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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Reports submitted to the 8th Meeting of the Energy Charter Conference held on 11 October 2001

- Transit Issues
- **Procedures for Conclusion of Negotiations on an Energy Charter Protocol on Transit**

The Chairman of the Transit Working Group reported to the Conference on the present status of negotiations on the Transit Protocol. Her conclusion was that although progress had been achieved since the last meeting of the Conference in May, more time was still required to conclude the negotiations. Nonetheless, she underlined that there was a continued commitment on the part of delegations to agree on a substantial Transit Protocol as speedily as possible. Concerning remaining issues to be resolved in the negotiations, the Chairman of the Transit Working Group drew attention in particular to the recent proposal by the European Union (document TRS 48) concerning the non-application of the Transit Protocol to flows of energy within the territory of the European Community as a Regional Economic Integration Organisation. The introduction of this proposal had led to many legitimate questions being raised by non-EU delegations concerning the implications that this would have for the Protocol's coverage of specific issues, which had to be addressed in a satisfactory manner before the negotiations could be finalised. It was also noted that a finalisation of the negotiations would have to represent a "package" solution, covering not only the above proposal by the EU, but also a number of other outstanding issues, as listed in document TRS 50, which was circulated to the Conference for information.

Several delegations underlined the importance they attach to receiving a full explanation from the EU as to the legal implications of its proposal for the Protocol's scope of

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application. In response, the EU issued a declaration to the Conference on its position with regard to the Transit Protocol, the text of which is attached at [Annex]. The Conference Chairman welcomed this declaration, but urged the EU in addition to provide other delegations as soon as possible with a fuller explanatory note analyzing the legal implications of its proposal with respect to individual articles in the draft text of the Protocol. On this basis, the Chairman noted, it would be possible for other countries to assess the extent to which the EU's proposal will affect the Protocol's coverage, and also to assess the possibility, if required, of drawing up in this connection an Understanding or other legal instrument as part of the Protocol. The EU expressed its readiness to prepare such an explanatory note and also to hold bilateral consultations as necessary with other delegations concerning its proposal.

With respect to other outstanding issues in the negotiations, the delegation of Georgia circulated to the Conference (Room Document 4) its proposal to incorporate into the Protocol the concept that its Contracting Parties shall not be prevented from enjoying the right to receive "fair and reasonable" benefits for facilitating the construction or expansion of energy transit facilities on their territory. Both the Chairman of the Transit Working Group and the Conference Chairman expressed the view that Georgia's proposal could in fact be seen as a weakening of the existing formulation in the draft Protocol from the point of view of transit states, since the concept of "fair and reasonable" benefits would be open to differing interpretations. Georgia was therefore invited to reconsider its position on this issue.

The Conference also considered the draft Protocol's provisions on international energy swap agreements and on the settlement of disputes between entities and states, noting in both cases that there were encouraging signs that compromise solutions acceptable to all delegations would be found.

- **Progress Report on Model Agreements**

The Conference heard a report from the Secretary General concerning the development of Model Agreements. It was noted that, following input received from meetings of the Legal Advisory Task Force and the Expert Group on Model Agreements, the latest draft of the Inter-governmental Model Agreement would be made available to delegations shortly. The Secretary General reported that due to the need to continue negotiations on the Transit Protocol, the timeframe for submission of the draft Inter-governmental and Host Government Model Agreements had of necessity been revised. However, the Secretariat would aim to complete its work on both Model Agreements in the first half of 2002, following which the intention remained to submit them to the Charter Conference for endorsement.

- Progress on Ratification and Status of Relations with Non-Signatories (Oral report by the Secretary General)

The Secretary General informed the Conference that two Signatories to the Treaty (Bosnia & Herzegovina and Malta) had deposited their instruments of ratification with the Depository since the Conference's last meeting, thus bringing the total number of Signatories having completed the ratification process to forty-six.

Concerning ratification of the Treaty by Russia, the Secretary General reported that consultations had continued since the Conference's last meeting, in particular with regard to the concerns over the Treaty's implications that had been expressed by several participants in the parliamentary hearings on ratification that took place in the Russian State Duma in January. In this context, a delegation of Duma deputies had visited the

Secretariat in May for expert-level talks on the Treaty's provisions; the Secretary General had held an extensive discussion with the new Chairman of the Russian gas company "Gazprom" regarding the Russian gas industry's concerns over ratification; and a round-table meeting on the Treaty had been held in the State Duma in September, with the participation of the Secretary General and a number of parliamentarians and representatives of the Russian government and energy industry. Moreover, in the case of "Gazprom" it had been agreed that consultations between the company's legal experts and the Secretariat would continue at working level. In short, the Secretary General considered that the Secretariat's dialogue with the Russian side over ratification of the Treaty had intensified, and had reached a higher political level than in the past. At the same time, it was noted that there remained serious reservations in Russia over the consequences of ratification. Moreover, following the outcome of the Duma's deliberations, a strong linkage was drawn in Moscow between a successful conclusion of the Transit Protocol negotiations and the completion of the process of ratification of the Treaty – in the Secretary General's view, this linkage had to be taken into account politically, even though the Secretariat had consistently taken the view that the two issues were separate.

