

**THE ENERGY CHARTER
SECRETARIAT**

CS (97) 303

CC 100

RESTRICTED

Brussels, 14 November 1997

NOTE FROM THE SECRETARIAT

Subject: Trade Amendment

Please find attached the draft trade amendment reflecting the outcome of the negotiations in the Conference on 4 and 5 November 1997.

[AMENDMENT TO THE TRADE-RELATED PROVISIONS
OF THE ENERGY CHARTER TREATY]

PREAMBLE

The Parties to the Energy Charter Treaty,

Having regard to the Energy Charter Treaty adopted and opened for signature in Lisbon on 17 December 1994 and, in particular, Articles 29, 30 and 31 thereof;

Considering that the Energy Charter Treaty aims to promote access to international markets on commercial terms and generally to develop an open and competitive market for Energy Material and Products;

Further considering the aim to provide interim trade arrangements which will assist those Contracting Parties which are currently not members of the World Trade Organization in their preparation for such membership;

Mindful of the developments in the world trading system resulting from the conclusion of the Uruguay Round of Multilateral Trade Negotiations and the subsequent termination of the General Agreement on Tariffs and Trade 1947 and instruments related to it;

Acting pursuant to the commitment in Article 29, paragraph (6) of the Energy Charter Treaty, to conclude prior to 1 January 1998 negotiations on an amendment which shall, subject to the conditions laid down therein, and as appropriate in the light of any developments in the world trading system, commit each Contracting Party not to increase tariffs beyond the levels prescribed under this amendment;

Recalling that one purpose of the Energy Charter Treaty reflected a determination to remove technical, administrative and other barriers to trade in Energy Materials and Products [and related equipment, technologies and services]¹,

HAVE AGREED AS FOLLOWS:

¹ RUF suggests deletion.

[ARTICLE 29]²

INTERIM PROVISIONS ON TRADE-RELATED MATTERS

- (1) The provisions of this Article shall apply to trade in Energy Materials and Products while any Contracting Party is not a member of [the WTO and party to Related Instruments.]³
- (2)
 - (a) Trade in Energy Materials and Products between Contracting Parties at least one of which is not a member of the WTO or party to a relevant Related Instrument shall be governed, subject to subparagraph (b) and to the exceptions and rules provided for in Annex GII, by the provisions of the WTO Agreement and Related Instruments, as applied and practised with regard to Energy Materials and Products by members of the WTO among themselves, as if all Contracting Parties were members of the WTO and parties to Related Instruments.
 - (b) Such trade of a Contracting Party which is a state that was a constituent part of the former Union of Soviet Socialist Republics may instead be governed, subject to the provisions of Annex TFU, by an agreement between two or more such states, until 1 December 1999 or the admission of that Contracting Party to the WTO, whichever is the earlier.
- (3) Each signatory to this Treaty, and each state or Regional Economic Integration Organization acceding to this Treaty, shall on the date of its signature or of its deposit of its instrument of accession provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of Energy Materials and Products, notifying the level of such customs duties and charges applied on such date of signature or deposit. Any changes to such customs duties or charges of any kind imposed on or in connection with importation or exportation shall be notified to the Secretariat, which shall inform the Contracting Parties of such changes.
- [(4) In respect of trade between Contracting Parties at least one of which is not a member of the WTO, no Contracting Party shall increase any customs duty or

² RUF general reserve.

³ The LAC is to confirm the appropriateness of these words.

charge of any kind imposed on or in connection with importation or exportation of Energy Materials and Products above the lowest of the levels applied []⁴.

A Contracting Party may increase such customs duty or other charge above the level referred to above only if:

- (a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement and Related Instruments, other than those provisions of the WTO Agreement and Related Instruments listed in Annex GII; or
 - (b) in exceptional circumstances not elsewhere provided for in this Treaty, the Charter Conference decides to waive the obligation otherwise imposed on a Contracting Party by this paragraph, consenting to an increase in a customs duty, subject to any conditions the Charter Conference may impose.
- (5) Notwithstanding paragraph (4), in the case of trade referred to in that paragraph, Contracting Parties listed in Annex BR⁵ shall not increase any customs duty or other charge above the level resulting from their commitments and any provisions applicable to them under the WTO Agreement and Related Instruments.]^{6 7}

⁴ The following options for applicable date(s) for a standstill were mentioned during previous discussions in Working Group II and its technical sub-group:

- the lowest of the levels applied in the period between the date of signature of the ECT and the date of the conclusion of the negotiations of the “tariff standstill” (EU)
- the lower of the level at signature of the ECT and entry into force of the “agreement”
- the date of adoption of the “tariff standstill” amendment
- the date of signature of (or accession to) the ECT
- some future date to allow for discussions of the current levels of customs duties and charges and possible downward adjustment
- 1 January 1996 (as the date at which countries had been asked to update the information - circulated in February 1996)
- 1 July 1996 as suggested in T 10.

