



# Existing Framework for Electricity Cooperation: The Role of the Energy Charter Treaty

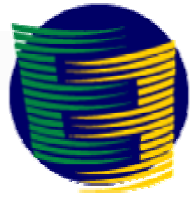
**Energy Charter Expert Meeting  
on Electricity Co-operation  
Brussels, 16 May 2006**

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Director of Trade and Transit  
Energy Charter Secretariat



# Contents

- **Challenges of Regional Electricity Cooperation**
- **The Toolbox of the Energy Charter Treaty**
- **Conclusions**



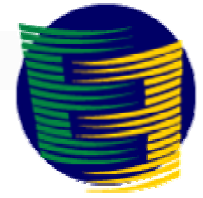
# Specifics of electricity

- Grid bound => question of access / interconnection
- Not storable=> reliability is a public good
- Reliability issues raised by transit / interconnection raises
- Siting:
  - Hydro (Wind) resources character => bound to resource site
  - Thermal power generation possible at any site (but NIMBY)
- Electricity trade / transit more driven
  - by complementarities and
  - short and long term temporary relative advantagesthen by considerations of resource transfer (like hydrocarbons)



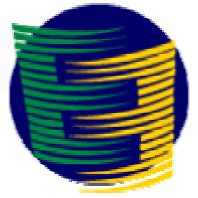
# Issues for regional cooperation

- Reliability, grid management
  - ☐ Joint reliability standards
  - ☐ Dealing with emergency situations
  - ☐ Coordination of governance and operation
- Joint market / market development
  - ☐ Consistency of sector reform
  - ☐ Coordination of market reform
  - ☐ One market place?
- Investment/ Financing/Technology
  - ☐ Framework for investors / access to capital
  - ☐ Coordination of investment?
- HSE standards
  - ☐ State of the art standards
  - ☐ Comparable standards



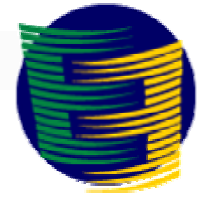
# Examples of regional cooperation

- Existing
  - ☐ Nordpool
  - ☐ EU / UCTE
  - ☐ CIS power council
- Reintegration
  - ☐ Balkans
  - ☐ Caucasus
  - ☐ Central Asia
- Emerging:
  - ☐ ASEAN
  - ☐ Columbia / Ecuador / Andes
  - ☐ Sub Saharan grid



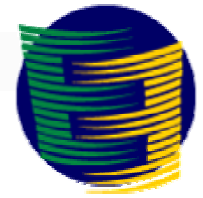
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# The Toolbox of the ECT

- Electricity as Energy Material and Product (EMP)
  - Provisions of the ECT with possible relevance for electricity
    - ☐ Art 2 General Purpose
    - ☐ Art 3 Access to open and competitive markets
    - ☐ **Art 4: Application of GATT**
    - ☐ Art 6: Competition
    - ☐ **Art 7: Transit**
    - ☐ Art 8: Technology transfer
    - ☐ Art 9: Access to Capital
    - ☐ **Art 10 ff: Investment**
    - ☐ Art 19: Environmental aspects
- In red:** Instruments with binding dispute settlement



# Electricity in the Energy Charter Treaty

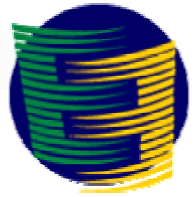
## ARTICLE 1: DEFINITIONS

- (4) "Energy Materials and Products", based on the Harmonized System of the Customs Cooperation Council and the Combined Nomenclature of the European Communities, means the items included in Annex EM.
- **ANNEX EM: ENERGY MATERIAL AND PRODUCTS (IN ACCORDANCE WITH ARTICLE 1(4))**

.....

27.16       Electrical energy.

- All text in the ECT refers to EMP without exemption
- Some special provision in the draft Transit Protocol (CC 251) refer only to hydrocarbons (Art. 1 (2) ( c) and art. 8.4



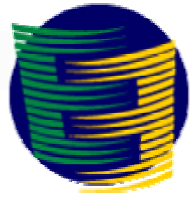
# Basic Approach of the ECT

## ■ ARTICLE 2: PURPOSE OF THE TREATY

This Treaty establishes a legal framework in order to **promote long-term cooperation in the energy field, based on complementarities and mutual benefits**, in accordance with the objectives and principles of the Charter.

