilateral energy cooperation between the EU and Russia.

7.3 The Partnership and Cooperation Agreement

²⁴ Based on interview with respondent from EEAS 06.03.2014. Hereafter referred to as EEAS [Interviewed at 06.03.2014].
The legal foundation for the bilateral trade relations between the EU and Russia is the Partnership and Cooperation Agreement (PCA), which was signed in 1994 (Van der Loo 2013:7). The aim of the PCA is to establish a framework for the relationship between EU and Russia and to promote trade, investment and harmonious relations (European Commission 2014c). Article 65 of the PCA concerns energy and in #65(1) it is stated that; “Cooperation shall take place within the principles of the market economy and the European Energy Charter, against a background of the progressive integration of the energy markets in Europe.” Further it describes some general forms in which the cooperation should take place, like the formulation of energy policy, energy saving and energy efficiency and improvement of energy infrastructure (The European Commission 1997:57). In other words, the formulations are very broad and give few concrete rights and obligations to the parties to the agreement. Before the conflict between Russian and Ukraine broke out in 2013, the EU and Russia negotiated a new and upgraded PCA. What importance the PCA could have for energy cooperation remains to be seen, and will be discussed later in this chapter.

As we see from the article 65 cited above, the legal provisions of the PCA are not determinate enough for the EU to have sufficient legal backing to raise any concrete issues like energy dual pricing with Russia. In general the agreement does not give any concrete provision for any kind of dispute settlement. The agreement does however provide the legal basis for the EU-Russia Energy Dialogue, which is one of the main forums for discussion about energy issues between the EU and Russia. Below I will look at how the EU-Russia Energy Dialogue works and if this has been a forum where the EU could hope to settle the issue of energy dual pricing.

### 7.4 The EU-Russia Energy Dialogue

The EU-Russia Energy Dialogue is a bilateral forum created by the EU and Russia to discuss energy issues. If the EU saw the energy dialogue as a suitable forum for continuing the discussion about energy dual pricing after it was settled in the WTO one can expect that the subject would be increasingly mentioned in the progress reports from the Energy Dialogue after 2004. We see, however, that the issue of energy dual pricing is neither mentioned much before nor after 2004. This indicates that the Energy Dialogue was not looked upon as an alternative forum to the WTO regarding this issue. The answer to this may be found in the structure of the Energy Dialogue. Below we will look at this further and compare the Energy
Dialogue to the WTO accession as forum for settling energy issues between the EU and Russia.

**The role and function of the Energy Dialogue compared to the WTO**

As the name indicates the EU-Russia Energy Dialogue\(^25\) is a forum for dialogue and exchange of information. The EU and Russia agreed to form the Energy Dialogue in 2000. The first step to form the Dialogue was to establish the common interests of Russia and the EU in the field of energy. The first synthesis report stated that: "As a bilateral cooperation mechanism, the Energy Dialogue has developed around concrete themes of interest to both parties and called for shared “win-win”- solutions” (EU-Russia Energy Dialogue 2010:64). We see from this passage that the energy dialogue is a different kind of forum from the WTO accession process. Here the two parties are equal and the talks are based on dialogue rather than bargaining. The aim, at least based on the stated purpose, is exchange of opinions and the aim is to reach joint solutions. In the evaluation report of the 10 years anniversary of the report it is mentioned that liberalization of the Russian energy market has been a topic of intense discussion during the talks. Mentioned was Russia’s practice of long-term gas contracts with territorial restriction clauses and it is claimed that solutions have emerged. It is also mentioned that the EU claimed that Russia should liberalize its gas prices. When it comes to this topic there is no mention of solutions (EU-Russia Energy Dialogue 2010:66).

When we compare the dynamics of the Energy Dialogue to the WTO accession process, there is a more equal power distribution. This is because there is no single outcome like WTO accession controlled by any of the actors which is of great interest to the other actor. The Energy Dialogue is based on the premise that Russia and the EU are mutually dependent on each other and that cooperation is in their mutual interest. Unlike the legal framework of the WTO, every issue in the Energy Dialogue must be settled through bilateral dialogue. In other words there is no formal source of determinacy which can provide legal backing to the claims made by Russia or the EU in the Energy Dialogue.

