

ENERGY CHARTER SECRETARIAT

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DECISION OF THE ENERGY CHARTER CONFERENCE

WORK PROGRAMME 1997 OF THE SECRETARIAT¹

[as adopted by the Provisional Energy Charter Conference
at its 6th Meeting held on 13 December 1996]

A. Private Office

(48 staff-months)

The overall direction and co-ordination of the Secretariat's work, including coordination of relations with governments and industry, will be carried out at the level of Secretary-General and Deputy Secretary-General with support at A-grade and B-grade level from staff having other duties as well.

To widen the general awareness of the Treaty - it is assumed that the Treaty will enter into force early 1997 - and to bring it to the attention of the public, the information campaign will be continued. It will be carried out at the level of Secretary-General and Deputy Secretary-General with support at A-grade and B-grade level.

This will involve extensive contacts with industry as well as with the press. As part of this campaign, and also to further implementation, the Secretariat will publish material explaining the content of the Treaty and arrange seminars for industry and other interested parties.

¹ Indicated staff-months exclude secretarial staff; secondees are calculated at 50%.

B. Negotiations Directorate

B1. Supplementary Treaty

Activity: Negotiations' support

(30 staff-months)

To facilitate the negotiations of the Supplementary Treaty, including the possibility of legally binding country specific exceptions to national treatment, with a view to conclusion by the end of 1997. It is expected that the negotiations will move to the level of the Conference and that they will intensify in terms of meeting days and possibly with preceding or parallel sessions to meet the target date.

Assuming that the target date will be met, the last months of 1997 would by experience be rather intensive in solving technical issues through consultations, legal scrutiny, co-ordinate and supervise/assist translation of documents to all official languages, legal/linguistic rectification and preparations for adoption of texts.

B2. Surveys of Exceptions to National Treatment

Activity: Assist countries, organise hearings, conclude and publish

(9 staff-months; 4 consultancy-months)

To facilitate the survey of exceptions to national treatment, the Secretariat will assist countries seeking help in drafting their reports on exceptions to national treatment and privatisation. The primary functions of the surveys are to specify and document the exceptions to national treatment as required by the draft Supplementary Treaty. In addition, they shall enable the reader to understand the economic significance of those exceptions better. Furthermore, relevant laws and activity on privatisation will be described.

The bulk of the surveys will be finalised in 1996. Fifteen countries are scheduled for 1997, however, it will be necessary to revisit some of those countries examined and the activities relating to presentation and publication will increase significantly in comparison with 1996.

B3. Trade, Negotiations under Article 29(6) and 30

Activity: Negotiations' support

(15 staff-months; 2 consultancy-months)

To facilitate intensifying negotiations on a tariff standstill (Article 29(6)) which may move to the level of the Conference. Collecting and compiling the relevant country specific information on import and export related tariffs and other charges of any kind at the relevant time of the tariff standstill will be necessary to identify the content of the respective legally binding commitments.

The trade negotiations are conducted with a view to concluding by 1 January 1998. Therefore intensified negotiations on substance in the first half of 1997 will - assuming a positive outcome - be followed by legal scrutiny, co-ordinate and supervise/assist translation into all

official languages and rectification, as well as completion of the submitted data on tariffs and other charges of any kind.

To facilitate continuing negotiations under Article 30 which will concentrate on the introduction of trade rules for energy-related services (GATS) into the ECT: Negotiations on the relevant services sectors, the content of relevant GATS rules and appropriate modifications thereto, identification of country specific situations and difficulties, formulation of horizontal and/or country specific commitments will be required.

To facilitate review of the trade dispute settlement mechanism (Annex D) in the light of the outcome of the negotiations on a standstill and on GATS.

To assist negotiations on inclusion of appropriate amendments to reflect other Uruguay Round results under Article 30. Apart from the changes triggered by the inclusion of a binding tariff standstill under Article 29(6) and negotiations on GATS other changes in the ECT as a result of the Uruguay Round may emerge in consequence of the above negotiations, which would be handled under Article 30.

Negotiations under Article 30 do not have an explicit target date. The introduction of GATS-related provisions into the ECT and the negotiations on the Supplementary Treaty may nevertheless need to be coordinated because of overlaps in substance. Considerable fact finding and legal drafting tasks are involved to complete negotiations on GATS.

B4. Energy Related Equipment

Activity: Negotiations' support

(6 staff-months)

Facilitate the negotiations on a list of Energy Related Equipment to be covered by trade provisions. It is envisaged that negotiations will move to the level of the Conference in order to settle the outstanding issues on equipment to be included in the list, the applicable trade provisions and the form of the instrument.

Once there is agreement on the text there would be a need for legal scrutiny, co-ordinate and supervise/assist translation into all official languages and rectification.

