

**ENERGY CHARTER
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Related documents: CC 471, RD 6 (ECC of 5-6 12 2013)
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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 24th Meeting held on 5th/6th December 2013 **took note** of the Report by the Chairman of the Trade and Transit Group (attached hereto) as contained in document CC 471 and modified by RD 6.

Keywords: Report, Chairman, Trade and Transit Group

Report by the Chairman of the Trade and Transit Group

This report provides an overview of the activities of the Group for Trade and Transit (TTG) in 2013. The Group convened three times in 2013: on 6 March, on 2 October and 24 October 2013. In addition to that, one Trade Experts Meeting was held on 5 March 2013.

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

1. Implementation of the Energy Charter Trade and Transit Provisions

- *Emergency response*

One of areas of the Road Map for the Modernisation of the Energy Charter Process of 2010 provides for stronger emergency response mechanisms of the Energy Charter. The Trade and Transit group was tasked to work out ways to improve the existing conciliation mechanism for transit disputes provided for in Article 7(7) of the Energy Charter Treaty. This mechanism was designed to ensure that disputes over issues related to transit of oil, gas or electricity do not result in disruptions of supply and compromise the security of energy flows between Charter countries.

Throughout 2013, the Secretariat proposed amendments to the Rules on Conciliation in order to make the mechanism more effective. The proposed amendments included a Roster of Conciliators in order to make the services of a conciliator available more expeditiously and ways to clarify the relationship of the mechanism with other bilateral or multilateral dispute resolution procedures that may exist among individual parties. While some progress was made, the proposals were not yet mature for an agreement at the end of the year, given the rather complex relationships between governments, shippers and operators implied. It was agreed to continue the discussion in 2014 with the assistance of the Legal Advisory Committee.

- *Energy Transit*

Following the decision of the Energy Charter Conference of 2011 to suspend negotiations on the draft Transit Protocol and to reconsider a reset at a later stage, the Energy Charter Secretariat has been active in promoting the implementation of the existing transit provisions of the Energy Charter Treaty.

International rules on transit were the subject of discussion at a Workshop on the Role of Intergovernmental Agreements in Energy Policy organised together with the WTO in Geneva in April. In October, the Energy Charter Secretariat presented the Charter's role in promoting reliable transit at a Conference co-organised by the government of Turkmenistan and the Ukrainian Chairmanship of the Organization for Security and Co-

operation in Europe in Ashgabat, which was opened by President Berdymukhamedov. In November, the Secretary General participated in a high level meeting at the United Nations Economic Commission for Europe to offer the Energy Charter's expertise in view of a recent resolution by the UN General Assembly on energy transit.

Furthermore, the Secretariat made presentations at international conference involving the pipeline industry, shippers and banks and maintained close contacts with the transit countries within the constituency.

The Group also analysed and commented on a comprehensive legal expert report on the interpretation of the Treaty Article 7(3) prepared by the Centre for Trade and Economic Integration of the Graduate Institute of Geneva.

- *Trade issues*

In the trade area, the activities of the Group in 2013 continued to focus on the creation of the implementation system for the Trade Amendment. This included; first, the review of the import and export duties regime of the countries within the ECT constituency at the applied (8-digit) level. Secondly, the Group discussed 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. Thirdly, the group discussed and finished, subject to Conference decision, its work on changes in the HS nomenclature that entered into force in 2002, 2007 and 2012 and that affect ECT Annexes EM I, NI and EQ I.

The purpose of the review of changes in the trade regime of ECT members is twofold; to comply with the transparency obligations under the Treaty, and to prepare the adoption of the binding tariffs regime with respect to products covered by the ECT. The review was mainly prepared by the Secretariat in collaboration with the delegations. The Secretariat would like to thank those delegations that submitted this information to the Secretariat and urge others to do so too.

The main current priority in the ECT trade regime is the decision to move to a bound tariff regime. For this the unanimous decision of the Contracting Parties Present and Voting is needed. As provided for by Understanding No. 3 related to the Trade Amendment, the Energy Charter Conference conducts annual reviews on the possibility of moving items to a legally binding commitment, meaning in practice 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 discussion of such possibility took place at the TTG meeting of on 6 March 2013. 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. In this respect, the Chairman of the TTG recalls decision CC 443 adopted a year ago by the Conference.

The Group furthermore discussed the amendments to ECT Annexes EM I, NI and EQ I that are conditioned by changes of the underlying HS system adopted in the years 2002,

2007 and 2012. The group proposes to the Conference to transpose the relevant HS changes in form of technical changes without changing the material scope and substance of the original Annexes EM I, NI and EQ I. For this purpose the group agreed, after expert consultations involving also the World Customs Organization, to the text stated in draft Conference Decision CC 472. In essence, this decision lists all HS positions of the three ECT Annexes which are amended by the mentioned HS changes. The Group emphasised the fact that pursuant to ECT Art. 34(3)(m), these changes are not Treaty Amendments and do not require ratification by Contracting Parties.

- *Transparency Initiative*

The transparency initiative on new cross-border infrastructure projects and strategies allowed delegations to exchange information on practical issues related to the development of energy infrastructure.

A representative of TetraTech, a USAID Contractor in Armenia, presented the results of the ongoing work on regional integration of Armenian and Georgian power systems. Agreements on parallel operations and emergency supply as well as the rules for system operators had been reached. The countries are now negotiating a transit agreement.

A representative of DNV AS shared his views on the ways to ensure integrity for cross-border oil and gas pipelines, discussing the role of developing common rules and standards to facilitate the establishment of cross-border energy infrastructure.

