

**ENERGY CHARTER
SECRETARIAT**

CCDEC 2003

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Brussels, 26 June 2003

Related documents:

CC 211, CC 227, CC 235, CC 236,
CC 238, CC 239, CC 242, CC 243,
CC 244, CC 246, CC 247, CC 248,
CC 249, CC 250

DECISION OF THE ENERGY CHARTER CONFERENCE

Subject: Reports submitted to the 12th Meeting of the Energy Charter Conference held on 26 June 2003

- [The Conference *took note* of the Chairman's proposal for finalisation of the Transit Protocol (as contained in document CC 249), which supplemented the main text circulated in document CC 235.]

Concerning the substance of the text as proposed in CC 235 and CC 249, the Chairman confirmed the following points in particular:

- Attachment II to document CC 235, which is based on the Legal Advisory Committee's Report, represents the correct legal analysis of the issues dealt with therein and, in particular, the issue of the Law of the Sea.
- With regard to the new paragraph (2) proposed for Article 20 of the Protocol (contained in CC 249), which sets a national treatment obligation inside a Regional Economic Integration Organization (REIO) and specifies that the rules of a REIO shall provide a standard at least equivalent to that resulting from the Transit Protocol, it is understood that this paragraph calls for an overall comparison, rather than an article-by-article comparison.

The Chairman concluded that, although not all delegations were ready to finalise the text of the Transit Protocol at this meeting, there was nonetheless a wide degree of support for his proposals for finalisation as contained in CC 235 and CC 249. Therefore, these proposals were to be considered as the accepted basis for finalisation of the text, whilst not excluding the possibility of certain additional clarifications to the elements contained therein, if required.

Keywords: Transit Protocol, Law of the Sea, Electricity Protocol, IAP, Industry Advisory Panel, UN-ECE, Gas Market Issues

- Other Transit Issues

- [The Conference *took note* of the Secretary General's report on implementation of the transit-related section of the Secretariat's Work Program for 2003 circulated in document CC 236.]
- [The Conference *took note* of the Secretary General's report on the present status of the Model Transit Agreements circulated in document CC 238.]

The Conference took note of the Secretary General's report on the present status of the Model Transit Agreements. The Chairman noted with satisfaction that a complete draft set of the Inter-governmental Agreement and the Host Government Agreement was due to be presented to the next meeting of the Charter Conference for consideration and endorsement.

- Investment Issues

- [The Conference *took note* of the report by the Investment Group Chairman circulated in document CC 239.]

The Conference Chairman supported in particular the Investment Group Chairman's appeal for a member state of the EU or OECD to volunteer for a country review of its investment climate and energy market structure in the near future.

- Trade Issues

- [The Conference *took note* of the report by the Trade Group Chairman circulated in document CC 242.]

Concerning the study on "Regional Electricity Markets in the ECT Area", the subject of substantial analytical work within the Group, it was noted that the Group's work on this document was now in its final stages, and that the study would shortly be published under the Secretary General's responsibility. Concerning specific issues addressed in the study, the Conference Chairman underlined in particular the importance of the issue of market concentration in the electricity sector, and the means that competition authorities can deploy to mitigate its negative effects on network access and trade. He encouraged the Trade Group to continue its efforts to promote dialogue and discussion on this and other policy issues.

The Conference Chairman also welcomed the voluntary financial support provided by the government of Switzerland for the organization in February 2003 of a training course on trade notification issues for representatives of twelve Energy Charter member-countries.

- [The Conference assessed the proposal (contained in document CC 243) for an Energy Charter Protocol on Electricity.]

The proposal to negotiate a Protocol on Electricity enjoyed a considerable degree of support within the Charter Conference. At the same time, it was evident that no consensus

existed in support of immediately commencing negotiations on such an instrument. The Conference Chairman therefore concluded that the Trade Group should be asked to continue its deliberations on the proposal as outlined in CC 243, with a view to establishing a clear understanding of how a new instrument in this area might add value to the existing framework of international legal rules covering electricity cooperation.

- Energy Efficiency Issues

- [The Conference *took note* of the report by the Chairman of the Working Group on Energy Efficiency and Related Environmental Aspects circulated in document CC 244.]

The Conference Chairman welcomed the development of the Working Group's role as a catalyst for policy debate among participating states, and thanked those countries that have provided active support for the Group's activities, whilst at the same time supporting the Working Group Chairman's call for additional voluntary contributions in this context.

- [The Conference *took note* of the report contained in CC 246 on the contribution submitted by the Secretariat on behalf of the Energy Charter process to the 5th UN-ECE Ministerial Conference on "Environment for Europe" in Kiev on 21-23 May 2003.]

The Conference Chairman welcomed the fact that at this Conference participating Ministers had reconfirmed the importance of energy efficiency for the environment in general, and had specifically underlined the role of the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) in promoting energy efficiency and furthering the objectives of the "Environment for Europe" process in the future.

- [The Conference *took note* of the proposal (contained in document CC 247) for an establishment of an Industry Advisory Panel to the Energy Charter Process.]

[The Chairman concluded] that no decision on the establishment of an IAP would be adopted at the meeting. He tasked the Secretariat with bringing this issue forward for consideration at the next meeting of the Charter Conference, specifying in more detail the mandate, tasks and areas of activity of the proposed IAP. In the meantime, the Chairman requested that the Secretariat proceed on an informal basis to hold consultations with potential candidates for membership of an IAP, should the Conference choose to establish one.

- Policy discussion on Gas Market issues (CC 248, see also previously-distributed documents CC 211 and 227)

The Secretariat introduced document CC 248, which reflected the results of the discussion of previously-distributed documents CC 211 and CC 227 at a ad-hoc Group meeting on gas policy issues held at the Secretariat on 4th June 2003. Inter alia, this document addresses the correlation between regional pipeline gas markets and the global LNG market, and pricing issues relating to the competitiveness of LNG. Concerning the conclusions that emerged from this discussion, it was noted that among the key policy questions to which the Charter Conference should give consideration were the following:

- I) why natural gas prices remain substantially below cost-recovery levels in a large part of the Energy Charter's constituency, and
- II) in what time-frame could the countries concerned be reasonably expected to move towards a cost-based pricing system for natural gas.

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[...] some delegations felt that greater emphasis should be placed on presenting focused policy recommendations for discussion by the Conference, and also on suggesting means of implementing solutions to the problems identified in these papers. The view was also expressed that, for financial reasons, it would be preferable for further work on natural gas markets to be channeled through the Conference's existing subsidiary bodies, rather than an additional ad-hoc group. One delegation observed that future deliberations on natural gas markets should also encompass the issues of downstream market concentration and energy taxation policies, which were absent from CC 248.

It was concluded that the Secretariat should continue to develop its analytical work in support of policy discussions among delegations on natural gas market issues, building on the basis of the issues identified in CC 248.