⁵ The question of countries to be listed on Annex BR and a possible new Annex BR II for non-WTO members on accession to WTO was deferred. One suggestion to deal with the later case was to include at the end of paragraph (5) the following sentence: “A Contracting Party listed in Annex BR II shall, upon its accession to the WTO, be considered to be listed in BR I.”

⁶ AZB, BLR, G, KAZ, KYR, RUF and U reserve on application of a legally binding standstill to them. There will be consultations with delegations on the standstill issue prior to the Chairman’s compromise proposal.

⁷ A text for a best endeavours standstill updating the present Article 29 commitment with respect to references to the WTO was presented but not discussed. The text is as follows:

(5bis) In respect of trade in Energy Materials and Products between Contracting Parties at least one of which is not a member of the WTO, Contracting Parties shall endeavour not to increase any customs duty or charge of any kind imposed on or in connection with importation or exportation above the lowest of the levels applied [].

A Contracting Party may increase such customs duty or other charge above the level referred to

(6) Annex D shall apply :

- (a) to disputes regarding compliance with provisions applicable to trade under this Article;
- (b) to disputes regarding the application by a Contracting Party of any measure, whether or not it conflicts with the provisions of this Article, which is considered by another Contracting Party to nullify or impair any benefit accruing to it directly or indirectly under this Article; and
- (c) unless the Contracting Parties parties to the dispute agree otherwise, to disputes regarding compliance with Article 5 between Contracting Parties at least one of which is not a member of the WTO.

except that Annex D shall not apply to any dispute between Contracting Parties, the substance of which arises under an agreement that:

- (i) has been notified in accordance with and meets the other requirements of sub-paragraph (2)(b) and Annex TFU; or
- (ii) establishes a free-trade area or a customs union as described in article XXIV of the GATT 1994.

above only if:

- (a) in case of a customs duty or other charge imposed on or in connection with importation or exportation, such action is not inconsistent with the applicable provisions of the WTO Agreement and Related Instruments, other than those provisions of the WTO Agreement and Related Instruments listed in Annex GII; or
- (b) it has, to the fullest extent practicable under its legislative procedures, notified the Secretariat of its proposal for such an increase, given other interested Contracting Parties reasonable opportunity for consultation with respect to its proposal, and accorded consideration to any representations from such Contracting Parties.

(5ter)Notwithstanding paragraph (5bis), in the case of trade referred to in that paragraph, Contracting Parties listed in Annex BR[I] in respect of Energy Materials and Products shall endeavour not to increase any customs duty or other charge above the level resulting from their commitments and any provisions applicable to them under the WTO Agreement and Related Instruments. [A Contracting Party listed in Annex BR II shall, upon its accession to the WTO, be considered to be listed in BR I.]

A Contracting Party listed in Annex BR[I] may increase such customs duty or other charge above the level referred to in this paragraph only if it has fulfilled the requirements of sub-paragraph (5bis) (b).

ANNEX G II⁸

**EXCEPTIONS AND RULES GOVERNING THE APPLICATION OF THE
PROVISIONS OF THE WTO AGREEMENT AND RELATED
INSTRUMENTS
(in accordance with Article 29(2)(a))**

(A) Exceptions to the Application of the Provisions of the WTO Agreement and Related Instruments.

The following provisions of the WTO Agreement and Related Instruments shall not be applicable under Article 29(2)(a):

- (1) Agreement Establishing the World Trade Organization
All except article [IX, paragraphs 2⁹, 3 and 4 and]¹⁰ XVI, paragraphs 1, 3 and 4

- (a) Annex 1A to the WTO Agreement:
Multilateral Agreements on Trade in Goods:

- (i) General Agreement on Tariffs and Trade 1994

II	Schedules of Concessions, paragraphs (1)(a),(1)(b,1st sentence), (1)(c) and (7)
IV	Special Provisions relating to Cinematographic Films
XV	Exchange Arrangements
XVIII	Governmental Assistance to Economic Development
XXII	Consultation
XXIII	Nullification and Impairment
XXIV	Customs Unions and Free-Trade Areas, paragraph 6
XXV	Joint Action by the Contracting Parties
XXVI	Acceptance, Entry into Force and Registration
XXVII	Withholding or Withdrawal of Concessions
XXVIII	Modification of Schedules

⁸ CH will, for transparency purposes, prepare a positive list. The negative list approach would continue to be the legally binding approach.

