

**ENERGY CHARTER  
SECRETARIAT**

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Related documents: CC 414, CC 432 Rev.
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**DECISION OF THE ENERGY CHARTER CONFERENCE**

**Subject: Report by the Chairman of the Trade and Transit Group**

[The Energy Charter Conference at its 22<sup>nd</sup> Meeting held on 29<sup>th</sup> November 2011] *took note* of the Trade and Transit Group Chairman's report on the activities of the Trade and Transit Group in 2011 circulated to delegations as document CC 414 (Annex).

Keywords : Report, Chairman, TTG

The discussions in the Group continued addressing topical issues of energy trade and transit.

### **1. Implementation of the Energy Charter Trade and Transit Provisions**

- *Draft Transit Protocol*

According to the Terms of Reference of the Group for Trade and Transit as amended on 22 March 2010 (Message 871/10; CC 395) the Group was mandated to conduct formal negotiations on the remaining open issues of the draft Energy Charter Protocol on Transit, as decided at the 20<sup>th</sup> Meeting of the Energy Charter Conference on 9 December 2009.

Notwithstanding the fact that no negotiations were held in 2010, the Conference reconfirmed the mandate at the end of that year. In addition, it supported my proposal to carry out related work, e.g. to explore constructive solutions to ensure compatibility between the legislation applicable within the European Union, its characteristics as a REIO and the Transit Protocol as a multilateral instrument, to consider the possibility to enlarge the constituency to include also countries in North Africa and to allow delegations to raise other concerns.

When resuming its work on the draft Transit Protocol (TP) in early 2011, the TTG made the following basic considerations: First, the fact that there had been no negotiations in 2010 on the basis of the text in TTG 87 might signal a problem. Second, since the time the Russian Federation on 20 August 2009 sent its letter to the depository of the Energy Charter Treaty there had been signals that Russia might wish to continue participating in the Energy Charter Process. At the same time, Russia had circulated a proposal for a “Draft Convention on Ensuring International Energy Security” which also contained provisions on transit. Third, on 3 March 2011 the EU’s third internal energy market package became effective, while the Energy Community Treaty had been enlarged to include Ukraine and Moldova.

While formal negotiations on the draft TP could not be held in this environment, the consideration of these circumstances triggered discussions in 2011 on possible ways to move forward with the document.

A comprehensive questionnaire-based consultation of all delegations was launched. Its purpose was, on the one hand, to collect positions on the draft provisions laid down in TTG 87 and, on the other hand, to test possible ways to address the deeper rooted problems impeding the progress in negotiations of the outstanding issues. In particular, the Secretariat proposed to introduce different forms of flexibility to facilitate the adoption of a core agreement on transit. Technical flexibility was proposed to address the fact that some provisions might be of technical nature and subject to evolution and change. Regional flexibility was intended to strengthen the usefulness of the Protocol for concrete projects and energy corridors by providing the possibility for more detailed rules in sub-agreements. Country flexibility was proposed as a last resort to grant exceptions to individual countries unable to agree on a few specific provisions of the draft TP.

The consultation continued throughout the year. In addition to the discussions in the Group, a number of delegations asked the Secretariat to make their written responses to the Questionnaire contained in TTG 93 available on the ECS delegates’ website. A

representative of the Energy Community Secretariat was invited to the meeting in October to explain the Energy Community's transit regime. Four countries responded to the questionnaire. In general, the written responses confirmed an interest by the respondents to conclude this instrument under the Energy Charter Treaty.

At the meeting of the TTG on 12 October 2011, the European Union presented the following common new position on the dTP:

1. "In view of the developments in the international energy situation, the developments in the Energy Charter constituency and, most notably, the lack of progress in the negotiations and consultations on the Transit protocol in recent years, it appears no longer opportune to continue the negotiations on a Transit Protocol on the current basis.
2. The EU is willing to consider a reset of the negotiations on the basis of a new document reflecting the common views of the constituency, if an important number of other stakeholders/contracting parties would express a genuine interest in such negotiations and a commitment to be bound by its result.
3. In this context, the EU recalls that this position does not affect its general consideration that it would be mutually beneficial if Russia would play a full role in the Energy Charter Treaty."

The EU invited other parties to outline their positions as well and suggested to prepare an inventory of interest in a new document. A number of delegations commented that a lot of work had been invested into the dTP, a lot had been achieved and it would be unreasonable to restart on a blank sheet of paper. In their preliminary comments, some delegations stated that there was no doubt that transit remained a challenge.