As we saw earlier energy dual pricing is an issue where the EU and Russia have diverging interests. If the two actors have strongly diverging interests when it comes to an issue there will be less room for negotiations and the case will only be possible to settle when one actor has other means to pressure the other (Hernes 1978:47). As we saw above there are no

---

\(^25\) It is called the Russia-EU Energy Dialogue in Russia (Energidialogia Rossia-ES).
institutional factors within the Energy Dialogue itself that can make one actor better suited to pressure the other like in the WTO accession process. Issues like energy dual pricing could therefore be hard to settle in the Energy Dialogue and it is not likely that the EU thought of this as a relevant alternative venue to the WTO accession process. Below we will see if the progress reports of the energy dialogue confirms this view.

**Energy dual pricing in the Energy Dialogue**

In the 3rd progress report of the Energy Dialogue from 2002 the issue of energy dual pricing is not specifically mentioned (EU-Russia Energy Dialogue 2002). Topics like improvement of the investment climate in energy, joint cooperation of infrastructure, and energy efficiency are among the topics that were discussed. In the 4th Energy Dialogue progress report from 2003, it is stated that Russia and the EU will work towards further integration of the gas market. The issue of dual pricing is not addressed specifically, but it is stated that the cooperation will be based on joint regulatory measures and long-term contracts, that they will try to find a mutually acceptable solution to the issues of territorial restriction clauses26, and that “the take or pay”-principle27 will continue to play an important role in the EU-Russia gas trade (EU-Russia Energy Dialogue 2003).

We see from these reports that specific issues within gas trade were discussed within the energy dialogue, but the issue of energy dual pricing was not mentioned. We will now look at the work in the Energy Dialogue in the progress reports dating from after 2004. If the EU decided, based on the lack of success in the WTO that it should rather concentrate on raising the issue in the Energy Dialogue we would find an increase in the mentioning of the issue in later progress reports.

The fifth progress report begins like this:

Since the previous report of November 2003, events have modified the context of the EU-Russia energy dialogue: ten new Member States have joined the European Union; the prices of raw materials have increased significantly on the international market; the European Union has given its support to Russian accession to the WTO; and the Russian Federation has made clear its intention to ratify the Kyoto protocol. These developments will favor the growing integration of the continent’s energy markets and thereby help facilitate investment (EU-Russia Energy Dialogue 2004:2).

26 Territorial restrictions clauses prevent wholesalers of gas to resell the gas outside the countries where they are traditionally established. This is considered to be incompatible with European competition law.

27 “Take or pay”-principle is a feature of long-term gas contracts which obliges the customer to pay for a certain amount of gas even though the gas is not consumed (RT 2012).
EU’s support for Russian membership is thus mentioned as a development that will have a positive influence on the work in the Energy Dialogue and the EU-Russian energy relationship in general. The report concludes with four future priorities of the energy dialogue; to encourage investments, to promote energy savings, to improve safety and security of infrastructure and electricity market integration (EU-Russia Energy Dialogue 2004:8). At least two of these goals - efforts to encourage investments and promote energy savings and efficiency - could be directly related to energy dual pricing. Still the issue is not specifically mentioned. In the next report, the 6th report from 2005, it is stated that the energy dialogue has helped to clarify important misunderstandings concerning the gas trade between the EU and Russia (EU-Russia Energy Dialogue 2005:2). In the following progress reports there is no specific mention of the EU’s problem with Russia’s practice of energy dual pricing. The topics that are in focus in the 7th to 9th progress reports which summarize the years 2006 to 2008, are still energy efficiency, energy infrastructure, improvement of the investment climate and integration of the energy markets (EU-Russia Energy Dialogue 2006; EU-Russia Energy Dialogue 2007; EU-Russia Energy Dialogue 2008;2008).

After examining the progress reports we can see that Russia’s practice of energy dual pricing was not a topic of the Energy Dialogue before or after 2004. This would support the claim made above that the Energy Dialogue was not a venue where the EU could hope to get a better deal on energy dual pricing than what was achieved in the WTO accession process.

