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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Conclusions of the Review conducted under Article 34(7) of the Energy Charter Treaty

[The Energy Charter Conference at its 15th Meeting held on 14 December 2004 *approved* the conclusions of the Review, conducted under Article 34(7) of the Energy Charter Treaty. The final text of these conclusions, as adopted by the Conference, was attached as Annex I to the document CC 294 (*Annex*).]

Keywords: Energy Charter Review, Trade in Electricity, Combined Group, Trade and Transit Group, Budgetary Implications

Conclusions of the Review Conducted Under Article 34(7) of the Energy Charter Treaty

as adopted by the Energy Charter Conference
at its 15th Meeting on 14 December 2004

In preparing the conclusions of the 2004 Review, the Energy Charter Conference wishes to record its thanks to Dr Pieter Boot, Deputy Director General in the Ministry of Economic Affairs of the Netherlands and Chairman of the Ad Hoc Review Group for his report reviewing the Charter process which he and his collaborators prepared for the Review Group. On the basis of this report and on other inputs and submissions made, the Conference adopts the following conclusions:

General conclusion

1. The Contracting Parties and other Signatories to the Energy Charter Treaty confirm their continuing commitment to the Energy Charter process, which we consider to be an important and useful tool for enhancing our relations in the energy field, based on complementarities and mutual benefits.
2. The strength of this process is based upon its unique legal framework and its potential as a policy forum, promoting our common objectives to strengthen international energy cooperation, to enhance the security of energy supply and access to energy markets, to maximise the efficiency of energy production and consumption, and to minimise their environmental impact. Mutual complementarities and increasing interdependence in energy matters underscore the value of a broad cooperative framework that can promote energy investments, facilitate cross-border flows of energy and improve energy efficiency.
3. At the same time, we consider that the work of the Charter process must evolve to reflect new developments and challenges in international energy markets, and also recognise and respond to the implications of broader changes across its constituency such as the enlargement of the European Union, the liberalisation of European energy markets, and the accession of member countries to the World Trade Organisation.
4. In this context, it is also appropriate to reconsider the relative importance of the work on the subject areas covered by the Treaty and sharpen their focus, and to find a new balance between monitoring implementation and policy discussion so as to increase the efficiency of the process. This also calls for a deepening of linkages with other relevant international organisations.

Core Priorities

5. We stress the utmost importance of ratification of the Energy Charter Treaty (as amended by the 1998 Trade Amendment), as well as the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA), by all Signatory States.
6. We encourage continued work on the implementation of the Energy Charter Treaty and PEEREA, and confirm that compliance with these instruments is of central importance to the Energy Charter process in order to promote stable and sustainable energy supplies on a mutually beneficial basis. A targeted policy debate can contribute in this regard by highlighting and comparing appropriate policy approaches that can facilitate the development of more open, competitive and sustainable energy markets.

7. With reference to the conclusions for the individual subject areas covered by the Treaty, we consider that the Energy Charter process should concentrate its activities on the areas where its constituency and unique legal framework provide it with clear comparative advantages. Activities need to respond in a flexible manner to developments in the energy sector and the energy industry. Formulating Charter activities at the programme level with reference to accountable targets will help to ensure that these activities are focused on achieving clear results.

8. This approach will require continued and, where appropriate, strengthened cooperation with other relevant international organisations, such as the World Trade Organisation (WTO), the International Energy Agency (IEA), and the United Nations Economic Commission for Europe, in order to maximise synergies and avoid duplication.

Trade and Transit

9. We reaffirm the importance of a transparent, non-discriminatory, and operational legal framework for energy transit, for the benefit of consumers, producers and transit countries, and express our full support for the finalisation of negotiations and adoption of the Energy Charter Protocol on Transit to expand upon the existing provisions in the Treaty. We stress the need to conclude this instrument in a timely manner.

10. In the light of the accession of many countries in the Charter constituency to the WTO, the role of the Charter process in the field of trade has changed. At the same time, we recognise the continued need to address potential barriers to cross-border energy flows, many of which relate to the grid-bound nature of trade in electricity and in hydrocarbons (natural gas in particular), including issues of access to networks and management of transmission systems. We consider that a combined agenda for Charter activities in the areas of trade and transit could make a significant and more focused contribution to the facilitation of energy flows across the Charter constituency, which is central for enhancing energy trade and security.

11. A primary objective of our cooperation through the Energy Charter process is to facilitate the development of open, competitive and sustainable energy markets. In this context, the Charter process can also provide constructive and complementary support to specific initiatives creating regional integrated energy markets in areas such as Eastern and South-Eastern Europe and Central Asia. Recognising the potential further benefits of increased energy trade, we will continue to examine opportunities and approaches for developing converging rules for regional electricity markets, including the need for new instruments, and for facilitating electricity trade.