I invited delegations to provide comments on the position raised by the EU in time for the Conference's 22<sup>nd</sup> meeting on 29 November 2011. By the deadline for submissions of documents to the Conference one country, Ukraine, has shared its position, recognising the need for adaptations with regard to the Transit Protocol's approach and announcing that it would participate in the work on a draft Transit Protocol in a new format.

I invite the Conference to adopt the following decision with regard to the draft Transit Protocol, the text of which is also forwarded to the Conference as CC 423 for approval:

1. The Energy Charter Conference acknowledges the work done by the Trade and Transit Group to implement the mandate it received in CC 372 to restart formal negotiations on the remaining open issues of the draft TP, with a view to enabling the Energy Charter Conference to conclude negotiations of the draft TP, if possible, by the end of 2010, and taking the discussion and the texts worked out by the TTG in 2009 as the starting point for the negotiations of the final text.
2. The Conference takes note of the general interest delegations have shown in a binding Protocol on Transit. At the same time, it acknowledges the European Union's common views on the negotiations on the Transit Protocol, in particular that it appears no longer opportune to continue the negotiations on a Transit Protocol on the current basis.
3. Taking into account the report by the Chairman of the Trade and Transit Group and the common position of the European Union presented in October 2011, the Conference came to the conclusion that the mandate contained in CC 372 does not provide any more an appropriate basis for negotiations. This mandate is hereby repealed, and the TTG discharged from its obligations arising thereunder.

4. The Conference appreciates the willingness of the EU to consider a reset of the negotiations. Before considering the possibility of mandating negotiations on a new Protocol the Conference needs more information with regard to the prospects for such an initiative, including the issues to be addressed and the convergence of positions within the constituency in this regard.
  5. The Conference tasks the TTG to conduct consultations among members and observers for this purpose, keeping the Strategy Group informed and consulting other stakeholders, in particular transmission-system-operators (TSO), as appropriate. In doing so, the TTG shall take into account the original mandate for the negotiations on the Transit Protocol in CC 156 adopted on 7 December 1999.
  6. In support of this activity, the Conference tasks the Secretariat to draft, as foreseen under activity B.1 of its Programme of Work for 2012, a report setting out the lessons learnt during its negotiation, looking also at the possibility of making these available in a different geographical context, more universally in terms of the form of energy transited and with a strong focus on their potential practical use.
- *Continuation of the transparency initiative*

The transparency initiative on new cross-border infrastructure projects had this year a strong focus on network development in the European Union, both for gas and for electricity. The report by Mr. Jean-Arnold Vinois, Head of Security of Supply & Networks at the European Commission on the EU Infrastructure Package was particularly relevant for delegations whose countries are involved in projects crossing the EU's external borders. An interesting debate followed on how to attract investments into priority infrastructure projects and to secure financing and to enhance approval procedures. The EU's Southern Gas Corridor and the role of internal market legislation were also addressed.

The TTG invited representatives of both new associations of Transmission System Operators established within the EU by the Third Energy Package. The presentations of ENTSO-E for electricity and ENTSO-G for gas focused on the development of Ten Year Network Development Plans (TYNDP), their methodology and results.

- *Presentation on network regulation in Northern America*

An invited expert updated the Group on energy network regulations in North America. The information provided on regulatory institutions, approval procedures, licensing, price setting, tariffs, capacity allocation, and the work of independent system operators was considered useful in view of the tasks of the Trade and Transit Group, in particular the discussions on the draft Transit Protocol.

- *Implementation system under the Trade Amendment*

In the trade area the activities of the Group focused on the creation of the implementation system for the Trade Amendment. In 2011 this mainly consisted of (1) the review of the import and export duties regime of the countries within the ECT constituency; (2) discussion of the possibility to move from "best endeavour" to binding commitments with respect to import and export duties on items covered by Annexes EM I and EQ I of the ECT.

## **(1) The review of the import and export duties regime of the countries within the ECT constituency**

In accordance with the Program of work (Section 5.3) the Secretariat has been conducting a review of changes in trade regime of ECT members, the purpose of which is twofold: (1) to comply with the transparency obligations under the Treaty; (2) to prepare the adoption of the binding tariffs regime with respect to products covered by the ECT.

With regard to those Contracting Parties that are WTO Members, the ECS has compiled the data on current tariffs applicable for all products and materials as well as equipment items listed in Annexes EM and EQ of the ECT respectively. The Secretariat requested delegations of those countries, for which no data have been made available over the recent period, to submit the respective information to the Secretariat. In total the information is available now for forty countries in the ECT constituency. I would like to thank those delegations that submitted this information to the Secretariat.