C. Implementation Directorate

Due to important work already undertaken by other International Organisations in the fields covered by the Treaty and the Protocol on Energy Efficiency and Related Environmental Aspects, co-operation with other international organisations is necessary in order to maximise use of existing programmes and resources and to avoid duplication. The Secretariat will actively consult other organisations on the possibilities for joint projects, complementary activities ect. Examples of relevant organisations include the European Commission, UN-ECE, IEA/OECD, WTO.

Several projects were already launched under different programmes of the European Commission relating to topics of the ECT and several others are under consideration based on proposals made by the Secretariat during 1996.

Most of these projects aim at countries with economies in transition which need assistance in preparing and implementing legal and institutional aspects in compliance with the Energy Charter Treaty.

The Secretariat will liaise with the Depositary as necessary in order to closely monitor the process of the countries' deposit of the instruments of ratification and co-ordinating activities with the Ministry of Foreign Affairs of Portugal as required in completing the process of eventual corrections or amendments to the Treaty.

Work relating to an electricity instrument or forum is not included in this Programme, as it will depend on decisions by the Conference. The same goes for continued work on the conclusion of a nuclear instrument. As appropriate, the necessary work will be undertaken through rescheduling of other activities or adding resources.

C1. Ratification and Accession

(12 staff-months)

The Secretariat will support the ratification process in countries which would be interested, as appropriate with the assistance of other international organisations, and would include, in particular, discussions/briefings with Government officials, as well as participating in and/or organising seminars and conferences aiming at increasing awareness of ECT related issues.

The Secretariat will assist countries in following accession procedures, which may include firstly the signing of the Charter and secondly the negotiation of the terms of accession to the Treaty or to the Protocol. 1997 may see the completion of the accession procedures for the Former Yugoslav Republic of Macedonia which started in 1996 and the initiation of the accession of Mongolia, subject to decisions by the Charter Conference.

C2. Investment

Activity: Surveys of Exceptions to National Treatment

(8 staff-months)

Support will be given to the work in the negotiating groups on completing surveys on exceptions to national treatment including the economic context for those exceptions, as well as developing summaries of all laws, regulations or other measures containing such exceptions. Fifteen countries are scheduled for survey in 1997. The surveys will help to shape the format and contents of the reports required under Article 10(9) of the ECT.

The Secretariat will publish the reports, following the appropriate selection, organisation and harmonisation of information collected.

Activity: Reports

(3 staff-months)

Energy Technology R&D

A report will be prepared on programmes under which countries provide grants or other financial assistance, or enter into contracts, for energy technology research and development. The report would be a basis for negotiation of the modalities of a post-investment regime in relation to such programmes in the framework of the supplementary treaty.

Annex ID

The Secretariat will prepare a comprehensive report on policies, practices and conditions not allowing investors to resubmit the same dispute to international arbitration at a later stage once the procedure was initiated at domestic courts in all countries listed in Annex ID. The task, to be performed once, requires the collection of appropriate information and its organisation and harmonisation, enabling its broader distribution pending the ratification progress.

Annex VC Notification

Notifications will be collected for the listing in Annex VC and the preparation of ensuing reports for the Charter Conference on proposals for technical changes to the Treaty resulting from such notifications.

C3. Trade

Activity: Secretariat Functions for Non-WTO/GATT Countries

(15 staff-months; 5 consultancy-months)

Trade is one of the major topics of the Treaty which applies GATT and Related Instruments to trade in Energy Materials and Products with and among non-WTO/GATT signatories. Identification of tasks by the Secretariat will be the first priority in this area.

On the basis of the provisions of the Treaty, the Secretariat will have to perform the duties of the previous GATT Secretariat for non-WTO members as regards trade in Energy Materials and Products. In the first stage, in particular, an inventory of the task ahead will be undertaken. Then, a workable and efficient notification system will be created as required by the GATT and/or relevant Related Instruments. New projects launched by EU (SYNERGY, PHARE, TACIS) or other programmes might help to overcome educational and implementing obstacles in various countries. At a later stage, procedures for required reviews will be developed and implemented. Non-WTO members will be assisted in developing trade rules through organising various seminars or workshops. All this work will be undertaken in close co-ordination with the WTO secretariat.

Activity: TRIMs Notifications

(3 staff-months)

The Secretariat will facilitate countries' notifications on Trade Related Investment Measures (TRIMs) and assist non-WTO members in identifying their TRIMs. Notifications should be made no later than 3 months after entry into force of the ECT by WTO members and no later than 12 months by non-WTO members (Art. 5., Annex TRM). Close co-operation is foreseen with the WTO Secretariat (Committee on TRIMs) in the case of WTO members whereas the ECT Secretariat will have to play a decisive role in relation to non-WTO members, unless their accession to the WTO is advanced to the extent that they have already identified their TRIMs during the WTO accession process.