⁹ The Technical Working Group agreed that the Energy Charter Conference should be able to make interpretations provided that there was no conflict with the WTO.

¹⁰ The Technical Working Group agreed that WTO waivers would apply automatically in the context of the ECT. It should be possible to waive GATT obligations other than on tariff standstill matters, it being understood that any action by the WTO should have primacy. EC indicated that its attitude on this issue would be influenced by the availability of waivers under the present Article 29. Hungary scrutiny reserve.

XXVIII bis	Tariff Negotiations
XXIX	The relation of this Agreement to the Havana Charter
XXX	Amendments
XXXI	Withdrawal
XXXII	Contracting Parties
XXXIII	Accession
XXXV	Non-application of the Agreement between particular Contracting Parties
XXXVI	Principles and Objectives
XXXVII	Commitments
XXXVIII	Joint Action
Annex H	Relating to Article XXVI
Annex I	Notes and Supplementary Provisions (related to the above-mentioned GATT provisions)

Understanding on the Interpretation of Article II: 1(b) of the GATT 1994

2	Date of incorporation of other duties and charges into the schedule
4	Challenges, (1st sentence only)
6	Dispute settlement
8	Supersession of BISD 27S/24

Understanding on the Interpretation of Article XVII of the GATT 1994

1	only the phrase “for review by the working party to be set up under paragraph (5)”
5	Working Party on state trading

Understanding on the Balance-of-Payments Provisions of the GATT 1994

5	Committee on Balance-of-Payments Restrictions, except last sentence
7	Review by the Committee [, the phrase “or under paragraph 12(b) of Article XVIII”] ¹¹
8	Simplified consultation procedures
13	Conclusions of Balance-of-Payments consultations, first sentence, third sentence: the phrase “and XVIII: B, the 1979 Declaration” and last sentence.

Understanding on the Interpretation of Article XXIV of the GATT 1994

All except paragraph 13

¹¹ J scrutiny reserve.

Understanding in Respect of Waivers of Obligations under the GATT
1994

3 Nullification and Impairment

Understanding on the Interpretation of Article XXVIII of the GATT
1994

Marrakesh Protocol to the GATT 1994

- (ii) Agreement on Agriculture
- (iii) Agreement on the Application of Sanitary and Phytosanitary Measures
- (iv) Agreement on Textiles and Clothing
- (v) Agreement on Technical Barriers to Trade
 - Preamble (paragraphs 1, 8, 9)
 - 1.3 General Provisions
 - 10.5 The words “Developed country” and the words “French or Spanish” which shall be replaced by “Russian”
 - 10.6 The phrase “and draw attention of developing country Members interest to them.”
 - 10.9 Information about technical regulations, standards and certification systems (languages)
 - 11 Technical assistance to other Parties
 - 12 Special and differential treatment of developing countries
 - 13 The Committee on Technical Barriers to Trade
 - 14 Consultation and Dispute Settlement
 - 15 Final Provisions (other than 15.2 and 15.5)
 - Annex 2 Technical Expert Groups
- (vi) Agreement on Trade-Related Investment Measures
- (vii) Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping)
 - 15 Developing Country Members
 - 16 Committee on Anti-Dumping Practices
 - 17 Consultation and Dispute Settlement
 - 18 Final Provisions, paragraphs 2 and 6
- (viii) Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation)

Preamble, paragraph 2, the phrase “and to secure additional benefits for the international trade of developing countries”.