7.5 The negotiations about a new Partnership and Cooperation Agreement

The last forum for cooperation I will look at as a possible alternative venue for the EU to get through with its demand about energy dual pricing is that of the negotiations between the EU and Russia on a new and upgraded PCA. These negotiations were one of the most important aspects of the EU-Russian energy relations before the conflict between Ukraine and Russia put a stop to them (EEAS [Interviewed 06.03.2014]; DG Trade [Interviewed 05.03.2014]). The decision to begin negotiations on the upgraded PCA was taken before the bilateral negotiations with Russia were concluded in 2004. This could therefore have contributed to the EU’s willingness to settle for a weak commitment in Russia’s accession process (DG Trade [Interviewed 05.03.2014]).
In contrast to the old PCA with Russia, the EU has prioritized to include a separate chapter on energy in each free trade agreement it has concluded with a relevant 3rd country in the last years. One of the agreements concluded with a separate chapter on energy was the agreement on the EU-Ukraine Deep and Comprehensive Free Trade Area. This agreement could be looked upon as a model of the agreement the EU wants to achieve with Russia (DG Trade [Interviewed 05.03.2014]). In the new free trade agreement between the EU and Ukraine there is a separate clause on energy prices. In the article 270 of the agreement under the title “prohibition of dual pricing” it is written that:

(…) neither Party or a regulatory authority thereof, shall adopt or maintain a measure resulting in a higher price for exports of energy goods to the other Party than the price charged for such goods when intended for domestic consumption (EEAS 2008:328).

This agreement entails the full liberalization of domestic gas prices and the convergence of domestic and export price on gas. This commitment is quite similar to the original demand that the EU posed to Russia in the beginning of the WTO accession negotiation. If this is a model for the agreement the EU wants to reach with Russia in this area it would indicate that the EU sees the new PCA as a venue where it can achieve what it did not manage to achieve in the WTO accession negotiations. Below we will look at the potential advantages to the EU in raising the issue in this venue, and what could be the reason the EU has hopes in settling the issue in these negotiations when the EU did not manage it in the context of the WTO.

Above we saw that the issue of energy dual pricing was largely absent from the bilateral energy relations between the EU and Russia, as well as the ECT, which is a multilateral forum dealing exclusively with energy. In the negotiations on a new PCA, however, the issue might be brought forward. This could be related to the fact that energy pricing affects the price of other traded goods, and thus could be related to competition distortion. It could be that the EU did not win through with this issue in the accession negotiations and therefore tries their luck a second time in the next available format, which is the bilateral free trade agreement. The knowledge that negotiations would start on a new free trade agreement could have contributed to the EU’s willingness to settle for less than their original demand in Russia’s WTO accession (DG Trade [Interviewed 05.03.2014]).

---

28 This agreement was supposed to be signed in the fall 2013. The prospect for increased deepening of trade relation between Ukraine and the EU was the reason increased tension between Ukraine and Russia started (Silke 2013). When Yanukovish abandoned the plan to sign the treaty in favor of $15 billion (8 billion pounds) bailout and cheaper supplies of natural gas he was pressed from office by pro-EU-activists (Emmot 2014). The deal was finally signed in spring 2014
As in the EU-Russia Energy Dialogue, the distribution of power between the EU and Russia is less asymmetrical than in the WTO accession. The wide range of different issues that is involved in the new PCA however, gives the opportunity for issue linkages for both actors. According to the respondent from DG Trade, the EU’s dependence on energy from Russia gives them little leverage when it comes to making demands to Russia in the field of energy. The negotiation on a PCA however, gives the EU the opportunity to link several other issues together (DG Trade [Interviewed 05.03.2014]).

One of the issues where the EU controls an outcome of interest to Russia is visa requirements. As we have mentioned earlier one actor can make concessions on an outcome it controls in exchange for concession on an outcome the other actor controls of great interest to them. While the issue linkages within the framework of the WTO are usually connected to other trade related issues, the bilateral agreement gives the parties the opportunity to decide the scope of other possible issue linkages (DG Trade [Interviewed 05.03.2014]).

