

ENERGY CHARTER SECRETARIAT

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Related documents: CC 148, CC 152, CC 153, CC 155, CC 159, CC 162, RD 2 (ECC of 07 12 1999), RD 3 (ECC of 07 12 1999), RD 4 (ECC of 07 12 1999)
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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Reports submitted to the 4th Meeting of the Energy Charter Conference held on 7 December 1999

- The Conference approved the Budget Committee's recommendation to discharge the Secretary General from his management and administrative responsibilities in respect of the 1998 Budget.
- Restructuring including privatisation (CC 152)
The Conference took note of the Secretariat's report on this issue. One delegation suggested that it might be appropriate to reflect on the title for the activity as the exact end result of the activity had yet to be considered. The Secretariat undertook to find an appropriate title.
- Report on the functioning of the notification system and report on possibilities for moving to legally binding commitments on customs duties (CC 153)
 - a) Report of the functioning of the notification system:
The Chairman of the Group on Trade reported on the trade-related notification requirements.
In response to a question by one delegation about cooperation with the WTO in order to ensure the availability of WTO documents/notifications, the Secretariat mentioned that efforts to improve the situation are ongoing.

Keywords: Roster of Panellists, Dispute Resolution, Customs Duties, Notification System, Model Agreements, Ratification Progress

The Conference Chairman noted that delegations of non-WTO members are encouraged to submit their WTO-based notifications under the Treaty as mentioned in Messages 183/99 and 189/99 as soon as possible. He noted furthermore that all delegations are invited to update or supplement their notifications on customs duties and charges of any kind whenever appropriate in order to permit the Secretariat to provide delegations with the transparency documentation as requested.

b) Report on possibilities for moving to legally binding commitments on customs duties:

The Chairman of the Group on Trade reported that in principle, delegations reiterated their interest in arriving at a legally binding commitment on customs duties. However, in view of the upcoming WTO ministerial meeting, delegations were not ready to commit themselves. Nevertheless, even though the time was not right for moving to a legally binding commitment on customs duties because of the upcoming WTO negotiations, the background information provided by the Secretariat was considered useful. Therefore, the Secretariat had been invited to continue providing similar transparency and documentation during the next year and a new review of possibilities for moving to a legally binding commitment will be undertaken then, as required by the Trade Amendment (Understanding No 3, Final Act to the TA).

On the review of possibilities for moving to a legally binding commitment on customs duties and other charges, the Conference concluded that, as required by the Trade Amendment, there will be a review next year.

- Panellists for the Roster of Purposes for the purpose of Dispute Resolution under Annex D (CC 155)

The Conference noted that in order to make the trade-related dispute settlement procedures fully operational, designation of panellists for the roster of panellists is required and that there are 3 options for designation of panellists (designation by Contracting Parties of two panellists per Contracting Party, designation of maximum 10 panellists by the Secretary General, subject to Conference approval, designation of maximum 20 panellists by the Conference).

The Chairman concluded that delegations are encouraged to come forward with nominations of panellists and that this is for the time being the preferred option for designating panellists.

- Report of the Working Group on Transit (RD 3 and RD 4)

The Conference took note of Room Document 3 ("Assessment by the Transit Working Group Chairman of the outcome of the consultations of the Transit Working Group to date") and of the oral presentation made by the Chairman of the Transit Working Group, who reported as follows:

Several initiatives have been suggested – the strengthening of the rule of law in transit of energy through a legally binding Transit Protocol, as well as the preparation of legally non-binding model agreements and legally non-binding guidelines and codes of conduct, assisting potential investors and governments in securing transit projects.

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It is the understanding of the Transit Working Group that the set of TRS documents prepared to date shall form the basis of the further deliberations preparing the first draft Transit Protocol.

