

ENERGY CHARTER SECRETARIAT

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Related documents: CC 216, CC 219, CC 220, CC 221, CC 222, CC 223, CC 225, CC 227, CC 232, CC 233, RD 2 (ECC of 17 12 2002)
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DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Reports submitted to the 11th Meeting of the Energy Charter Conference held on 17-18 December 2002

- **Report by the Chairman of the Transit Working Group, and Finalisation of negotiations on an Energy Charter Protocol on Transit, based on the Transit Working Group Chairman's Final Compromise Text (CC 232)**

The Chairman of the Transit Working Group reported to the Conference on the present status of negotiations on an Energy Charter Protocol on Transit. She noted that substantial progress had been made towards finalisation of the negotiations since the last meeting of the Conference in June 2002. However, she was nonetheless obliged to report that a complete final compromise text of the Protocol on which all delegations were agreed had not yet been achieved, notwithstanding the agreement reached by the Conference at its last meeting that negotiations on the Protocol should be brought to an end by the close of 2002. In particular, she drew attention to three remaining outstanding issues on which compromise solutions needed to be found to allow for a finalisation of the negotiations – the mechanisms envisaged in the Protocol for the establishment of transit tariffs; the proposal of the Russian Federation to incorporate a so-called “right of first refusal” for transit shippers within the Protocol; and the Regional Economic Integration (REIO) clause proposed by the European Union.

Having taken note of this report, the Conference Chairman invited the Conference to focus its attention on efforts to resolve the three above-mentioned issues. In doing so, he noted that the negotiation process had now been under way for three years. Therefore, without an agreement at the level of the Conference to concentrate from this point

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onwards solely on these three issues, thus considering the remainder of the text contained in document CC 232 to be provisionally accepted (subject to the overriding principle that “nothing is agreed until everything is agreed”), the Chairman feared there was a real risk of losing momentum towards finalisation of the Protocol.

- **Status Report on Model Transit Agreements (CC 219)**

The Conference took note of the report on the present status of the development of Model Transit Agreements, as contained in document CC 219. In addition, the Secretary General confirmed the intention of the Secretariat to submit completed drafts of the two model agreements (Inter-Governmental Agreement and Host Government Agreement) to the Conference as soon as possible during 2003. The Chairman welcomed this intention, and looked forward to seeing this important element in the Charter’s transit-related activities brought to fruition during the coming year.

- **[Progress Report on Ratification and Relations with Non-Signatories]**

The Secretary General reported to the Conference on developments on ratification issues and in the Energy Charter’s relations with non-signatories since the Conference’s last meeting in June 2002. Recalling the admission of the Islamic Republic of Iran and the Republic of Korea into the Charter process as observer states under items 3 and 4 of the Agenda, she underlined that in both cases the foundations for these observership applications were established during her bilateral discussions with the responsible Ministers of both countries in the margins of the 8th International Energy Forum in Osaka in September 2002. In this connection, the Secretary General expressed her gratitude to the Government of Japan for ensuring that the Secretariat was invited for the first time to participate in the work of the International Energy Forum. The Secretary General informed the Conference that the Secretariat planned to consolidate this positive tendency by increasing its efforts in 2003 to strengthen the Charter’s relations with states in the Middle Eastern region and North Africa, including those that already enjoy observer status within the Charter process. She noted that the process of accession to the Energy Charter Treaty by the present Federal Republic of Yugoslavia was likely to be completed during 2003, although most probably by the successor state of Serbia & Montenegro, once its formal establishment has been completed. Concerning relations with other international organizations, the Secretary General drew attention to the interest shown during the second half of the year by the Economic Cooperation Organisation (ECO) and the Organisation of the Petroleum Exporting Countries (OPEC) in developing closer cooperation with the Charter process.

Regarding ratification issues, the Secretary General underlined that a major development had taken place since the Conference’s last meeting, in that Japan had since then completed its procedures for ratification of the Treaty and PEEREA and had become a Contracting Party to both instruments. As a result, there were now only five of the Treaty’s fifty-two signatories that had yet to complete its ratification. With regard to the ratification process in the Russian Federation, the Secretary General informed the Conference that, regrettably, no progress in substance had been achieved in the second half of the year, but underlined that the Russian Government had recently given renewed

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high-level assurances of its commitment to the aims of the Charter process and to participation in the Charter's activities.

The delegation of Japan expressed the hope that its ratification of the Treaty would provide encouragement to other signatories that have yet to ratify to do the same. The delegation of Norway underlined the Norwegian Government's full support for the Charter process, and stated that Norway was giving active consideration to possible ways of resolving the issue of its non-ratification of the Treaty. The delegation of the Russian Federation confirmed that despite the well-known difficulties associated with the ratification process in Russia, the Russian Government would continue its efforts to achieve a resolution of this matter.