There is however some disagreement within the EU to whether the new PCA will be a suitable venue for settling difficult issues like the one about energy dual pricing (The EU [Interviewed 10.04.2014]). Because of the possibility for the EU to offer concessions on outcomes not relating to energy, this gives them greater power in the context of the new free trade agreement than in the context of the EU-Russia Energy dialogue. Even though the EU has several outcomes it controls where it can offer concessions to Russia like visa requirements, there is not any indications that this would be a more valuable outcome for Russia than possible accession to the WTO. The plans to begin the negotiations were also only in the starting phase and the EU had no way of knowing what it would achieve in such an agreement regarding energy dual pricing. On the other hand the range of issues the EU had the prospect to settle with Russia in the WTO, could have made it relevant to save some issues like energy dual pricing to the negotiations on the new PCA.

Thus we see that it is not grounds to conclude that the power distribution in the negotiations on a new PCA made this a better suited venue for the EU than the WTO for getting a commitment on energy dual pricing. The knowledge that there would be another venue where this issue could be brought further, however uncertain, could on the other have given the EU an extra incentive to get stronger commitments on other issues than energy dual pricing in the WTO accession. Because of the wide range of commitments the EU wanted to get from
Russia in the WTO, the knowledge of another option could therefore have contributed to the way the EU prioritized in Russia’s accession negotiations.

### 7.6 Summary and implications

In this chapter we have seen that the EU had other channels through which it could raise questions related to energy with Russia. The ECT did not, however, appear as a suitable arena to raise the issue of energy dual pricing for the EU. This was because the representatives from the EU did not know whether Russia would ratify the ECT and maybe more importantly, the provisions of the ECT do not seem to benefit the EU’s viewpoint on energy dual pricing. The current legal framework for the bilateral relations between the EU and Russia is the PCA. This agreement does not, however, have an extensive chapter on energy. The PCA is the legal basis for the EU-Russia Energy Dialogue which deals with a wide range of energy issues. The EU-Russia Energy dialogue is based on a different logic of negotiations than the WTO accession process. Here, the institutional framework does not give any of the actors power over the other in the form of exclusive control over a specific outcome. Hence the relationship is more symmetrical, which could make it harder to settle issues like energy dual pricing where the parties have diverging interests. In the progress reports of the Energy Dialogue the issue of energy dual pricing is not mentioned specifically. This does not change after the bilateral negotiations between the EU and Russia is completed in 2004.

There is, however, one more venue in which the EU could have seen the possibility to get a commitment on energy dual pricing. As a part of the negotiations on a new PCA, the EU hoped to include a separate chapter on energy similar to the free trade agreement reached between the EU and Ukraine. This chapter would then include an explicit provision against energy dual pricing. On the other hand it is not at all certain that Russia would accept such a provision. The negotiations were going slowly and are currently put on hold. The knowledge that these negotiations were planned could however have had an effect on the EU’s willingness to accept the deal it got on energy dual pricing within Russia’s WTO negotiations, as the respondent from DG Trade indicates.

Based on the findings in this chapter I would say that last hypothesis which states that the EU meant that it had better venues to settle the issue of energy dual pricing outside the WTO, could have some explanatory power, but it is hard to verify how important this factor was. On
the one hand the knowledge that there could be another chance for settling the issue of energy
dual pricing in the new PCA could have contributed to the EU’s willingness to prioritize to
get commitments from Russia on other outcomes of importance in the WTO accession
process. On the other hand this seems like an uncertain prospect and despite the possibility for
issue linkages there are not strong reasons to believe that the outcomes the EU controls in
connection to these negotiations is of more interest to Russia than the prospect of WTO
accession. One could therefore say that the negotiations on a new PCA because of the range
of other issue in the WTO accession negotiations could have appeared as a possible second
chance for the EU to get a commitment on energy dual pricing rather than a better venue of
cooperation like the hypothesis states.
8 Conclusion

As expected we have discovered in the analysis that several of the hypotheses could shed some light on the research question which was: How can the power distribution between the EU and Russia explain the outcome on the issue of energy dual pricing in Russia’s accession to the WTO? Since the details of the bilateral negotiations are secret there will remain a certain degree of uncertainty to the findings, but the best one can do is to look at the facts available and make the most probable inferences based on this material.