## ■ ARTICLE 3: INTERNATIONAL MARKETS

The Contracting Parties shall **work to promote access to international markets on commercial terms, and generally to develop an open and competitive market**, for Energy Materials and Products.



# ECT Trade provisions (Art 4)

- ECT applies WTO non-discrimination standards in the energy sector:
  - National treatment, MFN
  - e.g.: transit
- Trade Amendment brings ECT in line with WTO provisions
- ECT membership's benefit:
  - for **WTO members**: **complementary** to WTO membership
  - for **non-WTO members**: **stepping stone** to WTO membership



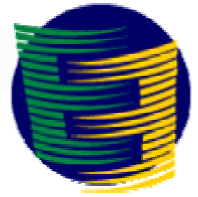
# Electricity in the Energy Charter Treaty



## ■ ARTICLE 7: TRANSIT

- (1) Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges.
  
- (10) For the purposes of this Article:
- (b) "Energy Transport Facilities" consist of high-pressure gas transmission- pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines, and other fixed facilities specifically for handling Energy Materials and Products.

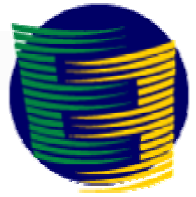
# Electricity in the Energy Charter Treaty



- ARTICLE 7: TRANSIT

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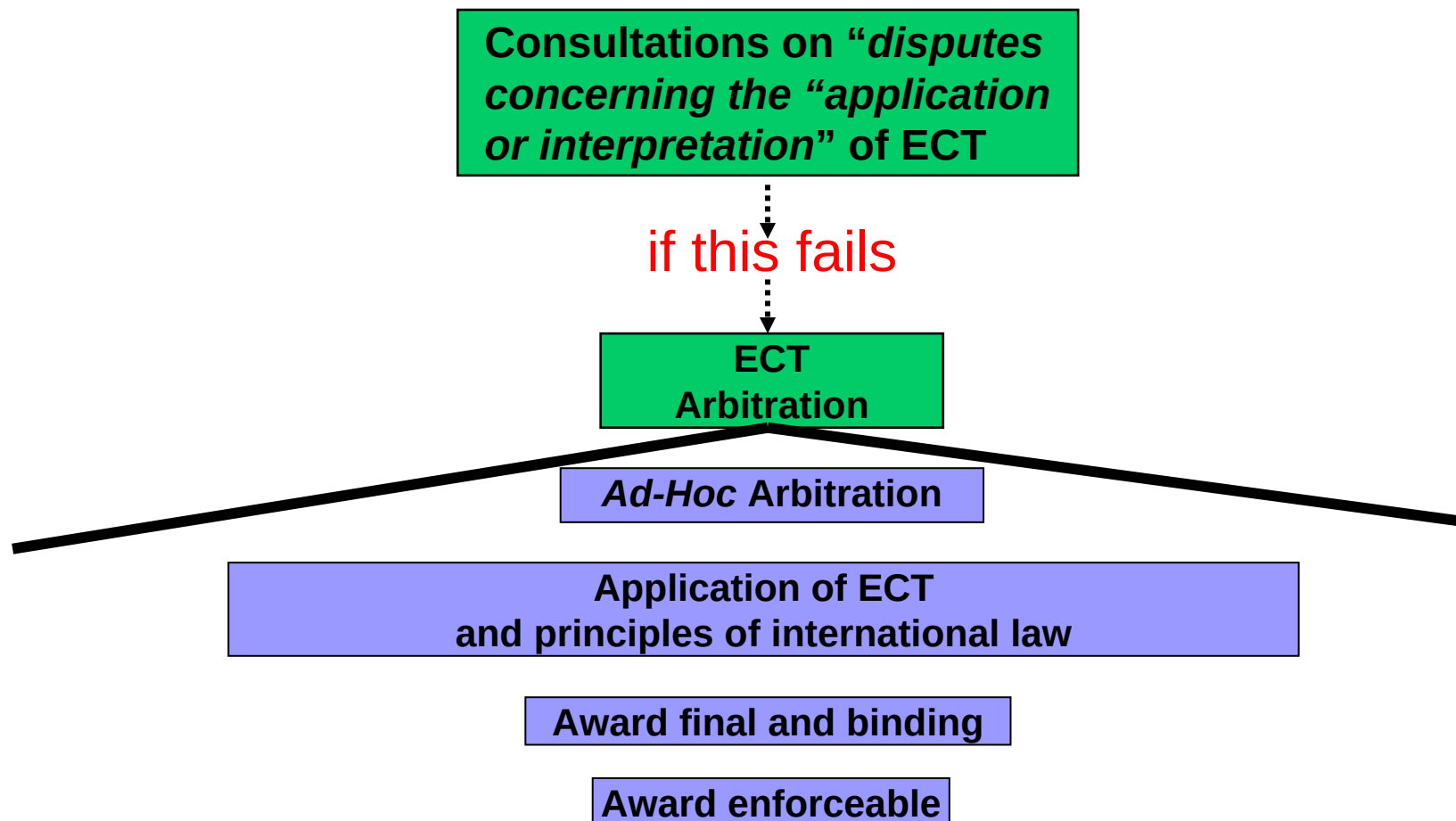
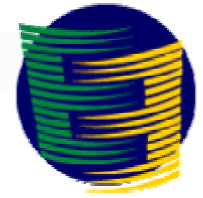
- (5) A Contracting Party through whose Area Energy Materials and Products may transit **shall not be obliged** to
  - (a) permit the construction or modification of Energy Transport Facilities; or
  - (b) permit new or additional Transit through existing Energy Transport Facilities,**which it demonstrates to the other Contracting Parties concerned would endanger the security or efficiency of its energy systems**, including the security of supply.