14 Application of Annexes (second sentence except as far as it refers to Annex III paragraphs 6 and 7)

18 Institutions (Committee on Customs Valuation)

19 Consultation and Dispute Settlement

20 Special and differential treatment of developing countries

21 Reservations

23 Review

24 Secretariat

Annex II Technical Committee on Customs Valuation

Annex III Extra Provisions (except paragraphs 6 and 7)

(ix) Agreement on Preshipment Inspection

Preamble, paragraphs 2 and 3

3.3 Technical Assistance

6 Review

7 Consultation

8 Dispute Settlement

(x) Agreement on Rules of Origin

Preamble, 8th indent

4 Institutions

6 Review

7 Consultation

8 Dispute Settlement

9 Harmonization of Rules of Origin

Annex I Technical Committee on Rules of Origin

(xi) Agreement on Import Licensing Procedures

1.4(a) General Provisions (last sentence)

2.2 Automatic Import Licensing (footnote 5)

3.5(iv) Non-Automatic Import Licensing (last sentence)

4 Institutions

6 Consultations and Dispute Settlement

7 Review (except paragraph 3)

8 Final provisions (except paragraph 2)

(xii)¹¹ Agreement on Subsidies and Countervailing Measures

4 Remedies (except paragraphs 4.1, 4.2 and 4.3)

5 Adverse Effects, last sentence

6 Serious Prejudice (paragraphs 6.6, the phrases “subject to the provisions of paragraph 3 of Annex V” and

“arising under Article 7, and to the panel established pursuant to paragraph 4 of Article 7”, 6.8 the phrase “, including information submitted in accordance with the provisions of Annex V” and 6.9)

7	Remedies
8	Identification of Non-Actionable Subsidies, paragraph 8.5 and Footnote 25
9	Consultations and Authorised Remedies
24	Committee on Subsidies and Countervailing Measures and Subsidiary Bodies
26	Surveillance
27	Special and Differential Treatment of Developing Country Members
29	Transformation into Market Economy, paragraph 29.2 (except first sentence)
30	Dispute Settlement
31	Provisional Application
32.2, 32.7 and 32.8	(only insofar as it refers to Annexes V and VII) Final Provisions

Annex V Procedures for Developing Information concerning Serious Prejudice

Annex VII Developing Countries

(xiii) Agreement on Safeguards

9	Developing Country Members
12	Notification and Consultation [paragraph 10] ¹¹
13	Surveillance
14	Dispute Settlement
	Annex Exception

(b) Annex 1B to the WTO Agreement:
General Agreement on Trade in Services

[(c) Annex 1C to the WTO Agreement:
Agreement on Trade-Related Aspects of Intellectual Property Rights]¹²

(d) Annex 2 to the WTO Agreement:
Understanding on Rules and Procedures Governing the Settlement of Disputes

(e) Annex 3 to the WTO Agreement:
Trade Policy Review Mechanism

¹² CH consider that the TRIPS agreement should be applicable.

- (2) Related Instruments:
- (a) Annex 4 to the WTO Agreement:
 - (i) Plurilateral Trade Agreements
 - Agreement on Trade in Civil Aircraft
 - Agreement on Government Procurement
 - International Dairy Arrangement
 - International Bovine Meat Agreement
 - (b) Ministerial Decisions, Declarations and Understanding:
 - (i) Decision on Measures in favour of Least-Developed Countries
 - (ii) Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policymaking
 - (iii) Decision on Notification Procedures
 - (iv) Declaration on the Relationship of the WTO with the IMF
 - (v) Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries
 - (vi) Decision on Notification of First Integration under Article 2.6 of the Agreement on Textiles and Clothing
 - (vii) Decision on Review of the ISO/IEC Information Centre Publication
 - (viii) Decision on Proposed Understanding on WTO-ISO Standards Information System
 - (ix) Decision on Anti-Circumvention
 - (x) Decision on Review of Article 17.6 of the Agreement on Implementation of Article VI of the GATT 1994
 - (xi) Declaration on Dispute Settlement pursuant to the Agreement on Implementation of Article VI of the GATT 1994 or Part V of the Agreement on Subsidies and Countervailing Measures
 - (xii) Decision Regarding Cases Where Customs Administrations Have Reason to Doubt the Truth or Accuracy of the Declared Value

