

Brussels, 3 December 1997

NOTE FROM THE CONFERENCE CHAIRMAN

Subject: Trade Amendment and Inclusion of Energy-Related Equipment

1. At the November Conference meeting I promised to circulate a compromise proposal on all three texts being negotiated with the intention of reaching substantial agreement on all outstanding issues at the December Conference meeting. Attached to this note is my proposal for a compromise text for a combined amendment on trade in Energy Materials and Products and the inclusion of Energy-Related Equipment in the trade provisions of the ECT (i.e. one instrument).
2. The document does not include a proposal for a list of equipment which is subject to consultations on 8 and possibly 9 December 1997.
3. The objective of the negotiations is to establish a legally binding tariff standstill regime for Energy Materials and Products and include Energy-Related Equipment in the trade provisions. Based on the informal consultations I have had, the only compromise solution that I think has a chance of finding agreement is for the amendment to provide for a best endeavours tariff standstill for both Energy Materials and Products and Energy-Related Equipment. I consider that this should be complemented by the possibility of a future legally binding standstill for agreed items. Accordingly, I have also introduced in the text a possibility to move to the level of a legally binding tariff standstill by unanimous vote at a later date without having to go through a formal amendment procedure. That procedure is reflected in Article 2 through the proposed amendment of ECT Article 36 (Voting).

The proposal therefore includes provision for a legally binding standstill for items listed in Annexes EMI and EQI both of which in the current proposal are empty. The present ECT Annex on Energy Materials and Products (Annex EM) becomes Annex EM II (see Article 2 amending Annex EM to become Annex EM II).

The text of the best endeavours tariff standstill provision (Article 29(5bis) and (5ter)) has been based on the ECT Article 29(4) and (5) as discussed by the Technical Sub-Group on 1 and 2 December. A number of other technical changes to the text resulting from that meeting have also been incorporated.

It is implicit in the proposal that the Charter Conference in deciding on moving items to the legally binding standstill commitment also decides on the date of the standstill and the listing of countries in Annex BR.

If my proposal on substance is acceptable and we retain the notion of having the trade provisions in two separate but identical instruments (except for coverage), this is likely to cause confusion. Moreover, the stand-alone amendment on Energy Materials and Products might not be viable because few (if any) signatories would ratify it, most preferring instead to ratify the Equipment and Materials amendment. In view of the parallel nature of the provisions with respect to Energy Materials and Products and Energy-Related Equipment, I see no advantage in having 2 separate amendments.

4. With respect to TRIPS the Technical Sub-Group agreed to disapply the application of the TRIPS agreement. The group, however, did consider favourably the possible conclusion of a joint declaration with respect to the protection of intellectual property rights. I have asked the Secretariat to conduct consultations with delegations indicating an interest on such a text prior to the Conference meeting.
5. The Technical Sub-Group also considered principles for procedures for dealing with new or amended instruments adopted by the WTO. Based on those principles a text has been provided by the Secretariat at Annex W, part B, paragraph (10) (Delegations should note that Annex GII is renamed Annex W). Delegations should submit any comments with respect to that provision prior to the Conference meeting, so that any outstanding technical issues might be dealt with prior to that meeting.
6. I have on recommendation of the Technical Sub-Group included an article on provisional application of the amendment. The Legal Advisory Committee (LAC) advised that all other final provisions were unnecessary as those of the ECT would apply. The LAC also advised that preambular language is optional. As a consequence I propose deletion of the preamble.
7. Changes resulting from the review of the LAC have been included. The explanatory report from the LAC is being circulated as CC 108.
8. All outstanding footnotes were dealt with by the Technical Sub-Group.
9. One delegation has brought up the issue of the so-called "positive list" for transparency. It was agreed in the Technical Sub-Group that this would not be possible to achieve against the time line of the conclusion of the negotiation before 1 January 1998. The Secretariat was invited to develop a transparency document as soon as resources allow with the presented proposal (contained in RD-3 of the December Sub-Group meeting) as a point of departure. Once the negotiations are concluded, the Secretariat will undertake this task. Prior to the Conference meeting the Secretariat will together with delegations concerned further examine the proposal.