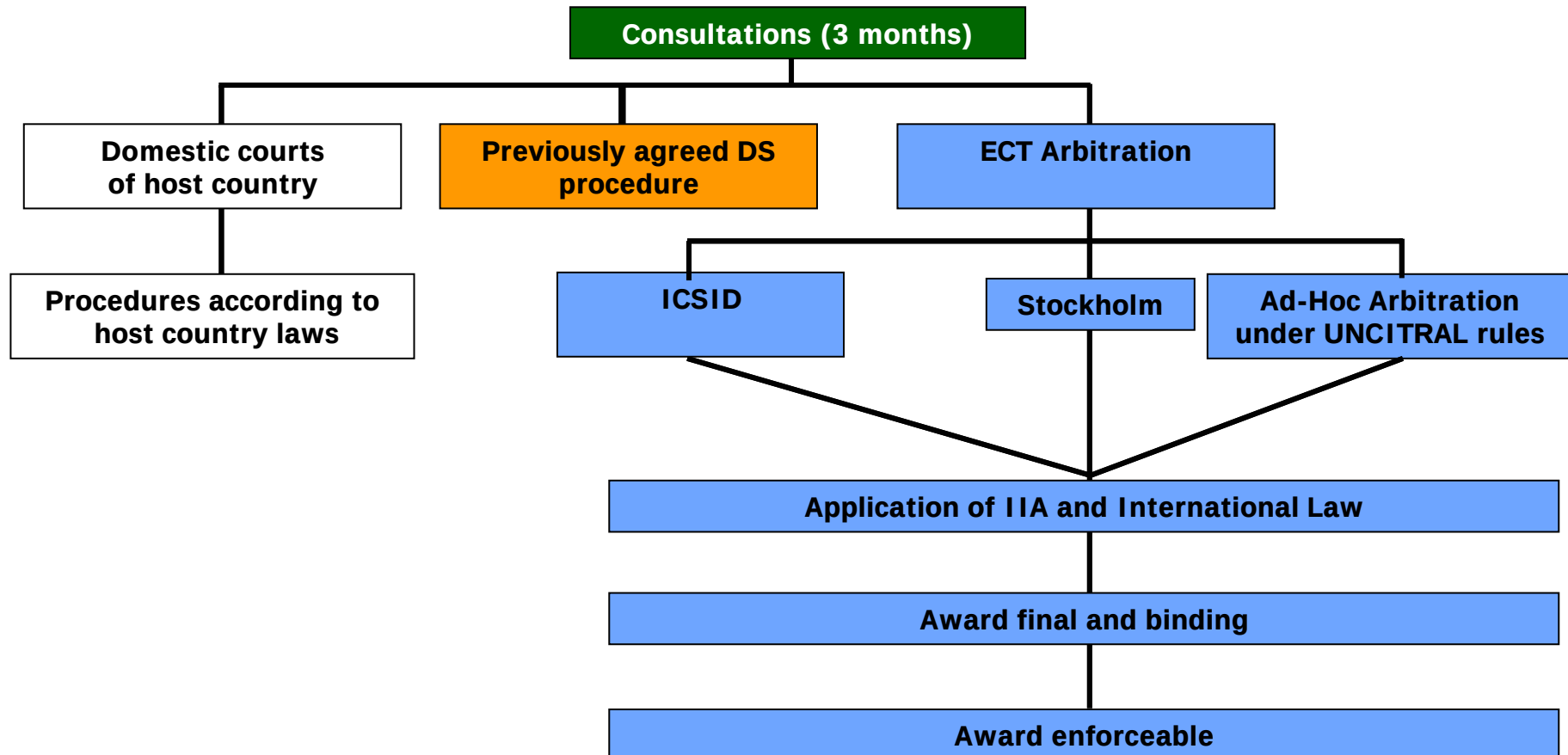
# Investment (Art 10 ff)