Main findings

The first hypothesis stated that: The EU did not have the power over Russia in the context of the accession negotiations to gain the concession it wanted on the issue of energy dual pricing. In the analysis we saw that the EU had high control over the outcome of Russia’s accession. This is first and foremost because of the status as an incumbent member, but this control is further enhanced by the EU’s influence in the WTO because of their market size and experience with WTO negotiations. According to Hernes’ model, however control over an outcome only translates to power if the other actor is interested in what one controls. The interest from Russian authorities in WTO accession varied over time. Because of this and because it also was of interest to the EU to include Russia in the multilateral trading system, the EU’s power should be considered substantial and not high. I defined that substantial power should give the EU high possibility to get desired commitments from Russia. Thus we see that the first hypothesis about EU’s lack of power in the accession negotiation cannot give a sufficient explanation of Russia’s weak commitment on energy dual pricing.

The second hypothesis was: Russia had control over other outcomes of great value to the EU, and the EU therefore settled on a less satisfactory outcome on the issue of energy dual pricing in exchange for other commitments. We saw in the analysis that the EU got stronger commitments from Russia on issues relating to trade in goods other than energy. This was especially apparent when it came to issues relating to market access for manufactured goods and agricultural products. We also saw two examples of WTO plus. These were the lowered fees for European airlines flying across Siberia and elimination of export taxes on certain raw materials. Because of the possibility for issue linkages, the wide range of outcomes in the accession process gave Russia a certain power over the EU, since this gave Russia the
possibility to give commitments on issues of less importance, in exchange for getting away with a weaker commitment on an outcome of interest to Russia, like energy dual pricing. We therefore see that the second hypothesis provides significant insight how the distribution of power could explain the negotiation outcome on energy dual pricing.

The third hypotheses stated that: The weak legal backing of the EU’s claim about energy dual pricing was the reason for the outcome of the negotiations on this issue. If this hypothesis was verified it would mean that it was not only the distribution of power which had an effect on the final negotiation outcome. We saw that the lack of clear legal basis for the EU’s claim about energy pricing could have had some effect on Russia’s determination not to give in to the demand to eliminate the practice. When we looked at the aggregate outcome of the deal between the EU and Russia we could see that there was a tendency for the EU to get weaker commitments in cases where its demand had weak legal backing. This indicates that the EU had a better chance at getting commitments if its arguments were backed by the WTO legal framework. Since the outcomes where the EU had weak legal backing and got a weak commitment were all related to the energy sectors, these findings are not however, conclusive. This is because this tendency could also be explained by the great interest Russia has in the energy sector, which would support the findings referred to above. It is therefore hard to conclude very strongly that third hypothesis about the effect of legal backing could explain the outcome, but there are some indications that this might be the case.

The fourth and last hypothesis was formulated as: The EU meant that it had better venues of cooperation to settle this issue outside the WTO. I focused on the forums for cooperation which were relevant at the time of the conclusion of the bilateral talks between the EU and Russia in 2004. I found that neither the Energy Charter Treaty nor the EU-Russia Energy Dialogue were suitable alternatives for the EU to settle this issue. The negotiations on a new PCA, however could have had some effect on the negotiation outcome. This is because the plans to start negotiating a new agreement were known to the EU before 2004, and this knowledge of another possible alternative could have given the EU the incentive to concentrate on other issues in Russia’s accession process. There are however some factors speaking against this being a significant explanatory factor. One of the reasons for this is that the fact that the plans were under way does not give the EU much reason to know what it could expect to achieve in these negotiations. And even though a prospective free trade agreement gives the EU the opportunity to link issues together to get a better bargaining
position there is little reason to believe that the EU would have grounds to expect that this would give them more valuable outcomes to offer Russia in exchange for unified gas prices than in the WTO accession. The knowledge, however, that there could be a second chance for the EU to get a commitment on energy dual pricing could have contributed to the EU’s priority of the traditional WTO issues like market access in the accession process. Thus we see that the last hypothesis could give part of the explanation of the accession outcome, but as with the previous hypothesis this is hard to verify.

