

**ENERGY CHARTER
SECRETARIAT**

CCDEC 2002

16 TTG

Brussels, 17-18 December 2002

Related documents: CC 233, RD 1 (ECC of 17- 18 12 2002)

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Rules Concerning the Conduct of Conciliation of Transit Disputes under Article 7 of the Energy Charter Treaty

[The Energy Charter Conference at its 11th Meeting held on 17-18 December 2002, with regard to the issue of the Rules Concerning the Conduct of Conciliation of Transit Disputes under Article 7 of the Energy Charter Treaty,

approved the proposal to instruct the Secretariat to prepare a corresponding Decision for adoption by the Conference, on an addition to the present Rules.]

An outline of the proposed Decision was circulated to the Conference as Room Document 1 [Annex.]

Keywords: Conciliation Rules, Trade Disputes

**Proposal for addenda to the Rules Concerning the Conduct
of Conciliation of Transit Disputes**

as adopted by the Energy Charter Conference
at its 11th Meeting held on 17-18 December 2002

Since the beginning of the Transit Protocol negotiations, efforts have been made by the Transit Working Group to address the Russian concerns regarding the conciliation mechanism set out in Article 7(6) and (7) of the Energy Charter Treaty.

During the meeting of 24-25 October 2002 of the Transit Working Group, the Chairman asked the LAC to review the proposed Decision set out in document TRS 64/CC 210. The LAC Chairman reported to the TWG's Chairman that, in light of the LAC's discussion during its meeting of 8 November 2002, his advice to the TWG Chairman was not to approach a solution by interpreting Article 7(6) and (7) of the ECT. The LAC Chairman indicated, however, that other procedural approaches may provide a more positive solution to the current problems.

It should be recalled that the TWG had already considered the option of conceiving the "conciliator" in terms of either an individual or a group as one way to address most of the concerns expressed by the Russian delegation. It was also agreed in the TWG that if the interim tariffs ruled upon by the conciliator were not paid, the aggrieved party would be entitled to interrupt or reduce the Transit subject to the dispute.

During the November meeting, the Transit Working Group discussed briefly a new proposal of adding two additional paragraphs to the Conciliation rules (see, RD 1, 28 November 2002). Delegates were asked to submit objections to the proposal to the Secretariat by the 13 December 2002. At the expiry of the deadline no objections were received.

The Conference is invited to take note of this development and instruct the Secretariat to finalise the proposal in order to enable the Conference to make a Decision at its next meeting in 2003.

For reasons of transparency a short description of the proposal is attached.

PROPOSED ADDENDA

First, to alleviate the concern that a single conciliator might not appropriately handle some of the Transit Disputes, it is proposed to add the following paragraph as a paragraph (6) to Rule 2 of the Conciliation Rules:

- (a) For the purposes of these Rules, the expression "conciliator" shall be interpreted as referring either to an individual or to a group."
- (b) Upon the request of the respondent Contracting Party, the Secretary-General shall appoint three conciliators."

Accordingly, the full text of Rule 2 would read as follows:

RULE 2: APPOINTMENT OF CONCILIATOR

- (1) The Secretary-General shall decide on the appropriate form of the consultation about the appointment of the conciliator. In making the appointment, the Secretary-General shall have particular regard to the importance of appointing a conciliator who has or is likely to have the confidence of the Parties; will be independent and impartial; will avoid actual or apparent conflicts of interest; will respect the confidentiality requirements of these Rules; and will conduct the proceedings in a manner which ensures the integrity and reputation of the conciliation procedure.
- (2) The decision of the Secretary-General to appoint a particular person is final, subject to Rule 4(1).
- (3) At the time of appointment, the conciliator shall sign the declaration in Annex A of these Rules and shall disclose any information that could reasonably be expected to be known to him or her at the time which is likely to affect or give rise to justifiable doubts as to his or her independence or impartiality. The disclosure shall include the type of information described in the Illustrative List in Annex B.
- (4) The terms of appointment of the conciliator shall include a statement by the Secretary-General of his opinion as to the Parties and other Contracting Parties concerned for the purposes of the conciliator's declaration and inform the conciliator of any information relevant to the conciliation.
- (5) If the Secretary-General elects in accordance with Article 7(7)(e) not to appoint a conciliator, he or she shall inform the Parties and any other Contracting Party concerned of his or her decision in writing as soon as possible.
- (6) *(a) For the purposes of these Rules, the expression "conciliator" shall be interpreted as referring either to an individual or to a group.*
(b) Upon the request of the respondent Contracting Party, the Secretary-General shall appoint three conciliators."

Second, to address the concern that the non-payment of interim tariffs decided upon by the conciliator should be regarded as legitimate grounds for the interruption and the reduction of Transit, it is proposed that the following paragraph be added as paragraph (3) to Rule 12 of the Conciliation Rules:

"(3) For the purposes of this Rule, "other terms and conditions to be observed for Transit" include the decision to interrupt or reduce Transit in the case that no interim tariffs were forthcoming as determined by the conciliator's decision."

This paragraph aims to clarify the issue that amongst the conditions on which the conciliator may decide is to allow interruption or reduction of transit if it transpires that the interim tariffs have not been paid.

Accordingly Rule 12 of the Conciliation Rules would read as follows:

RULE 12: RECOMMENDATION/DECISION OF THE CONCILIATOR

- (1) Where the Parties have not reached agreement within the time limit provided for in Article 7(7)(c) or in Rules 3(5) or 4(5), the conciliator shall:
 - (a) record in writing his or her recommendation either for a resolution to the dispute or a procedure to achieve such resolution and his or her decision on interim tariffs and other terms and conditions to be observed for Transit including the date of effect;
 - (b) include a statement of reasons for his or her recommendation and decision; and
 - (c) provide signed copies of his or her recommendation and decision to the Parties and the Secretary-General.

- (2) The Secretary-General shall:
 - (a) deposit a signed copy of the recommendation and the decision in the archives of the Secretariat;
 - (b) notify all Contracting Parties of the fact that a recommendation and decision on interim tariffs has been made.

- “(3) For the purposes of this Rule, “other terms and conditions to be observed for Transit” include the permission to interrupt or reduce Transit in the case that no interim tariffs were forthcoming as determined by the conciliator’s decision.”***