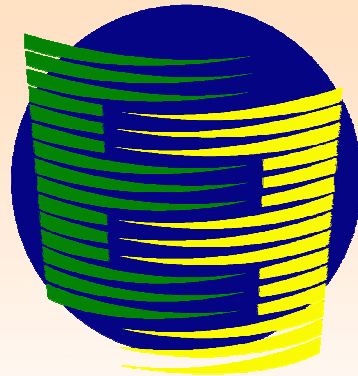




ENERGY SECURITY: THE ROLE OF INTERNATIONAL LEGAL FRAMEWORK

Dr. Andrei Konoplianiuk
Deputy Secretary General
Energy Charter Secretariat

International Conference
«The Role of Governments and International Organisations in Promoting Energy Security»

**Energy Charter Secretariat, International Energy Agency,
Organisation for Security and Cooperation in Europe**

25 October 2006, Palais d'Egmont, Brussels

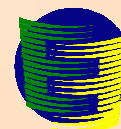
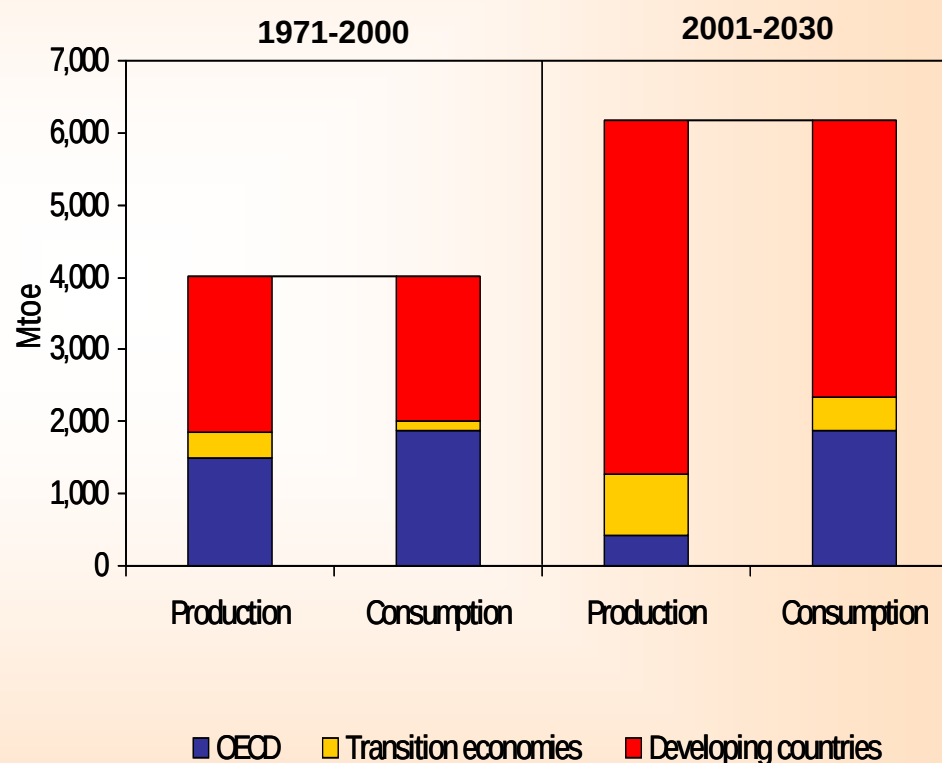
GLOBAL ENERGY TRENDS: WHY NON-OECD IMPORTANT

2001-2030:

- **Increase in energy production:
95% outside of OECD**
- **Increase in energy consumption:
70% outside of OECD**
- **Cumulative energy investment:
- 50% from non-OECD to non-OECD markets, and
- 10% from non-OECD to OECD markets**

Increase in World Energy Production and Consumption

(Source: IEA WEIO 2003)