Thus we see that the power distribution in the WTO accession to a large degree can explain the negotiation outcome on energy dual pricing. This is because the EU had substantial power to get commitments from Russia in the WTO accession, but the possibility for issue linkages also gave Russia power since it could choose to concede in sectors of less importance, in exchange for a weaker commitment on energy dual pricing. While the first hypothesis does not gives us a sufficient explanation of the outcome on energy dual pricing, the second hypotheses has significant explanatory power.

The last two hypotheses also contribute to shed some light on the research question even though the findings here are less certain. The weak legal backing of the EU’s claim regarding energy dual pricing could have further increased Russia’s possibility to withhold a strong commitment on this issue. The possibility to settle the issue of energy dual pricing in another venue could have had some effect on the EU’s decision to accept a weaker commitment on this issue in the accession process in exchange for stronger commitments in other sectors.

**Implications**

First of all the findings cited above can tell us something about the limitations of the power of incumbent members in the WTO accession process. We saw that the EU has a certain amount of power over Russia and that it managed to get concessions of importance to them. But the EU also had a wide range of issues which it had to pay attention to in the process. Thus we could say that the power of an incumbent member like the EU could be looked upon as a limited currency which has to be spent wisely so that the EU will get as much in return as possible.

Thus we see that the asymmetry in the accession process should not be overrated. If there is an issue with great importance to both parties then the applicant state will have the ability to
concede on other issues and thus lighten the pressure on the issue in question. We can also see from this that the WTO legal framework serves as a norm for the demands that the incumbent members pose on the applicant states. This is shown in the way the EU argued for their claim about energy dual pricing and in the final aggregate outcome where there is a certain correlation between the commitments made by Russia and the legal basis of the claims.

The prerequisites of Russia as an applicant member can of course not be generalized to every applicant member of the WTO. The structure of the Russian economy gives the country certain distinct preferences in the WTO accession process. It will, however, be possible to generalize to other energy exporting countries in the accession process since they will have a similar economic structure as Russia, and we can expect that these countries will also be more willing to concede to demands relating to issues other than energy.

This brings us to our second topic: what can the negotiation outcome on energy dual pricing tell us about the general place of energy issue in the WTO? The importance of this issue in the accession process underlines that the WTO can be an important forum for discussion of energy issues. What we have seen however is that the great strategic importance of energy for an energy exporting country like Russia, combined with the disputed legal status of these issues makes it likely that the energy importing WTO members will have an uphill battle getting their interest through in the context of the WTO.

Finally we will look at what this case can tell us of which role the WTO will have in the future energy relations between the EU and Russia. We saw that, despite the possibility for raising this issue in the negotiations on a new PCA, there were no other forums in which the EU could have had better hopes of settling the issue of energy dual pricing than the WTO. In spite of this the EU settled for a weak commitment. This in turn can be explained by the number of issues in the accession process. Because power in the accession process is a limited currency the power can’t be stretched too thin over too many issues. The EU then prioritized to focus on market access. One can say that even though the WTO accession might have been the best place for the EU to focus on energy issues, it was certainly also the best place for the EU to focus on trade liberalization in services and other goods. Even though energy was important in the WTO accession process it was not so important that the EU would trade it for concessions on other sectors more traditionally linked to the WTO. This could also explain why the negotiations on a new PCA might have seemed like a possible alternative venue for
the EU to settle the issue of energy dual pricing at the time of the bilateral negotiations between the EU and Russia in 2004 despite the uncertainty of these prospects.

Based on the findings cited above and the recent disputes launched by Russia in the WTO about the EU’s calculation of energy inputs and EU’s 3rd energy package, we can expect that the WTO will be an important forum for the settling of energy issues in the future. It is however not certain that this will always benefit energy importing countries which currently make up the bulk of WTO’s membership. It can thus seem like the EU’s lack of success when it comes to settling issues such as energy dual pricing in the accession process could leave the EU vulnerable in its future energy related interactions with Russia in the WTO.
Bibliography

Official Documents:


Putin, Vladimir (2002). *President of Russia - Annual Address to the Federal Assembly of the Russian Federation.* [Accessed 04.05.2014]


White House, the (2005). *Joint Statement by President Bush and President Putin on Russia’s Accession to WTO.* [Accessed 04.05.2014]