The World Energy Council shared the results of the recent report developed by WEC on rules of trade and investments in the energy sector. The report outlined the recommendations on the three principles: improving access for energy-related environmental goods and services, energy sector environmental innovation and border measures and carbon leakage.

The Trade and Transit Group further received a briefing by a representative of the Trans-Adriatic Pipeline AG on the development of TAP to ship gas from Azerbaijan's Shah Deniz field to Europe. He reported on the planning process of the project as well as its collaboration with the Trans Anatolian Natural Gas Pipeline Project (TANAP) and DESFA (Greece), the role of the pipeline for gas in Albania and other countries in South East Europe as well as the impact on the destination market in Italy.

A representative of Turkmen Gaz gave a presentation on the initiative of his country for a second resolution of the UN General Assembly on Reliable and Stable Transit of energy and its role in ensuring sustainable development and international cooperation. Key aspects of the document represent the basis for the functioning of an international experts group to prepare a comprehensive document on developing a global cooperation in the field of energy. As a next step, an experts and stakeholders working group would be established to collect the opinions of member states and UN agencies and other stakeholders on the subject. The final document will be presented to the 69th session of the UN General Assembly.

Delegations and the Secretariat expressed their interest in the initiative and proposed to work together on the issues it addresses.

2. Promoting and Securing Cross-Border Energy Flows

- *Task Force on Regional Energy Cooperation in Central and South Asia*

The 9th meeting of the Task Force on Regional Energy Cooperation in Central and South Asia took place in Astana, Kazakhstan, on 7 October 2013 upon the invitation of the Ministry of Industry and New Technologies of Kazakhstan and with the support of the government of Norway. The meeting focused on the pricing of electricity transit, clean coal technology and sustainable energy. The Energy Charter Secretariat and CDC Energiya presented a draft study on the pricing of electricity transit developed under the Secretariat's Fellowship Programme. Participants also discussed clean coal technologies, including carbon capture and storage, as well as other technologies to minimise the energy industry's harmful environmental effects. Delegates shared their respective governments' policies, programmes and projects aimed to ensure access to sustainable energy for all and limit greenhouse gas emissions through the use of renewables and energy efficiency. A Declaration on Promoting Regional Energy Cooperation between Central and South Asia was adopted as a result of the meeting.

- *Study on the Price of Electricity Transit in Transition Countries*

In addition to that, the Energy Charter Secretariat conducted a study on Price of Electricity Transit in Transition Countries under its Fellowship Programme in cooperation with the Central Asian Coordination and Dispatch Center "Energiya". The purpose of the study was to analyse issues related to electricity transit in selected countries in Central and South Asia, to compare existing transit pricing methodologies and to make recommendations to the respective decision making bodies in the region. Draft of this report was also discussed with the representatives of the energy systems of Central and South Asia during RECA meeting on 7 October 2013 in Astana, Kazakhstan. It is intended to present the finalised study during the next meeting of Trade and Transit Group taking place in Spring 2014.

3. Development of Open, Competitive and Sustainable Energy Markets

- *The role of long-term contracts for energy security in a liberalised market*

In March, the Secretariat co-organised with the Ministry of National Development of Hungary a Workshop in Budapest on Contractual Issues Related to Energy Trade to discuss the role of long-term gas supply contracts and hub trading against the background of the significant changes on global gas markets. The Workshop aimed at facilitating a matter of fact discussion among decision-makers from governments and industry and from countries across the energy value chain to get a better understanding on the functioning of future gas markets, security of supply and security of demand and ways to secure strategic investments in exploration, pipelines, LNG facilities and downstream industries. In view of the role of the Energy Charter as an inter-governmental

organisation, special emphasis was put on the role of governments and regulators in promoting public policy objectives such as energy security, economic growth and environmental protection. The latter were then discussed in the light of private business principles such as entrepreneurial freedom and the avoidance of market distortions. One of the key conclusions was that regulation has to take into account the specificities of the given market.

A report on the Workshop was published on the Secretariat's website. The Secretariat briefed the Trade and Transit Group and the Industry Advisory Panel on the outcome of the event. As a result, the Trade and Transit Group agreed to organise a follow-up event in 2014 on a specific related aspect.

- *Enhancing the rule of law in Middle East and North Africa (MENA) in the areas of energy investments, trade and transit*

Building on the objective to expand the Energy Charter Treaty beyond its traditional borders, the Energy Charter Secretariat has prepared a concept paper for a multiannual MENA program. The program aims to raise the interest in the Energy Charter Treaty (ECT) by all MENA countries and to accompany them, according to their specificities and readiness, throughout the accession process to the ECT. The program is addressed to the following countries: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. These ten countries are those who are part of the South Mediterranean European Neighbourhood Policy. Accession to the ECT would enhance the rule of law according to international legal standards in the areas of energy investments, trade and transit. With the expected accession of Montenegro, all North Mediterranean countries will be Contracting Parties to the ECT. Therefore, in the context of a Euro-Mediterranean energy regional integration, there is a view that South Mediterranean countries should be encouraged to share the same values and rules of the ECT. The Trade and Transit Group will be updated on future steps concerning the concept paper.

The Trade and Transit Group was informed about the organisation of a joint workshop by the Energy Charter Secretariat and Dii (Desertec) on long-term transmission rights (LTRs) for the power sector in Europe and the Mediterranean. The joint workshop will take place during the first quarter of 2014 at the offices of the Energy Charter Secretariat in Brussels. One of the workshop objectives is to promote the principles and rules of the ECT on investments, trade and transit. The workshop will discuss the advantages and drawbacks of allowing LTRs on cross-border interconnections within the EU as well as between the EU and third countries, particularly from the MENA region.