Investment

12. The promotion and protection of investments in the energy sectors of Energy Charter states, based on a predictable, transparent and non-discriminatory legislative environment, remains a priority area of our cooperation. We will continue our efforts to promote a favourable environment for investors in our respective energy sectors, including through the work of the Charter's Investment Group. We welcome the introduction of in-depth reviews of the Investment Climate and Market Structure of Energy Charter member states, with an increased role for the Secretariat in their preparation, and with greater focus on the follow-up of recommendations made by the Energy Charter Conference.

13. We recognise the value of the Charter as a forum for an exchange of experience from across the entire constituency on policy issues related to energy investments. Making use of

existing materials and research, where appropriate, will facilitate a balanced exchange of information and avoid duplication of efforts. We also believe that consideration should be given to ways to address issues related to the transfer of technology and access to capital.

14. We will also continue our work on non-discriminatory treatment in the pre-investment phase, i.e. on the 'making of investments'. The Investment Group should continue to monitor exceptions to this principle, with a view to their reduction and removal. We will also periodically review the possibility of making progress on this issue on a legally binding basis, as foreseen by the Energy Charter Treaty.

Energy Efficiency

15. We reaffirm the importance of promoting energy efficiency and related environmental aspects, a priority that has been reinforced by the entry into force of the Kyoto Protocol. We support the contribution that the Energy Charter process continues to make in this area through the Protocol on Energy Efficiency and Related Environmental Aspects, and the role of the PEEREA Working Group as a forum for policy exchanges on energy efficiency actions and programmes, and on incorporating energy efficiency objectives and strategies into national policies.

16. We welcome the efforts of individual countries to reduce their energy intensity and to improve energy efficiency in various sectors. We consider that the in-depth country reviews of energy efficiency policies conducted in the Charter framework, and the follow-up to the recommendations of these reviews, should continue to play an important role in this regard.

17. A focus for future activities in the PEEREA Working Group should be assisting those countries and sectors where there is the most scope for improvement in energy and environmental performance, making available for this purpose the experience of countries which have a successful record of policy implementation in the relevant areas. Horizontal reviews of countries and / or sectors can be a productive way of helping to achieve this objective. Other approaches and policy instruments, such as voluntary 'target setting' by individual countries as part of their overall energy efficiency strategy, should also be explored.

Dispute Settlement

18. The Treaty's dispute settlement mechanisms are an important instrument to ensure compliance with its substantive provisions. The Secretariat should raise awareness about the possibilities for dispute settlement applicable under the Treaty, and should facilitate the provision of information, where appropriate, on the use of these mechanisms.

Organisational Issues

19. Regular meetings of the Energy Charter Conference should normally be held once a year. A continuous political role for the Chairman of the Conference, together with the Vice-Chairmen, would provide additional impetus to the Energy Charter process.

20. With regard to the subsidiary bodies of the Conference, we resolve to merge, with effect from the beginning of 2005, the Groups on Trade and Transit in view of the converging agendas in these areas. We will examine in 2006 the feasibility of a further merger with the Investment Group.

21. We welcome the establishment of an Industry Advisory Panel to the Energy Charter process, and we consider that an effective dialogue with the energy industry and other stakeholders is a central aspect of the Charter process. To facilitate this dialogue, we shall endeavour to ensure greater transparency and awareness of the Energy Charter's provisions and of our activities.

22. Recognising the necessity to streamline the activities, some economies in the budget for 2005 will be achieved. In line with the future development of the Energy Charter process, we will examine the possibilities for further significant reductions in the budget in the coming years.

Expansion

23. The Energy Charter process has a natural focus on the evolving Eurasian energy market, including the Mediterranean, the Middle East and Asia. We welcome the interest shown in the Charter process by several non-member states, and acknowledge in particular the growing Asian dimension of the Charter process. Observer status at the Energy Charter Conference provides a mechanism for facilitating association and familiarity with the Charter process and we encourage the observer states to participate actively in the Charter's work and to consider the mutual benefits of full accession to the Energy Charter Treaty.

Implementation of the Review Conclusions

24. We affirm our common ambition to strengthen energy cooperation in the framework of the Energy Charter process in line with the conclusions of this Review and subject to available resources, and invite the Secretariat to report to the regular meetings of the Energy Charter Conference on the implementation of these conclusions, including any appropriate proposals for improvement and for addressing new challenges in energy markets.