In concluding this item, the Chairman welcomed in particular the completion of the ratification process by Japan, and also the statements made by the Norwegian and Russian delegations. He added that, in addition to the efforts made by the Secretariat to promote ratification of the Treaty, other Contracting Parties had an important role to play through their bilateral channels in maintaining political focus on this objective throughout the Charter's constituency.

- **Report by the Chairman of the Working Group on Energy Efficiency and Related Environmental Aspects (CC 225)**

The Conference took note of the Working Group Chairman's report contained in document CC 225. Introducing his report, the Working Group Chairman placed particular emphasis on the importance of moving energy efficiency issues higher up the agenda of decision-makers, and of achieving better integration of energy efficiency objectives into specific policies. The forthcoming UN-ECE Ministerial Conference on Environmental issues in Kyiv in May 2003, it was noted, represents an opportunity to increase political focus on energy efficiency issues. In this context, the Working Group had taken the initiative to propose that commitments relating to energy efficiency objectives be included in the Declaration to be adopted at the Kyiv Ministerial. The Working Group Chairman also highlighted the ongoing focus in the Group's activities on promoting instruments and strategies for financing energy efficiency measures, and underlined that this would continue to represent one of the Group's main areas of activity in 2003.

Several delegations took the floor to echo the Working Group Chairman's comments concerning the Kyiv Ministerial and the need to explore the opportunity that it presented to raise the profile both of energy efficiency in general and of the Energy Charter's specific role in this area. In the light of these views, the Conference Chairman concluded that the Conference welcomed the Working Group's efforts to promote energy efficiency objectives at political levels, including at the Environment Ministers' Conference in Kyiv in 2003. The Conference Chairman also welcomed the initiatives and activities being pursued by the Working Group with regard to the financing of energy efficiency initiatives, and encouraged delegations to support this work. Finally, the Conference Chairman expressed his appreciation to the Finnish Government for its voluntary contribution in support of the Working Group's input to the Kyiv Ministerial, and appealed to other delegations to consider making similar voluntary contributions in support of the Working Group's future activities on energy efficiency issues.

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- **Report by the Chairman of the Investment Group (CC 223)**

The Conference took note of the Investment Group Chairman's report contained in document CC 223 on the Group's activities since the last Conference meeting. In highlighting the main features of this report, the Group Chairman drew particular attention to the continuation of the Group's dialogue with the business community and other interested parties on investment climate issues in the Charter's constituency, in which context presentations had been made to the most recent meeting of the Group by BP and the EBRD. He also noted the work undertaken by the Group on horizontal reviews of remaining measures not in conformity with the commitments contained in the Treaty's investment chapter, and expressed his support for the continuation of such reviews in 2003. Regarding other plans for the Investment Group's work in the coming year, the Group Chairman highlighted the existing plans to complete work on a first set of Best-Practice Guidelines on Restructuring and Privatisation in the energy sector, and to conduct an in-depth review of the energy-sector investment climate and market structure of the Russian Federation during the first half of the coming year. He also noted the strong interest of transition economies in seeing a review conducted of the energy-sector investment policies of more advanced market-economy states, since this could yield valuable information and experience for their own restructuring efforts. In this connection, the Group Chairman appealed to those delegations representing advanced market-economy states, in particular the member-states of the European Union, to consider volunteering to undergo such a review.

With regard to the Supplementary Treaty (ST), the Group Chairman reported that, in the light of the important work that is currently being undertaken on the issue of foreign investment in the framework of the WTO, and in order to minimize the risk of an inappropriate overlap or inconsistency between the finalisation of the ST and investment-related activities in the WTO, the Investment Group had agreed to put temporarily on hold further discussions of the ST until such time as developments in the WTO become clearer. The Secretariat had in the meantime been asked to monitor the WTO work closely, and to report back to the Investment Group at its autumn 2003 meeting. *The Conference endorsed* this approach.

Concerning the substance of the ST negotiations, the delegation of Japan stated that, whilst it did not object to the Declaration on Environmental and Social Standards currently proposed as part of the ST package, it nonetheless considered that the ST's primary function was to set a legal framework for investments, rather than to judge whether Contracting Parties are observing environmental and labour standards. Therefore, in Japan's view, the Energy Charter was not an appropriate forum within which to review these latter issues.