## **(2) Possibility to move to the binding tariff regime for import and export customs duties on selected items**

The first priority in the ECT trade regime is the decision to move to bound tariff regime. For this the unanimous decision of the Conference is needed.

The Energy Charter Conference has to conduct annual reviews on the possibility of moving items to a legally binding commitment under Understanding No. 3 to the Trade Amendment. When the issue of binding tariff regime was discussed last time in 2005, the Chairman of the Group on Trade and Transit suggested in his report to the Energy Charter Conference, based on consultations with delegations, that the issue of binding customs tariffs regime be taken up further after the Trade Amendment has entered into force.

Now, that the Trade Amendment is in force, the Group restarted the discussion of the possibility of moving items of Energy Materials and Products or Energy-Related Equipment from Annexes EM I or EQ I to Annexes EM II or EQ II. The Secretariat organized a meeting of Trade Experts 22 September 2011 in Geneva to address the issue.

At the Trade Experts meeting the delegations had an opportunity to discuss technical and legal modalities of a change from “best endeavour” regime to binding commitment. Although some delegations were ready to move forward on the issue, the majority of the delegations felt that the review of applied and, where relevant, binding customs duties and other charges in all ECT countries needs to be completed before any meaningful discussion could take place on what product items should be subject to binding tariff commitment. The Trade and Transit Group considered the outcome of the Trade Experts meeting at its autumn meeting. Based on that discussion I suggest that the issue of binding customs tariffs regime be taken up further in 2012. In order to facilitate the process, a meeting of trade experts should be re-convened in 2012 with the aim of clarifying the positions and preparing a potential Conference decision on that point.

- *Session of the ECS on ‘International Governance of Energy Trade: WTO and the Energy Charter Treat’ at the WTO Public Forum*

On 21 September the Energy Charter Secretariat organized a session entitled ‘International Governance of Energy Trade: WTO and the Energy Charter Treaty’ at the WTO Public Forum. The aim of the session was to discuss effective ways, from the regulatory

perspective, to address challenges related to energy trade – taking into consideration the distinctive features of energy commodities. Another objective was to increase the visibility of the Energy Charter process within the WTO community.

In his address to the audience, the Secretary General of the ECS, Ambassador Memier, underlined the unique role the Energy Charter Treaty plays as the only energy-specific multilateral agreement that covers all major aspects of international energy turnover: trade, transit, investment, and energy efficiency. This session was very well attended by WTO delegations from both ECT members and observer countries.

- *Policies to support development of wind energy market and trade*

In the context of technology transfer and technology co-operation, the Secretariat presented to the Group a report discussing the factors influencing the development of renewable energy technologies and respective markets as well as trade in such technologies. The report specifically focused on the wind technologies as the most mature of the renewable energy technologies developed in the ECT constituency. The report examined strategies for wind industry development, with a special focus on the policy mechanisms that have been used to promote the local wind manufacturing industry in the ECT member countries that are leaders on the global market.

The main objective of the report was to open a discussion between the ECT delegations on the relationship between the successful development of the low carbon technologies and the policy support mechanisms to either directly or indirectly promote such development. The goal is to foster exchange of experience in policy making between ECT members. The Group benefitted from presentations of and discussions with representatives of the European Wind Energy Association and RECs (Renewable Energy Certifications) International.

- *Assessment of the ECT provisions with regard to low-carbon investments*

According to the Road Map for the Modernization of the Energy Charter Process, the Investment Group ‘should, in cooperation with the Trade and Transit Group elaborate an assessment of the provisions of the ECT’s investment regime with regard to the subject of climate change and promotion of low-carbon investments.’ In 2011 the Secretariat presented its preparatory work for the Assessment to both the Trade and Transit Group and the Investment Group.

The Trade and Transit Group discussed a report (TTG 95) that addressed trade-related aspects of promoting low-carbon energy sector. Based on initial discussions in IN and TTG the Secretariat elaborated the Terms of Reference for the Assessment discussed at the October meetings of the Investment and Trade and Transit Groups.

The Assessment conducted in 2012 will focus on review of the existing ECT provisions with regard to low-carbon investment, trade, and energy efficiency. The Assessment will include case-study analysis of effective policies in various ECT members that facilitate flow of low-carbon investments. The intermediate results of the Assessment will be presented to the Investment and Trade and Transit Groups for consideration. Furthermore, specific policy options will be developed (legally binding provisions, soft-law obligations, declaration, and possible new legal instruments aimed at complementing the effectiveness of the relevant Energy Charter Treaty (ECT) provisions).