Activity: Annex D functions (trade disputes)

(6 staff-months)

Special attention will be given to tasks imposed on the Secretariat in relation to execution of provisions under Annex D such as: preparation of rules of procedure for panel proceedings

for the adoption by the Charter Conference; setting up the roster of panellists; setting up the notification procedure for dispute settlement (including the consultation process); servicing panels; and the development of procedures enabling the adoption of panel reports by the Charter Conference and other steps relating to the implementation of panel recommendations, etc.

Activity: Annex TFU Notifications (2 staff-months)

Notifications will be collected of all future agreements between states of the FSU constituting rules in trade in Energy Materials and Products deviating from those of GATT and Related Instruments which have otherwise been made applicable by the ECT. Relevant procedures required by provisions of Annex TFU will be put in place.

C4. Transit

Activity: Transit conciliation procedures (7 staff-months; 3 consultancy-months)

Work related to transit dispute settlement will continue, with particular emphasis given to the development and completion of conciliation procedures, as required by the Treaty (Art. 7), for approval by Conference.

The work will necessitate the retaining of an outside consultant that will assist the Secretariat in developing and plan the conciliation procedures needed to comply with ECT requirements.

C5. Non-trade Disputes Settlement

Activity: Dispute settlement compendium (4 staff-months; 3 consultancy-months)

All the information regarding Dispute Settlement will be compiled in a compendium, encompassing the Arbitration Rules of UNCITRAL, of the Arbitration Institute of the Stockholm Chamber of Commerce and of the International Centre for Settlement of Investment Disputes. Such a compendium would serve as a guide to interested parties in the Government and industry.

C6. Transitional measures

Activity: Annex T Reviews (4 staff-months)

Progress will be reviewed of economies in transition towards the full compliance of provisions of the Treaty for which they claimed temporary suspension. This would be essential in particular after the Treaty has entered into force. The Secretariat shall co-operate with countries concerned not only based on notification requirements but also through involvement in relevant on-going or future projects executed by other international institutions such as the EU's SYNERGY, PHARE and TACIS programmes. This activity should not only result in bringing national legislation in conformity with ECT provisions but, in particular, in assisting countries to meet the phase-out dates for full compliance of suspended provisions. Emphasis should have to be put on competition, transit, transparency

and conditions for non-discriminatory access to financial markets. The Charter Conference will be annually informed of progress and take necessary decisions.

C7. Energy Efficiency and Related Environmental Aspects

Activity: Charter efficiency projects (1 staff-month)

The Secretariat will compile a list of voluntary notifications received from countries regarding energy efficiency projects considered to be “Charter efficiency projects” as included in the definition of Investment in the Treaty, and which shall enjoy the same treatment as the other investments in the energy sector.

Activity: Survey of energy efficiency activities (4 staff-months; 4 consultancy-months)

The Secretariat will initiate a survey of energy efficiency activities, including the identification of the main actors, legal situation, relevant institutions and programmes in order to obtain a picture of the status of energy efficiency activities in the Signatory countries. This survey will support countries in effectively implementing the Treaty and Energy Efficiency Protocol provisions. The SYNERGY programme (EU-DGXVII) is considering offering support in this area. Other organisations such as IEA and ECE might also contribute.

Activity: Procedures of the Energy Efficiency Protocol (1 staff-month; 1 consultancy-month)

Procedures will be drafted to facilitate the implementation of the provisions of the Energy Efficiency Protocol. Ultimately these procedures should be adopted by the Charter Conference within 180 days after the entry into force of the Protocol.

C8. Transparency

Activity: Assistance to Enquiry Points (4 staff-months)

Designated enquiry points will be supported in defining and starting their activities, also assuring a proper communication between them and the ECT Secretariat. To provide for the necessary training, support is being sought from the European Commission’s SYNERGY programme.

D. Legal Advice (12 staff-months)

The Secretariat’s Legal Adviser will advise on all legal issues affecting the work of the Conference and Secretariat including those concerning interpretation of the Treaty and Protocols, dispute procedures, the implementation of the Treaty in signatory countries and the further trade and investment negotiations. He will also be responsible for providing advise on legal issues arising from the Secretariat’s day to day operations such as the terms of contracts and the application of the Headquarters Agreement.

E. Administration and Finance

(48 staff-months)

Work of the Secretariat's administration includes meeting arrangements, document circulation, the provision of interpretation and translations services, informatics, office management, personnel management, staff conditions and social security, pension and medical arrangements, financial management, including budgetary and financial control, payroll administration, purchasing, contracts and tendering. The development, implementation and running of a central filing system will be an additional time-consuming element of the Secretariat's work.