- (xiii) Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires
 - (xiv) Decision on Institutional Arrangements for the GATS
 - (xv) Decision on certain Dispute Settlement Procedures for the GATS
 - (xvi) Decision on Trade in Services and the Environment
 - (xvii) Decision on Negotiations on Movement of Natural Persons
 - (xviii) Decision on Financial Services
 - (xix) Decision on Negotiations on Maritime Transport Services
 - (xx) Decision on Negotiations on Basic Telecommunications
 - (xxi) Decision on Professional Services
 - (xxii) Decision on Accession to the Agreement on Government Procurement
 - (xxiv) Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes
 - (xxv) Understanding on Commitments in Financial Services
 - (xxvi) Decision on the Acceptance of and Accession to the Agreement Establishing the WTO
 - (xxvii) Decision on Trade and Environment
 - (xxviii) Decision on Organisational and Financial Consequences Following from Implementation of the Agreement Establishing the WTO
 - (xxix) Decision on the Establishment of the Preparatory Committee for the WTO
- (3) All other provisions in the WTO Agreement or Related Instruments which relate to:
- (a) governmental assistance to economic development and the treatment of developing countries, except for paragraphs (1) to (4) of the Decision of 28 November 1979 (L/4903) on Differential and more Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

- (b) the establishment or operation of specialist committees and other subsidiary institutions;
 - (c) signature, accession, entry into force, withdrawal, deposit and registration.
- (4) All agreements, arrangements, decisions, understandings or other joint action pursuant to the provisions listed as not applicable in subparagraphs (1) to (3).
 - (5) Trade in nuclear materials may be governed by agreements referred to in the Declarations related to this paragraph contained in the Final Act of the European Energy Charter Conference.

(B) Rules Governing the Application of Provisions of the WTO Agreement and Related Instruments.

- (1) Interpretations of the WTO Agreement including the multilateral trade agreements, taken by the Ministerial Conference or the General Council of the WTO under paragraph 2 of article IX of the WTO Agreement shall be applicable insofar as they concern provisions applicable under Article 29(2)(a).
- (2) Requests for waivers under Article 29(2) and (4)(b) shall be submitted to the Charter Conference, which shall follow, in carrying out these duties, the procedures of paragraphs 3 and 4 of article IX of the WTO Agreement.
- (3) Waivers of obligations in force in the WTO shall be considered in force for the purposes of Article 29 while they remain in force in the WTO.
- (4) The provisions of article II of the GATT 1994 which have not been disapplied shall, without prejudice to Article 29(5), be modified as follows :
 - "(i) All Energy Materials and Products imported from or exported to any other Contracting Party shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation or exportation, in excess of those imposed on the date of the standstill referred to in Article 29(4), first sentence, or under Article 29(5), or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing or exporting territory on the date referred to in Article 29(4), first sentence.
 - (ii) Nothing in article II of the GATT 1994 shall prevent any Contracting Party from imposing at any time on the importation [or exportation] of any product:
 - (a) a charge equivalent to an internal tax imposed consistently with the provisions of paragraph 2 of article III of GATT 1994 in respect of the like domestic product or in respect of an article from which the imported product has been manufactures or produced in whole or in part;
 - (b) any anti-dumping or countervailing duty applied consistently with the provisions of article VI of GATT 1994;

- (c) fees or other charges commensurate with the cost of services rendered.
- (iii) No Contracting Party shall alter its method of determining dutiable value or of converting currencies so as to impair the value of the standstill obligations provided for in Article 29(4) or (5).
- (iv) If any Contracting Party establishes, maintains or authorises, formally or in effect, a monopoly of the importation or exportation of any Energy Material or Product described in Annex EM, such monopoly shall not operate so as to afford protection on the average in excess of the amount of protection permitted by the standstill obligation provided for in Article 29(4) or (5). The provisions of this paragraph shall not limit the use by Contracting Parties of any form of assistance to domestic producers permitted by other provisions of this Treaty.
- (v) If any Contracting Party considers that a product is not receiving from another Contracting Party the treatment which the first Contracting Party believes to have been contemplated by the standstill obligation provided for in Article 29(4) or (5), it shall bring the matter directly to the attention of the other Contracting Party. If the latter agrees that the treatment contemplated was that claimed by the first Contracting Party, but declares that such treatment cannot be accorded because a court or other proper authority has ruled to the effect that the product involved cannot be classified under the tariff laws of such Contracting Party so as to permit the treatment contemplated in this Amendment, the two Contracting Parties, together with any other Contracting Parties substantially interested, shall enter promptly into further negotiations with a view to a compensatory adjustment of the matter.
- (vi) (a) The specific duties and charges included in the Tariff Record relating to the Contracting Parties members of the International Monetary Fund, and margins of preference in specific duties and charges maintained by such Contracting Parties, are expressed in the appropriate currency at the par value accepted or provisionally recognized by the Fund at the date of the standstill referred to in Article 29(4), first sentence, or under Article 29(5). Accordingly, in case this par value is reduced consistently with the Articles of Agreement of the International Monetary Fund by more than twenty per centum, such specific duties and charges and margins of preference may be adjusted to take account of such reduction; Provided that the Conference concurs that such adjustments will not impair the value of the standstill obligation provided for in Article 29(4) or (5) or elsewhere in this Amendment, due account being taken of all factors which may influence the need for, or urgency of, such adjustments.
- (b) Similar provisions shall apply to any Contracting Party not a member of the Fund, as from the date on which such Contracting Party becomes a member of the Fund or enters into a special exchange agreement in pursuance of Article XV of GATT 1994”