There is a common understanding of the Transit Working Group on several issues, inter alia, on the objectives of the Transit Protocol, on the application of the provisions of the Transit Protocol to energy swaps of a transit nature, and on the provisions on standards, metering, notification and compliance. Other issues, such as the provisions on construction or modification of energy transport facilities used for transit, on tariffs and on dispute settlement, warrant further deliberation. The list is not exhaustive, and further consultations are needed to ensure completeness. The Transit Protocol shall not contain provisions on taxation.

Some delegations wished to insert the foregoing understanding in the preamble of the text of the negotiation mandate (see para 15 below). However, the Working Group eventually accepted the text now before the Conference, having agreed that the above understanding would be reported to the Conference at the same time.

The legal interface between the Transit Protocol and the existing provisions of the Energy Charter Treaty shall be discussed by the Transit Working Group at the earliest opportunity. The starting point of the discussion is laid down in Message 201/99. The Secretariat will forward a first draft text of a Transit Protocol to the Transit Working Group in January 2000.

It is the understanding of the Transit Working Group that the preparation of legally non-binding model agreements shall be continued in parallel with the preparation of the negotiation of the Transit Protocol. Both the negotiation of a Transit Protocol and the endorsement of a first set of model agreements by the Energy Charter Conference shall be concluded as soon as possible, and if possible by the end of 2000.

Some delegations in the Transit Working Group meeting on 6 December 1999 pointed out that the provisions of the Transit Protocol should address environmental concerns, following the line of approach already established by the Energy Charter Treaty. It was also noted that the feasibility of the exercise appears to be strengthened by the willingness of parties to dialogue on the subject of model agreements and the specific contributions received to date.

The Conference took note of Room Document 4 - "Report of the Transit Working Group to the Charter Conference on Model Agreements" as presented by the Chairman of the Transit Working Group.

Detailed early comments provided on the preliminary draft model transit agreements by industry seem to point at a convergence of views on how model agreements could be structured and termed.

- Report on Energy Efficiency and Related Environmental Aspects (RD 2 and CC 157)

The Conference took note of the report of the Chairman of the Working Group on the Protocol on Energy Efficiency and Related Environmental Aspects (Room Document 2). In his oral presentation the Chairman of the Working Group underlined the progress made by member countries in implementing the Protocol, mainly in the areas of policy

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and legislation development. Another issue emphasised was the setting-up of a review process for the Protocol. This review process relies on two components: regular reviews supporting monitoring of achievements under the Protocol, the format of which was tested on six volunteer countries in 1999, and selected in-depth energy efficiency peer reviews, the first of which was undertaken in the Slovak Republic.

The Conference discussed the report on the in-depth energy efficiency review of the Slovak Republic contained in document CC 157. The Conference endorsed the report, including the recommendations made to the Government of the Slovak Republic.

The Chairman of the Working Group referred to the ongoing co-operation with other International Organisations and to the invitation made by the Environmental Committee of UN/ECE Geneva to the Secretariat to report on progress of implementing the Aarhus commitments to the Kiev Ministerial Conference in 2002, based on the review process of the Protocol. The Chairman of the Working Group underlined also the need for additional resources in the year 2000 and welcomed the decision of the Budget Committee to address this issue in June.

The Conference Chairman concluded by encouraging delegations to consider the opportunity of supporting work under PEEREA through voluntary contributions.

- Progress report on Ratification (CC 159)

The Secretariat reported on the progress made on ratification since the 3rd Meeting of the Conference. France and Mongolia have deposited their instruments of ratification/accession with the Depositary. In addition the Secretariat's Headquarters Agreement was ratified by the Belgium Parliament and has entered into force last October. The delegation of Belarus informed the Conference that the ratification of the Treaty was on the agenda of the present session of the Parliament. The delegation of Switzerland reported that it would deposit its ratification of the Trade Amendment in the very near future. The delegation of Poland informed the meeting that its Parliament was expected to complete its ratification procedure within 6 months. The Chairman urged delegations of those Signatory States which had not yet completed national ratification procedures to accelerate the process.