<https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009DP.aspx?language=E&CatalogueIdList=70939,65879,63534,76600,72168,76563,55740,56728,66607,59141&CurrentCatalogueIdIndex=0&FullTextSearch=> [Accessed 04.05.2014]

<http://www.wto.org/english/res_e/publications_e/wtr10_forum_e/wtr10_7may10_e.pdf> [Accessed 10.05.2014]


WTO (2012) *Addendum, WT/L/508/Add.1 – Accession of the Least Developed Countries.* 

<http://www.wto.org/audio/wks24042013_session2.mp3> [Accessed 06.05.2014]


WTO (2014b) *Dispute Settlement - the Disputes - DS474, Cost Adjustment Methodologies and Certain Anti-Dumping Measures on Imports from Russia.* 
<http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds474_e.htm> [Accessed 10.05.2014]

**Other sources:**


Ehring, Lothar, and Yulia Selivanova (2011). “Energy Transit,” Ch. 2 in Yulia Selivanova


Stern, Robert M (2002). “An Economic Perspective on Russia’s Accession to the WTO”. *Research Seminar in International Economics Discussion Paper No. 4 80*. Ann Arbor: School of Public Policy, the University of Michigan


Appendix I

List of informants:

<table>
<thead>
<tr>
<th>Place of Work</th>
<th>Date of Interview</th>
<th>Place of Interview</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directorate-General for Trade</td>
<td>05.03.2014</td>
<td>Interviewed in person in Brussels</td>
</tr>
<tr>
<td>The European Union</td>
<td>10.04.2014</td>
<td>Interviewed by phone from Oslo</td>
</tr>
<tr>
<td>European External Action Service</td>
<td>05.03.2014</td>
<td>Interviewed in person in Brussels</td>
</tr>
<tr>
<td>Permanent Delegation of Russia to the EU</td>
<td>20.03.2014</td>
<td>Interviewed by phone from Oslo</td>
</tr>
<tr>
<td>Norwegian Ministry of Foreign Affairs</td>
<td>17.12.2013</td>
<td>Interviewed in person in Oslo</td>
</tr>
</tbody>
</table>
Appendix II

Interview guides:

1. The representative of the permanent delegation of Russia to the EU

What are the most important topics in the energy relations between Russia and the EU at the moment?

What is the role of the EU-Russia Energy Dialogue?

What is the greatest potential for enhanced cooperation and what are the challenges when it comes to energy?

How will the bilateral relationship between EU and Russia be affected by Russia’s membership in the WTO?

How do you assess the legality of energy dual pricing within the WTO legal framework?

2. The representative from DG Trade and the EU source:

How will you assess the accession package of Russia to the WTO seen from the point of view of the EU?

How do you interpret the result when it comes to energy dual pricing?

What were the most important issues for the EU during the accession negotiations with Russia to the WTO?

When was the turning point in the negotiations about energy dual pricing?

Are there any other channels through which you could raise this issue?

How is your general cooperation with Russia?

How was your cooperation with the other members of the WTO?

Did the priorities of the EU in the negotiations change over time?
Did you make use of any external experts like think tanks or other scientist when you decided your stand on the issue about energy dual pricing?

What role do you think energy can play in the WTO?

What were you main arguments against energy dual pricing?

3. The respondent from the EEAS

How will you assess the accession package of Russia to the WTO seen from the point of view of the EU?

What was your role in connection to the WTO accession process

How do you interpret the result of the negation process when it comes to energy dual pricing?

When was the turning point in the negotiations about energy dual pricing?

Are there any other channels through which you can raise question of energy dual pricing?

How is your general cooperation with Russia?

How important is the issue of energy dual pricing in relation to other energy issues in the EU-Russia Relationship. Did the importance change over time?

Did you make use of any external experts like think tanks or other scientist when you decided your view on the issue about energy dual pricing?

How will you assess the work of the EU-Russia Energy Dialogue?

Was the issue of energy dual pricing discussed in any other forums for cooperation at the same time as it was discussed in the WTO?

Which expectations did you have about Russia ratifying the Energy Charter Treaty?

How are your hopes for settling energy issues with Russia in the future?

What role do you think the WTO will play in the future relationship between EU and Russia?