(vii) On or before [the date of signature] [the entry into force] of this Amendment, each Contracting Party shall notify the Secretariat of the customs duties [and charges if any kind] applicable on the date of the standstill referred to in Article 29(4), first sentence. The Secretariat shall keep a Tariff Record of the customs duties [and charges if any kind] relevant for the purpose of the standstill on customs duties and charges of any kind under Article 29(4) or (5).

(5) The Decision of 26 March 1980 on “Introduction of a Loose-Leaf System for the Schedules of Tariff Concessions” (BISD 27S/24) shall not be applicable under Article 29(2)(a). The applicable provisions of the Understanding on the Interpretation of Article II:1(b) of the GATT 1994 shall, without prejudice to Article 29(5), apply with the following modifications:

“ Understanding on the Interpretation of Article II:1(b)
of the General Agreement on Tariffs and Trade 1994

Contracting Parties hereby agree as follows :

- (i) In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of article II of GATT 1994, the nature and level of any “other duties or charges” levied on any Energy Materials and Products with respect to their importation or exportation, as referred to in that provision, shall be recorded in the Tariff Record at the levels applying at the date of the standstill referred to in Article 29(4), first sentence, or under Article 29(5) respectively, against the tariff item to which they apply. It is understood that such recording does not change the legal character of “other duties or charges”.
- (ii) “Other duties or charges” shall be recorded in respect of all Energy Materials and Products.
- (iii) It will be open to any Contracting Party to challenge the existence of an “other duty or charge”, on the ground that no such “other duty or charge” existed at the date of the standstill referred to in Article 29(4), first sentence, or the relevant date under Article 29(5), for the item in question, as well as the consistency of the recorded level of any “other duty or charge” with the standstill obligation provided for by Article 29(4) or (5), for a period of one year after the entry into force of this Amendment or one year after the notification to the Secretariat of the level of customs duties and charges of any kind referred to in Article 29(4), first sentence, or Article 29(5), if that is the later.
- (iv) The recording of “other duties or charges” in the Tariff Record is without prejudice to their consistency with rights and obligations under GATT 1994 other than those affected by sub-paragraph (iii) above. All Contracting Parties retain the right to challenge, at any time, the consistency of any “other duty or charge” with such obligations.

- (v) “Other duties or charges” omitted from a notification to the Secretariat shall not subsequently be added to it and any “other duty or charge” recorded at a level lower than that prevailing on the applicable date shall not be restored to that level unless such additions or changes are made within six months of the notification to the Secretariat.”
- (6) Where the WTO Agreement or a Related Instrument refers to “duties inscribed in the Schedule” or to “bound duties”, there shall be substituted “the level of customs duties and charges of any kind permitted under Article 29(4) or (5)”.
- (7) Where the WTO Agreement or a Related Instrument specifies the date of entry into force of the WTO Agreement (or an analogous phrase) as the reference date for an action, there shall be substituted the entry into force of this Amendment.
- (8) With respect to notifications required by the provisions made applicable by Article 29(2)(a):
- (a) Contracting Parties which are not members of the WTO or parties to a Related Instrument shall make their notifications to the Secretariat. The Secretariat shall circulate copies of the notifications to all Contracting Parties. Notifications to the Secretariat shall be in one of the authentic languages of this Treaty. The accompanying documents may be solely in the language of the Contracting Party;
- (b) such requirements shall not apply to Contracting Parties to this Treaty which are also members of the WTO and parties to Related Instruments, which contain their own notification requirements.
- (9) Where Article 29(2)(a) or (4)(b) applies, the Charter Conference shall carry out any applicable duties that the WTO Agreement or a Related Instrument assigned to the relevant bodies under the WTO Agreement or a Related Instrument.
- (10) ~~[New or revised instruments introduced under the WTO Agreement or a Related Instrument shall be applied as follows :~~
- ~~(a) Those which relate [exclusively] [predominantly] [only] to provisions of the WTO Agreement or Related Instruments which are applicable under Article 29(2)(a), shall apply [from the date of their applicability under the WTO Agreement or Related Instruments];~~
- ~~(b) Those which do not relate to any provisions of the WTO Agreement or Related Instruments which are applied under Article 29(2)(a) shall not be applied under Article 29(2)(a);~~
- (c) Those which do not fall under sub-paragraph (a) or (b) shall.....
- [the substance is recorded at footnote 13 below]*
- ~~(d) Adopted panel reports and appellate body reports under the Understanding on Rules and Procedures Governing the Settlement of Disputes, contained in Annex 2 to the WTO Agreement, and other case law developed under the~~