Energy Charter

DRAFT

AMENDMENT

TO

THE TRADE-RELATED PROVISIONS

OF THE ENERGY CHARTER TREATY

Chairman's proposal

**AMENDMENT TO THE TRADE-RELATED PROVISIONS
OF THE ENERGY CHARTER TREATY**

The Contracting Parties to the Energy Charter Treaty,

HAVE AGREED AS FOLLOWS :

ARTICLE 1

Article 29 of the Energy Charter Treaty shall be replaced by the following text:

ARTICLE 29

INTERIM PROVISIONS ON TRADE-RELATED MATTERS

- (1) The provisions of this Article shall apply to trade in Energy Materials and Products and Energy-Related Equipment while any Contracting Party is not a member of the WTO.
- (2)
 - (a) Trade in Energy Materials and Products and Energy-Related Equipment between Contracting Parties at least one of which is not a member of the WTO shall be governed, subject to subparagraph (b) and to the exceptions and rules provided for in Annex W, by the provisions of the WTO Agreement, as applied and practised with regard to Energy Materials and Products and Energy-Related Equipment by members of the WTO among themselves, as if all Contracting Parties were members of the WTO.
 - (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)
 - (a) Each signatory, State or Regional Economic Integration Organization to this Treaty shall on the date of its signature or 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 deposit⁴. Each signatory, State or Regional Economic Integration Organization to this Treaty shall on the date of the adoption of this Amendment by the Charter Conference 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-Related Equipment, notifying the level of such customs duties and charges applied on such date of adoption.

- (b) Each state or Regional Economic Integration Organization acceding to this Treaty, shall on the date 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 and Energy-Related Equipment, notifying the level of such customs duties and charges applied on such date of 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 charge of any kind imposed on or in connection with importation or exportation of Energy Materials and Products listed in Annex EM I¹ or Energy-Related Equipment listed in Annex EQI¹ above the lowest of the levels applied on the date of the decision by the Charter Conference to list a particular item in the relevant Annex.

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, other than those provisions of the WTO Agreement listed in Annex W²; 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 BR in respect of Energy Materials listed in Annex EM I and Products or Annex BRQ in respect of Energy-Related Equipment listed in Annex EQI 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.

(5bis) Each Contracting Party shall endeavour not to increase any customs duty or other charge of any kind levied at the time of importation or exportation:

- (a) in the case of the importation of Energy Materials and Products listed in Annex EM II or Energy-Related Equipment listed in Annex EQII and described in Part I of the Schedule relating to the Contracting Party referred

¹ In the current proposal these two Annexes are empty.

² Annex W will need to be amended as a consequence of inclusion of Energy-Related Equipment in Article 29.

to in article II of the GATT 1994, above the level set forth in that Schedule, if the Contracting Party is a member of the WTO;

- (b) in the case of the exportation of Energy Materials and Products listed in Annex EM II or Energy-Related Equipment listed in Annex EQII, and that of their importation if the Contracting Party is not a member of the WTO, above the level most recently notified to the Secretariat, except as permitted by the provisions made applicable by sub-paragraph (2)(a).

(5ter)A Contracting Party may increase such customs duty or other charge above the level referred to in paragraph 5bis only if:

- (a) in case of a customs duty or other charge levied at the time of importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex W; 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.

(6) Other duties and charges levied on or in connection with importation or exportation or Energy Materials and Products or Energy-Related Equipment shall be subject to the provisions of the Understanding on the Interpretation of Article II: I(b) of the GATT 1994 as modified according to Annex W.

(7) 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.

ARTICLE 2

The Energy Charter Treaty shall be amended as follows:

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

In the Preamble, paragraph eight, replace “related equipment” with “Energy-Related Equipment”.

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

In paragraph ten, 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 (4) with:

“(4) “Energy Materials and Products”, Based on the Harmonized System of the World Customs Organisation and the Combined Nomenclature of the European Communities, means the items included in Annexes EM I and/or EM II as the case requires.”

In Article 1, after the text of paragraph (4) insert:

“(4bis) “Energy-Related Equipment”, based on the Harmonised System of the World Customs Organization, means the items included in Annexes EQI and/or EQII as the case requires.”

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” means the Agreement Establishing the World Trade Organization, its Annexes and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified from time to time.

(c) “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 from time to time.”

In Article 3, after “Energy Materials and Products” insert “and Energy-Related Equipment”.

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

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

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

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

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

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

In Article 20, paragraph (1), replace “GATT and relevant Related Instruments” with “WTO Agreement”, and after “Energy Materials and Products” insert “or Energy-Related Equipment”.

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

In Article 36(1)(d), substitute “G” with “W”.

In Article 36, in paragraph (1) after subparagraph (f) add:

“(g) approve the addition of items to Annex EQI from Annex EQII with the corresponding deletion of the item from Annex EQII, and the addition of items to Annex EM I from Annex EM II with the corresponding deletion of the item from Annex EM II.”

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

In Annex EM, insert after “EM” : “II”.

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 and Related Instruments” with “WTO Agreement”.

ARTICLE 3

Annex D of the Energy Charter Treaty shall be 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 and Related Instruments” 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 and Related Instruments” with “WTO Agreement”.

In paragraph 3(a), second sentence, replace “GATT and Related Instruments” with “WTO Agreement”

and replace the penultimate sentence with :

“Panels shall be guided by the interpretations given to the WTO Agreement within the framework of the WTO Agreement 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.”