## 2. Promoting and Securing Cross-Border Energy Flows

- *Electricity co-operation*

The 7<sup>th</sup> Meeting of the Task Force on Regional Energy Cooperation was held in Kyrgyzstan in June 2011. Since its establishment under the Bishkek Declaration in April 2007, the Task Force works as a neutral forum to discuss issues related to electricity transit and technical matters and standards. The meeting gathered 35 participants from the governments and national companies of Central and South Asian states. It gave an opportunity for the Energy Charter Process members and observers to share experiences and discuss the best practice examples in electricity sector with the Central Asian Regional Coordinative Dispatch Centre, the CIS Electric Power Council, the South Asian Association on Regional Cooperation (SAARC) Secretariat, and the SAARC Energy Centre and the representatives of the US government-funded project on Regional Energy Security, Efficiency and Trade (RESET) Program in Central and South Asia.

As part of the core issues in promoting the Regional Electricity Cooperation, the issue of developing the methodology for electricity transit tariffs were underlined by the CIS Electric Power Council and the Central Asian Regional Coordinative Dispatch Centre. Based upon this discussion, the Secretariat proposes for 2012 to undertake a study analysing electricity interconnections and issues related to electricity transit and transit tariff methodologies in transition countries.

The Declaration of the meeting, agreed by the participating delegations, recommends working towards reaching a joint understanding on legal, regulatory, and technical frameworks for cross-border energy transit and trade and expresses the importance of rapid completion of the Transit Protocol negotiations. It further elaborates on electricity transit issues in the context of this region for sustainable and secure cross-border energy flow. Delegates proposed to alter the topics for future discussions and to vary the geographic scope of the Task Force in order to enhance the possibilities for broader regional coverage for potential energy co-operation. The Delegations from the Central Asian economies also highlighted the importance of the accession of Afghanistan and Pakistan to the Energy Charter Treaty in facilitating implementation of new energy interconnections with Central Asia and in allowing the development of a coherent legal and technical regime using the Energy Charter principles. The Declaration proposes to hold the next meeting at ministerial level, if possible in Pakistan.

Electricity Model Agreements are frequently referred to and used during project negotiations, e.g. negotiations on the Central Asia South Asia 1000 Megawatt electricity transmission line project.

- *Emergency response: Options for effective conciliation under Article 7(7) ECT*

Within the different activities on emergency response carried out under Area C of the Road Map for the Modernisation of the Energy Charter Process, the Strategy Group asked the Trade and Transit Group to develop options for effective conciliation under Art. 7(7) ECT. The Group came to the conclusion that in order to be effective in view of its objective to secure established flows of energy, the mechanism must be rapidly available, neutral, and oriented at immediate practical solutions. The proposal by the Secretariat to enhance the mechanism by text amendments to the Rules Concerning the Conduct of Conciliation of

Transit Disputes adopted by the Conference adopted in 1998 (CC 103 Rev.2) was supported by delegations. I suggest that this work will be continued in 2012 on the basis of concrete text proposals.

- *Report on Oil Pipeline Tariffs*

A draft report on oil pipeline tariffs updating the Secretariat's publication "From Wellhead to Market. Oil Pipeline Tariffs and Tariff Methodologies in Selected Energy Charter Member Countries", published in January 2007 was presented to the Group as foreseen in activity 5.2 of the Secretariat's Programme of Work. The report examined principles of pipeline tariff methodologies applied in the countries, rules of access to cross-border and transit pipelines, tariff methodologies in place for domestic, cross-border and transit oil, and products pipelines in selected countries. The Secretariat intends to publish the updated report in 2012.

### **3. Development of Open, Competitive and Sustainable Energy Markets**

- *Transit under the Extractive Industries Transparency Initiative (EITI)*

Following the public statement by the Energy Charter Conference of 24 November 2010 supporting the Extractive Industries Transparency Initiative (EITI), which expressed the Conference's readiness to provide assistance and to make a contribution to consultations in elaborating specific approaches in case of extending EITI to energy transit area, the Trade and Transit Group received a delegation from the EITI International Secretariat and non-governmental organizations working with the Secretariat on the application of EITI standards for energy transit. The discussion focused on the role of transparency to improve the investment climate and sustainable development in transit countries. The discussion on transparency requirements has been linked with the draft Transit Protocol and its Art. 10(1) on tariffs. I recommend that the Secretariat works in 2012 with EITI on transparency standards for transit operations, provided the availability of resources under the Programme of Work.