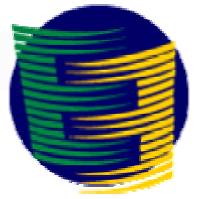
- Definitions of « investment » and « investor »
- Protection of individual investment contracts
- Principle of Non-Discrimination
- Freedom of investment-related capital transfers
- Compensation in case of expropriation and losses due to war and similar events
- Employment of key personnel

# State-State Dispute Settlement (Art 27)



# Investor-State Dispute Settlement (Art 26)





# Soft” provisions of the ECT

## ■ Article 6: Competition

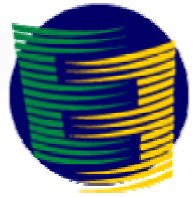
“Each Contracting Party shall work to alleviate market distortions and barriers to competition in Economic Activity in the Energy Sector.”

## ■ Article 9: Access to Capital

“Each Contracting Party shall accordingly endeavour to promote conditions for access to its capital market by companies and nationals of other Contracting Parties,..”



# Soft” provisions of the ECT

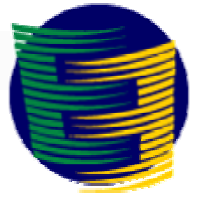


## ■ Article 8: Transfer of Technology

“..the Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis”

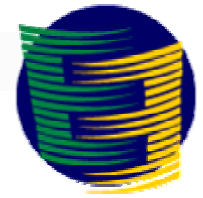
## ■ Article 19:Environmental Aspects

“...each Contracting Party shall strive to minimize in an economically efficient manner harmful Environmental Impacts occurring either within or outside its Area from all operations within the Energy Cycle in its Area, taking proper account of safety.”



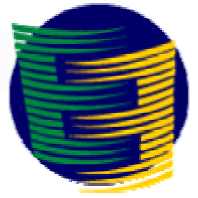
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# Electricity in the Energy Charter Treaty

- All provision of the ECT apply to Electricity
- Provisions with enforcement by arbitration (Art 26 / 27):
  - Trade (Art 4)
  - Transit (Art 7)
  - Investment (Art 10 ff)
- The ECT transit provisions (Art 7) address also issues stemming from a fixed infrastructure necessary for transit (i.e. access)
- BUT: Art. 7.5. is a strong caveat with regard to electricity
- ECT favours long term cooperation based on complementarities, access to open and competitive markets and competition, BUT does NOT suggest a specific sector design/model
- “soft” provisions:
  - Competition (Art 6)
  - Transfer of Technology (Art 8)
  - Access to Capital (Art 9)
  - Environmental Aspects (Art 19)Knowledge sharing, peer pressure



# Conclusions

- The ECT does not prescribe a specific sector model
- The ECT provides a tool box with a unique set of binding and non-binding instruments
- Allowing for a tailor made instrument mix for each regional cooperation