

**ENERGY CHARTER
SECRETARIAT**

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Brussels, 17-18 December 1997

Related documents: CC 106, CC 107, CC 111, CC 112 Corr.

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Chairman's Conclusions on Negotiations on Supplementary Treaty, Trade Amendment and Energy-Related Equipment

[Negotiations on the Supplementary Treaty (CC 106) and Negotiations on the Trade Amendment and the Energy-Related Equipment (CC 107) were] covered by the Chairman's conclusions contained in CC 111 which was circulated on 19 December 1997.

It was reported to the Conference that the Russian Federation and the European Communities had agreed on a joint statement on nuclear trade.

[The Conference document CC 111 with the Chairman's conclusions is attached as Annex]

Keywords: Supplementary Treaty, Trade Amendment, Energy-Related Equipment

Brussels, 19 December 1997

NOTE FROM THE CONFERENCE CHAIRMAN

Subject: Conference Chairman's Conclusions on Negotiations

The December Conference meeting concluded that in view of the very wide measure of agreement reached on the Supplementary Treaty, as well as the Trade and Energy-Related Equipment amendment, the negotiations have reached a successful conclusion on all substantial points.

The outstanding issues are:

Supplementary Treaty

- Annex PR(1)

There is agreement that there will be an Annex PR. No further countries may be added to that Annex. EC has a scrutiny reserve on the listing of OECD countries in Annex PR. The EC asked for it to be recorded that should an acceptable solution not be found, they would not exclude the possibility of including EC countries in the list to obtain a balance.

On my proposal for a new Article 10(5)(c), I believe I can, following consultations, bring a new proposal forward very soon.

- Privatisations - Future Restrictions on Resale

There is no possibility for an agreement on inclusion of an Annex PR (2) to allow future discriminations in relation to resale. Several delegations appreciate that the concerns behind their desire for a provision could probably be met through other measures which would be less discouraging to foreign investors. However, they have had to maintain a scrutiny reserve while the proposal is considered in their capitals.

- Privatisations - Existing Restrictions on Resale

The proposal on existing restrictions is, subject to linguistic tidying up, in substance agreed. It is also understood that it covers restrictions in constituent documents existing on 17 December 1997.

I expect to have final positions by 31 January 1998 on both my proposals on resale privatisation.

- Banking

There is agreement that there should be an Understanding which makes it clear that, in relation to the foundation and establishment of banks and their licensing, Article 10(2) places on Contracting Parties no obligation relating to economic activities other than Economic Activities in the Energy Sector. The Russian Federation has scrutiny reserve on my proposal (RD-12) which I hope they can lift very soon.

- Dispute settlement

In my final proposal Article 26 will apply in the context of the ST. The only “limitation” on this that could attract general acceptance is the very circumscribed proposal in CC 106 on possible future reservations. To be viable, the countries on Annex DS must be limited to the 3 countries identified in my proposal. Norway and Iceland conditionally accept the proposal put forward in CC 106, provided Understanding No. 7 is deleted. I hope that it will be possible to convince Australia that this compromise is the only possible way to accommodate their concerns.

- Provisional application

An Article on Provisional Application will be included. I will be in touch with the Chairman of the Legal Advisory Committee concerning its drafting.

- Hook up issues

The form of the hook-up is agreed. There was general acceptance that there should be no inconsistency between the Supplementary Treaty and the Energy Charter Treaty. The operating assumption is that Article 10(4) and Understanding No. 6 together with the relevant rules of the Vienna Convention on the Law of Treaties would be sufficient to resolve any possible conflict between the terms of the ECT and those of the Supplementary Treaty. Norway has indicated that it attaches great importance to its proposal for a conflict rule. Delegations are invited to indicate in writing whether they are in favour of the Norwegian proposal by 31 January 1998. Delegations not responding will be assumed to concur with my conclusions.

Trade and Energy-Related Equipment Amendment

- GATT Article XXIV

It was considered that a solution to the difficulty of applying paragraph 6 of this article could be an Understanding that any Contracting Party affected by a tariff increase as mentioned in the first sentence of this paragraph would be entitled to seek consultations in the Energy Charter Conference. I invite the Russian Federation to lift its scrutiny reserve on this solution as soon as possible.

- Annex BR

Subject to a Japanese reserve, it was agreed that there should be an Understanding that, for the avoidance of doubt, any signatory of the Energy Charter Treaty can apply to be listed in Annex BR at the time of introduction of a mandatory tariff limit. Japan is urged to lift its reserve as soon as possible.

- Moving items of energy products and equipment from best endeavours to a mandatory tariff limit

There was agreement to the Czech proposal to include an Understanding on annual reviews by the Conference to consider moving of items of Energy Materials and Products and Equipment from best endeavours to a mandatory tariff limit.

- General

Agreement in substance was reached on several other important points, including on a new Understanding relating to Article 29(5) and a joint declaration on TRIPS proposed by Switzerland. Detailed drafting is to be left to the Legal Advisory Committee. On behalf of the Conference I urge that Committee in its consideration of the text of the Trade Amendment, especially Annex W, to make that text as transparent as possible.

The EC asked for it to be recorded that they had an issue of internal competence to resolve in relation to the Trade and Energy-Related Equipment Amendment and that they would be in contact with me on that issue.

- The list of equipment (Annex EQ II)

Except for the items listed in RD 11 the Conference has concluded negotiations on the list of Energy-Related Equipment in CC 109 to be covered by the amended ECT trade provisions. A group of technical experts will meet in January 1998 to finalise consideration of the remaining items in RD 11. The results will be included in my final proposal.

Next steps

Based on consultations on the outstanding issues and a final Legal Advisory Committee review, I will, in due time, circulate to all delegations my final proposals for the texts of the Supplementary Treaty and the Trade and Energy-Related Equipment Amendment for adoption at the next Conference meeting in April 1998. That meeting will also take a decision on the date and venue for signature of the Supplementary Treaty.