- **Report by the Chairman of the Trade Group (CC 220)**

The Conference took note of the Trade Group Chairman's report contained in document CC 220. Among the elements contained in his report, the Group Chairman highlighted in particular the Group's ongoing focus on electricity trade issues, in which context a Seminar on Liberalising Trade and Investment in the Eurasian Power Sector had been hosted by the Secretariat in October 2002, which was generally regarded as having being

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highly successful. As a means of developing further the Charter's role in this area, the Group Chairman suggested that work might be commenced within the Trade Group in 2003 on the development of policy guidelines on issues affecting electricity markets and trade. He also noted that a training seminar on state trade notification requirements under the Treaty would be held in February 2003, with financial support from the Government of Switzerland, and urged those delegations of non-WTO states that have not yet registered to participate in this event to do so. The Conference Chairman echoed this appeal, and also underlined the importance of compliance with the Treaty's trade-related notification obligations by Contracting Parties/Signatories that are not yet WTO members.

The Trade Group Chairman also expressed thanks to the delegation of Japan for its recent nomination of two panelists for inclusion in the Roster of Panellists established in accordance with Annex D (7) of the Treaty.

- **Analytical Papers submitted by the Secretariat on “ECT Electricity Markets and Trade” (CC 221) and “Inefficiencies in Electricity Pricing” (CC 222)**

The Conference Chairman opened this sub-item by welcoming the preparation of these two analytical papers as a further contribution to developing the Conference's role as a forum for policy exchanges on energy issues. In introducing the two papers, the Secretariat briefly highlighted a number of the key features contained therein. With regard to the paper on ECT Electricity Markets and Trade, it was underlined that unconstrained flows of electricity across borders represent a positive means of eliminating price uncertainties for potential investors, and that Article 19 of the Treaty obliges its Contracting Parties to minimize the harmful environmental effects of the energy cycle, but without distorting international trade. Concerning the paper on Inefficiencies in Electricity Pricing, attention was drawn to the ongoing need for reforms, particularly in transition economies, aimed at strengthening regulatory frameworks and increasing competition as a means of overcoming pricing inefficiencies.

Mr V.A. Dzhangirov (Chairman of the Executive Committee of the CIS Electric Power Council, attending the Conference as an Observer) submitted a formal statement to the Conference on behalf of the CIS Electric Power Council (circulated as Room Document 2) appealing for work to commence under the Charter's auspices on the development of a legally-binding Protocol on Electricity Issues. He also drew attention to a number of factual inaccuracies contained in document CC 221. The delegations of several member-states of the CIS took the floor to register their support for the appeal concerning a Protocol on Electricity. At the same time, one group of delegations underlined that, in its view, other items of business on the Energy Charter's agenda (most notably finalisation of the Transit Protocol and ratification of the Treaty by Russia) needed to be completed first of all, before consideration could be given to the possibility of developing a new instrument on electricity.

Concluding the discussion under this sub-item, the Conference Chairman noted that there was at present no consensus among delegations in support of commencing work on an Electricity Protocol. Once progress was made, however, on completing the Transit

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Protocol, it might be possible to consider further actions within the Charter process on electricity issues. In the meantime, the Conference Chairman recommended that the CIS Electric Power Council be invited to submit to the Secretariat in writing its detailed proposals regarding a separate instrument on electricity, for discussion among delegations at an appropriate working level, and also its comments on the present study on regional electricity markets in the ECT area prepared by the Trade Group. He also endorsed the suggestion of the Trade Group Chairman that the CIS Electric Power Council be encouraged to attend future meetings of the Trade Group in order to contribute to its deliberations on electricity trade issues.

- ***The Conference approved*** the recommendation of the Budget Committee contained in document CC 216 to discharge the Secretary General from her management and administrative responsibility in respect of the 2001 Budget, in accordance with Article 32(4) of the Secretariat's Financial Rules.
- **Report by the Chairman of the Budget Committee**

The Chairman of the Budget Committee informed the Conference that a certain amount of progress towards resolving the problem of arrears in national contributions to the Secretariat's budget had been made in recent months. At the same time, serious concern remained over the long-standing arrears accumulated by one member-country, the Russian Federation. One delegation took the floor to reiterate the great importance that it attaches to all member-countries fulfilling their budgetary obligations to the Charter process, and also to repeat the proposal that it raised at the Budget Committee for consideration to be given to introducing a minimum level of individual national contributions to the Secretariat's budget. The Secretary General noted that a report on the legal basis for the calculation of national contributions to the budget would be prepared by the Secretariat, as background for further consideration of this proposal by the Committee at its next meeting.

The delegation of the Russian Federation confirmed its intention to take steps in order gradually to resolve the problem of its arrears to the Secretariat's budget. The Conference Chairman welcomed this statement, but at the same time urged the Russian Federation to prepare a concrete schedule for settlement of its financial obligations, in consultation with the Secretariat.

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