The Russian delegation commented that an analysis of the Treaty had been prepared by the government at the request of the Russian President, although no reaction to this analysis had yet been received from the President's office. It was underlined that the Duma had not rejected the Treaty outright, and was continuing to work on the process of preparing for its ratification. The Russian government would continue to assist the Duma wherever possible in this regard, although no firm timetable for completion of the ratification process could be given. The Russian delegation also noted that in addition to the concerns of the Russian gas industry, there were objections to ratification of the Treaty from the Russian Nuclear Power Ministry, on the grounds that the Treaty did not address the issue of Russia's trade in nuclear materials with the countries of the European Union, on which no progress had been made at a bilateral level since the time of the Treaty's signature.

The Secretary General also informed the Conference that the Federal Republic of Yugoslavia had signed the European Energy Charter since the Conference's last meeting, and that the process of its full accession to the Treaty was proceeding in a timely manner. Concerning relations with non-Signatories, the Secretary General reported that a Symposium on the Energy Charter for had been held in Beijing in July, jointly organised by the Secretariat and the Chinese government. In parallel, the Secretary General had held bilateral meetings with representatives of the Chinese State Development Planning Commission and Ministry of Foreign Affairs, as a result of which the Chinese government was now actively considering possibilities for establishing closer ties with the Charter process. The Secretary General also reported on her presentation on the Charter's aims and activities to the Energy Working Group of APEC in Kuala Lumpur in May, and informed the Conference that plans were under discussion for a Seminar on the Treaty in Tunis in the first half of 2002, organised by the Tunisian government and with the participation of several other North African governments, in preparation for which work is shortly to commence on an Arabic translation of the Treaty.

One delegation took the floor to underline its keen interest in seeing progress towards ratification of the Treaty by Russia, and also to welcome the development of the Secretariat's dialogue with the People's Republic of China and with APEC.

- Oral report by the Chairman of the Working Group on Energy Efficiency and Related Environmental Aspects

The Conference took note of the report presented by the Chairman of the Working Group on Energy Efficiency and Related Environmental Aspects concerning the activities of the Group so far this year. It was noted that the latest in the series of in-depth energy efficiency reviews, a review of Hungary, had been discussed by the Group at its last meeting in June, and that the recommendations of the review team had been endorsed by the Conference via written procedure. The recommendations emerging from the next in-depth review, of Bulgaria, would be presented to the next meeting of the Conference. Noting that three further states (Turkey, Romania and Estonia) had volunteered to host in-depth reviews in 2002, the Working Group Chairman appealed to delegations to consider the possibility of further voluntary contributions to support this activity. The possibility that the Working Group might be involved in the development of in-depth energy efficiency reviews in two regions of Russia, within the framework of the EU-Russia energy dialogue, was also mentioned. The Working Group Chairman updated the Conference on progress made in the Group's compilation of "regular" country reviews, pointing out that a number of states had not yet submitted their replies to the review questionnaires as requested, and also informed the Conference about the discussions held by the Group, with the participation of relevant other international organizations and NGOs, on policy issues such as energy efficiency institutions, third party financing and energy efficiency indicators and statistics.

The Conference Chairman welcomed the above report, underlined the appeal for all countries to fulfill their obligations with respect to the compilation of regular energy efficiency reviews, and echoed the Working Group Chairman's invitation to delegations to consider further voluntary contributions for in-depth energy efficiency reviews and analytical policy-related activities foreseen for 2002.