~~WTO Agreement or Related Instruments, related to applicable provisions of the WTO Agreement or Related Instruments, are automatically likewise applicable under Article 29(2)(a);]~~¹³

¹³ The Legal Advisory Committee should be asked to confirm that it was not necessary to include additional provisions to achieve points a), b) and d). In cases where an instrument was not clearly wholly within a) or b), the text should contain the following elements:

[Any Contracting Party may request Conference to consider a new or revised instrument. It may at the same time request Conference to decide that all or part of that instrument should not be applied or be applied only with modifications, including on an interim basis.

Such a request should be made within 6 months of circulation by the Secretariat of a notice that such a new or revised instrument has been adopted by the WTO.

A WTO member which was not subject to a new or revised instrument in the WTO should not be bound by it in the context of the ECT.

Conference should be able to take decisions by a $\frac{3}{4}$ majority.]

J scrutiny reserve.

EC scrutiny reserve on the treatment of new plurilateral agreements.

ANNEX D AMENDMENTS

“Annex D is amended as follows:

At the end of paragraph 1(a), delete the period and add thereafter following “29”:

“, or about any measures that might nullify or impair any benefit accruing to a Contracting Party directly or indirectly under the provisions applicable to trade under Article 29.”

In paragraph 1(b), at the end of the first sentence, delete the period and insert thereafter following “29”:

“, or any measure that might nullify or impair any benefit accruing to a Contracting Party directly or indirectly under the provisions applicable to trade under Article 29.”

and in the second sentence, replace “GATT” with “WTO Agreement”.

In paragraph 1(d), insert after the comma before “the Contracting Parties”:

“or to nullify or impair any benefit accruing to it directly or indirectly under the provisions applicable to trade under Article 29,”

In paragraph 2(a), second sentence, replace “GATT” with “WTO Agreement”.

In paragraph 3(a), second sentence, replace “GATT” with “WTO Agreement” and replace the penultimate sentence with :

“Panels shall be guided by the interpretations given to the WTO Agreement and Related Instruments within the framework of the WTO Agreement or Related Instruments and shall not question the compatibility with Article 5 or 29 of practices applied by any Contracting Party which is a member of the WTO to other members of the WTO to which it applies the WTO Agreement and which have not been taken by those other members to dispute resolution under the WTO Agreement or Related Instruments.”

In paragraph 4(b), first sentence, replace “GATT” with “WTO Agreement”.

In paragraph 5(c), replace “GATT” with “WTO Agreement”.

In paragraph 7, first sentence, replace “party to the GATT” with

“member of the WTO or party to a Related Instrument”

and replace “panellists currently nominated for the purpose of GATT dispute panels” with:

“persons whose names appear on the indicative list of governmental and non-government individuals, referred to in article 8 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 to the WTO Agreement or who have in the past served as panelists on a GATT or WTO dispute settlement panel.”

Add after paragraph 9:

“(10) Where a Contracting Party invokes Article 29(7)(b), this Annex shall apply, subject to the following modifications:

- (a) the complaining party shall present a detailed justification in support of any request for consultations or for the establishment of a panel regarding a measure which it considers to nullify or impair any benefit accruing to it directly or indirectly under Article 29;
- (b) where a measure has been found to nullify or impair benefits under Article 29 without violation thereof, there is no obligation to withdraw the measure; however, in such a case the panel shall recommend that the Contracting Party concerned make a mutually satisfactory adjustment;
- (c) the arbitral panel provided for in paragraph (6)(b), upon request of either party, may determine the level of benefits that have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute”.