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

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

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

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 the 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”.

ARTICLE 4

The following annex shall replace Annex G of the Energy Charter Treaty:

ANNEX W

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

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

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

- (1) Agreement Establishing the World Trade Organization
All except article IX, paragraphs 3 and 4 and 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
 - 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”
- 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

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) 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 (except paragraphs 7.1, 7.2 and 7.3)
- 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
 - 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

- (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

- (f) Annex 4 to the WTO Agreement:
 - Plurilateral Trade Agreements
 - (i) Agreement on Trade in Civil Aircraft
 - (ii) Agreement on Government Procurement
 - (iii) International Dairy Arrangement
 - (iv) International Bovine Meat Agreement

- (g) 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

- (2) All other provisions in the WTO Agreement 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.
- (3) All agreements, arrangements, decisions, understandings or other joint action pursuant to the provisions listed as not applicable in subparagraphs (1) to (3).
- (4) 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.

- (1) In the absence of a relevant Interpretation of the WTO Agreement adopted by the Ministerial Conference or the General Council of the World Trade Organisation under article IX:2 of the WTO Agreement concerning provisions applicable under Article 29(2)(a), the Charter Conference may adopt an Interpretation.
- (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 and Energy-Related Equipment 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 manufactured 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 listed in Annex EM [I or in respect of Energy-Related Equipment listed in EQ I], 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 adoption by the Charter Conference of this Amendment, each Contracting Party shall notify the Secretariat of the customs duties and charges of 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 of 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 and Energy-Related Equipment 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 and Energy-Related Equipment.
- (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 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 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 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 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) (a) Interpretations of the WTO Agreement adopted by the Ministerial Conference or the General Council of the WTO under paragraph 2 of article IX of the WTO Agreement insofar as they interpret provisions applicable under Article 29(2)(a) shall apply.
- (b) Amendments of the WTO Agreement under article X of the WTO Agreement that are binding on all members of the WTO (other than those under paragraph 9 of article X) insofar as they amend or relate to provisions applicable under Article 29(2)(a), shall apply unless a Contracting Party requests the Charter Conference to disapply or modify such amendment. The Charter Conference shall take the decision by a three-fourths majority of the Contracting Parties and determine the date of the disapplication or

modification of such amendment. A request for the disapplication or modification of such amendment may include a request that the application of the amendment be suspended pending the decision of the Charter Conference.

A request to the Charter Conference made under this paragraph shall be made within six months of the circulation of a notification from the Secretariat that the amendment has taken effect under the WTO Agreement.

- (c) Interpretations, amendments, or new instruments adopted by the WTO, other than the interpretations and amendments applied under paragraphs (a) and (b) shall not apply.

ARTICLE 5

The following Annexes shall be added to the Energy Charter Treaty:

ANNEX EM I^{3 4}

ENERGY MATERIALS AND PRODUCTS
(In accordance with Article 1(4))

ANNEX EQ I³

LIST OF ENERGY-RELATED EQUIPMENT
(In accordance with Article 1(4bis))

ANNEX EQ II⁵

LISTS OF ENERGY-RELATED EQUIPMENT
(In accordance with Article 1(4bis))

[list of equipment items]

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))

³ This Annex will be empty until the Conference decides otherwise.

⁴ Note that the existing Annex EM will be renamed “EM II” (see Article 2).

⁵ The list of this Annex will be circulated prior to the Conference following the 8 December consultations.

ANNEX BRQ

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))

ARTICLE 6

PROVISIONAL APPLICATION

- (1) Each signatory which applies the Energy Charter Treaty provisionally in accordance with Article 45 and each Contracting Party agrees to apply this Amendment provisionally pending its entry into force for such signatory or Contracting Party to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.
- (2)
 - (a) Notwithstanding paragraph (1) any signatory or Contracting Party may deliver to the Depository within three months from the date of the adoption of this Amendment by the Charter Conference a declaration that it is not able to accept the provisional application of this Amendment. The obligation contained in paragraph (1) shall not apply to a signatory or Contracting Party making such a declaration. Any such signatory or Contracting Party may at any time withdraw that declaration by written notification to the Depository.
 - (b) Neither a signatory or Contracting Party which makes a declaration in accordance with subparagraph (a) nor Investors of that signatory or Contracting Party may claim the benefits of provisional application under paragraph (1).
- (3) Any signatory or Contracting Party may terminate its provisional application of this Amendment by written notification to the Depository of its intention not to ratify, accept or approve this Amendment. Termination of provisional application for any signatory or Contracting Party shall take effect upon the expiration of 60 days from the date on which such signatory's or Contracting Party's written notification is received by the Depository. Any signatory which terminates its provisional application of the Energy Charter Treaty in accordance with Article 45(3)(a) shall be considered as also having terminated its provisional application of this Amendment with the same date of effect.