- Oral report by the Chairman of the Trade Group

The Chairman of the Trade Group reported that at its last meeting the Group had discussed possible approaches to dealing with trade in electricity within the Charter process, the system of reviewing notifications submitted in accordance with the Treaty's trade provisions, and the overall functioning of the notification system. In the latter respect, the Chairman of the Group noted that in spite of some progress this year, there were still a number of delegations that were not properly meeting the notification requirements imposed by the Treaty. To remedy this situation, and also to encourage more active participation by delegations in the Trade Group, he proposed that the Conference consider the nomination of a Vice-Chairman of the Group at its next meeting. The Chairman of the Group also noted that the Transparency Paper on "WTO Rules applying under the ECT to Trade in Energy" had been updated and would soon be published by the Secretariat. He informed the Conference that a training course on technical barriers to trade notifications would be held in Bern from 5-9 November, specifically designed for trade officials from Contracting Parties/Signatories not yet members of the WTO. It was noted that this training course, organised jointly by the Secretariat and the World Trade Institute, had been made possible thanks to a voluntary contribution from Switzerland.

The Conference approved the proposal of the Chairman of the Trade Group that the annual review of possibilities for moving to a legally-binding commitment on customs

duties and other charges should be conducted by written procedure, with decisions to be taken, as required, by the Conference in December.

The Conference Chairman thanked the Chairman of the Trade Group for his report, and called on all delegations that have not yet fulfilled their legally-binding notification obligations under the Treaty to do so by December 2001.

- Oral report by the Vice-Chairman of the Investment Group

In the absence of the Chairman of the Investment Group, its Vice-Chairman presented the Conference with a report on the Group's activities so far this year. The Group had been able to record considerable progress in the area of removing from national legislation of Contracting Parties/Signatories measures not in conformity with the Treaty's investment provisions. Since June 2000, 22 such measures have been withdrawn, bringing the total number of exceptions to the Treaty's provisions in this area down to 105. At the same time, the Vice-Chairman noted that not all delegations were providing the Secretariat with the requested information on the exceptions they currently maintain to national treatment in the energy sector, and appealed to delegations to rectify this situation in time for the next meeting of the Group in November. Concerning country reports, the Vice-Chairman noted that the Secretariat's proposal to merge the previously separate reports on market restructuring and investment climate issues into a single report for each country had been received positively by the Group, and would hopefully be finalised at the Group's next meeting in November. The Vice-Chairman drew particular attention to the Group's intention to revitalise negotiations on the Supplementary Treaty, which will be a major topic on the agenda for the Group's next meeting. He also informed the Conference on the Group's efforts to develop a closer dialogue with business on investment climate issues in the energy sector, in which context the Group planned to institute a regular series of consultations with selected energy companies concerning their investment projects in the Charter's area.

The Conference Chairman welcomed this report on the Investment Group's activities, and expressed the hope that the next meeting of the Group in November would yield further progress, in particular with regard to the Supplementary Treaty.

- Results of the Meeting of the Budget Committee on 8th October 2001

The Budget Committee Chairman reported that at its meeting on 8th October the Committee considered the Secretariat's draft Budget for 2002 (based on the principle of zero-real growth, coupled with a structural regulation of expenditure for invited experts previously covered by Budget part II), and reviewed expenditure to date in 2001. In the latter context, the Committee was informed about the usage to date of the authorized one-time draw on the General Reserve Fund to a maximum of 144.500 Euros for the purpose of finalisation of the Transit Protocol (the latest status of which was presented to the Conference in Room Document 2). The Budget Committee Chairman informed the Conference that sufficient funds were available under this one-time draw for financing additional meetings required for the Protocol's finalisation. The Conference Chairman concluded that negotiations on the Protocol within the Transit Working Group could continue on this basis.

The Budget Committee Chairman also presented the situation concerning arrears in national contributions to the Secretariat's budget. It was noted that several delegations had made progress over this issue, but that there remained one country that had built up arrears equivalent to well over one tenth of the Secretariat's annual budget, which was a

major cause for concern. The Conference Chairman expressed regret over this state of affairs and appealed to the delegation in question to rectify this situation and present a plan concerning its intentions to clear its arrears before the next meeting of the Conference.

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Declaration by the European Community and its Member States relating to the negotiation of an Energy Charter Protocol on Transit

1. The European Community and its Member States are fully committed, including through the Treaty establishing the European Community, to the principles of open and competitive markets as set out in the European Energy Charter and the Energy Charter Treaty.
2. As a Regional Economic Integration Organisation, the Community is based on a single market without borders between its Member States and on the principle of the free circulation of goods, as set out in the Treaty establishing the European Community.
3. It is on this basis that a Regional Economic Integration clause has been introduced.
4. As Contracting Parties to the Energy Charter Treaty, the European Community and its Member States note that negotiation of a Transit Protocol should be completed taking this into account and based on the principles of the Energy Charter Treaty, with particular attention to open and competitive markets, and with a view to improve freedom of transit.