OTHER AMENDMENTS TO THE ECT
IN CONSEQUENCE OF THE CHANGE OF REFERENCE :

In the Preamble, paragraph 7, replace “General Agreement on Tariffs and Trade” with “Agreement Establishing the World Trade Organization”

and in paragraph 9, replace “General Agreement on Tariffs and Trade” and “parties thereto” with “World Trade Organization” and “members thereof”

and in paragraph 10, replace “parties to the General Agreement on Tariffs and Trade and” with “members of the World Trade Organization and parties to”.

In Article 1, replace the text of paragraph (11) with :

“(a) “WTO” means the World Trade Organization established by the Agreement Establishing the World Trade Organization.

(b) “WTO Agreement”¹⁴ means the Agreement Establishing the World Trade Organization including the multilateral trade agreements contained in its Annexes 1, 2 and 3, which are binding on all members of the WTO, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified.

(c) “Related Instruments” means the plurilateral trade agreements contained in Annex 4 to the Agreement Establishing the World Trade Organization and agreements, arrangements or other legal instruments including decisions, declarations and understandings, concluded under the auspices of the WTO, which are binding on those members of the WTO that have accepted them, as subsequently rectified, amended or modified.

(d) “GATT 1994” means the General Agreement on Tariffs and Trade as specified in Annex 1A to the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified.”

In Article 4, title, replace “GATT” with “WTO Agreement”

and in the text of Article 4, replace “parties to the GATT” with “members of the WTO”

and replace “GATT” before “and Related Instruments” with “WTO Agreement”.

In Article 5, paragraph (1), insert “1994” following “article III and XI of the GATT”

and replace “GATT” before “and Related Instruments” with “WTO Agreement”.

In Article 14, paragraph (6), replace “GATT” with “WTO Agreement”.

In Article 20, paragraph (1), replace “GATT” with “WTO Agreement”.

In Article 25, paragraph (3), replace “GATT” with “WTO Agreement”.

In the ‘Table of Contents’ of Annexes to the Energy Charter Treaty, 9. Annex G, replace “GATT” with “WTO Agreement”.

¹⁴ The definitions of “WTO Agreement” and “Related Instruments” may require further reflection.

In Annex TRM, paragraph (1)(a) and (b) and in paragraphs (3)(a) and (b), replace “party to the GATT” with “member of the WTO”.

In Annex TFU, paragraphs (2)(c), (4), first sentence, and (6), first sentence, replace “GATT” with “WTO Agreement”.

ANNEX BR

List of Contracting Parties which shall not increase any customs duty or other charge above the level resulting from their commitments and any provisions applicable to them under the WTO Agreement and Related Instruments.

(In accordance with Article 29 (5))

Country x

Country y

Country z

[PART II: FINAL PROVISIONS]¹⁵

ARTICLE []

ENTRY INTO FORCE

- (1) This Amendment shall, in accordance with Article 42 of the Energy Charter Treaty, enter into force between Contracting Parties to the Energy Charter Treaty on the ninetieth day after the date of deposit with the Depositary of instruments of ratification, acceptance or approval thereof, by at least three-fourth of the Contracting Parties to the Energy Charter Treaty.
- (2) For each Contracting Party to the Energy Charter Treaty which ratifies, accepts or approves this Amendment thereafter, it shall enter into force on the ninetieth day after the date of deposit by that Contracting Party to the Energy Charter Treaty of its instrument of ratification, acceptance, or approval.
- (3) For the purposes of paragraph (1), any instrument deposited by a Regional Economic Integration Organization shall not be counted as additional to those deposited by member states of such Organization.

ARTICLE []

IF APPROPRIATE ON PROVISIONAL APPLICATION

ARTICLE []

RESERVATIONS

No reservations may be made to this Amendment.

ARTICLE []

STATUS OF ANNEXES

The Annex[es] to this Amendment [and Decisions ...] [is an] [are] integral part[s] of the Amendment.

¹⁵ The Final Provisions have not been discussed. Some or all of the following provisions may be unnecessary or need amendment. The LAC will cover this in its review.

ARTICLE []

DEPOSITARY

The Government of the Portuguese Republic shall be the Depositary of this Amendment.

ARTICLE []

AUTHENTIC TEXTS

In witness whereof the undersigned, being duly authorised to that effect, have signed this Amendment in English, French, German, Italian, Russian and Spanish, of which every text is equally authentic, in one original, which will be deposited with the Government of the Portuguese Republic.