

# 1.5.20

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## GLAWCAL COMMENT

### **ELECTRICITY: A GOOD OR A SERVICE?**

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*Based on*

**Boklan, Daria, and Belova, Olga. “Trade in Electricity under WTO and EAEU Law: Compatibility of Two Legal Regimes.” The Journal of World Energy Law & Business, 2020.**

*A gLAWcal comment on Belova, Olga. "Trade in Electricity under WTO and EAEU Law: Compatibility of Two Legal Regimes." The Journal of World Energy Law & Business, 2020.*

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In the article, Boklan and Belova note that the classification of electricity as a good or a service is of huge import for matters of international conduct. This is because WTO Member States are able to significantly impose more protectionist restrictions on services than on goods. Thus the debate on whether electricity should be classified as a good or a service is one in which international opinions diverge. Under international law, electricity is considered as a good. However, there is a debate among scholars regarding the fact that, "by its nature and its dependence upon grids, it is much more like a service, or perhaps a mixture of both." Some scholars note that electricity should be defined as a service because it is not a physical substance nor is it a fuel. It cannot be stored and must be consumed right after it has been produced. Contrary to the exchange of other traded goods, electricity is traded via the usage of linked energy grids. The nature of electricity raises a complex definitional challenge. In fact, electricity, which is the flow of electric charge that constitutes an electric current moving inside a wire, has a unique physical consistency that makes it intangible and very difficult to store. The classical understanding of a good inherently involves a tangible component which electricity is hard pressed to meet. However, according to a definition by Hill, the essential characteristic of a good is that it is "an entity over which ownership rights may be established and from which its owners derive some economic benefit, while services are necessarily used-up by their single occurrence." The use of this definition provides better context to the understanding of electricity as a good as used in international law. Electricity is defined as a good in the Harmonized System, which is an international nomenclature for the classification of products. It allows participating

countries to classify traded goods on a common basis for customs purposes. Opponents of the idea that electricity is a service claim that the technical characteristics of electricity show that it is a good, and should be governed by property law. Although electricity has been around for more than a century, its classification in international law remains ununited for several possible reasons. One may be the nature of electricity itself, another may be its latent entrance into the international realm of concern. Although the World Trade Organization (WTO) has a long history of regulating energy, electricity is not typically subjected to the customary security clearances that other products are otherwise subjected to. This is due in part to electricity being traded via the usage of linked energy grids and does not necessarily cross fixed borders. The export of electricity depends on a fixed infrastructure of grids which were not necessarily in place and under the scrutiny of international organizations such as the WTO until recent decades and therefore the tools, such as definitions and classifications, used in policy creation were not yet well established. When the GATT was initially drafted for example, electricity was not regarded to as a commodity. Later on, some countries began considering it as such, and therefore undertook tariff bindings on it. The evolution of our use and trade of electricity is still ongoing as evidenced by the growing body of regulations and regulating bodies such as the WTO and the EAEU. As such, our understanding of electricity as a good or a service may continue to evolve with it.



**Cite as:** gLAWcal Comment “Electricity: a good or a service?” (2020) based on Boklan, Daria, and Belova, Olga. “Trade in Electricity under WTO and EAEU Law: Compatibility of Two Legal Regimes.” The Journal of World Energy Law & Business, 2020.

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**Email:** [research@glawcal.org.uk](mailto:research@glawcal.org.uk)

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