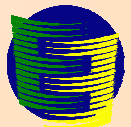


ENERGY SECURITY AND DIVERSIFICATION

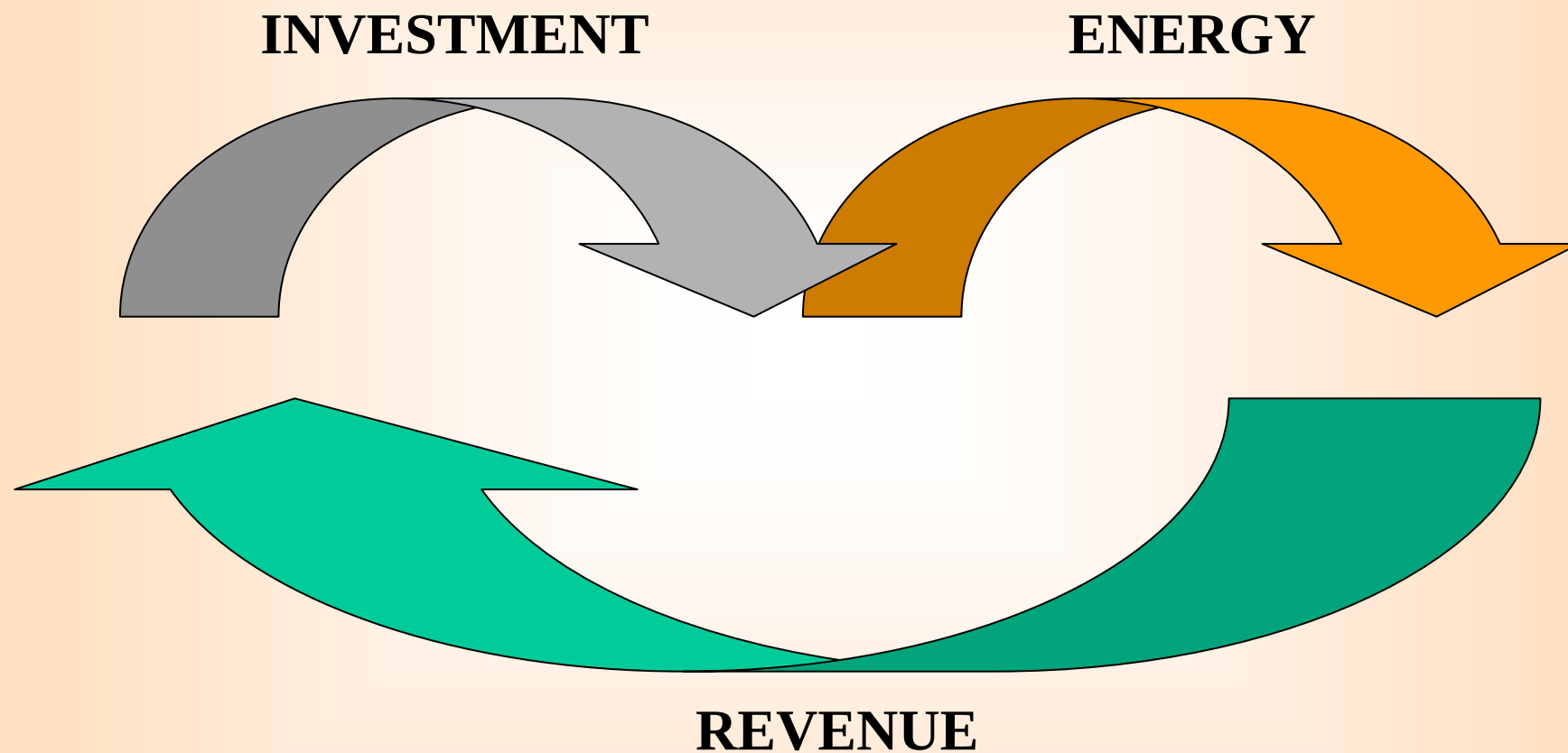
Diversification :

- of supply routes (“multiple pipelines”)
- of sources of supplies (“multiple suppliers”)
- of markets and routes to access them

to be based on balance of interests of all players throughout whole energy value chain



ECONOMIC “CIRCLE OF LIFE” OF ENERGY PROJECTS

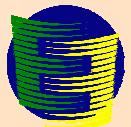


ENERGY ECONOMY: DEMAND FOR QUALITY OF REGULATORY FRAMEWORK

Energy projects (compared to other industries):

- Highest capital intensity (absolute & unit CAPEX per project),**
- Longest project life-cycles,**
- Longest pay-back periods,**
- Geology risks (+ immobile infrastructure, etc.),**
- Highest demand for legal & tax stability,**
- Role of risk management.**

=> Higher demand for “quality” of legal and regulatory framework compared to other industries



ENERGY MARKETS DEVELOPMENT: EVOLUTION OF CONTRACTUAL STRUCTURES

“Physical energy” markets =

Long-term contracts

+ Short-term contracts

+ Spot

+ Forward

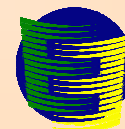
+ “Paper energy” markets =

+ Forward

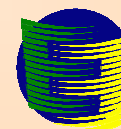
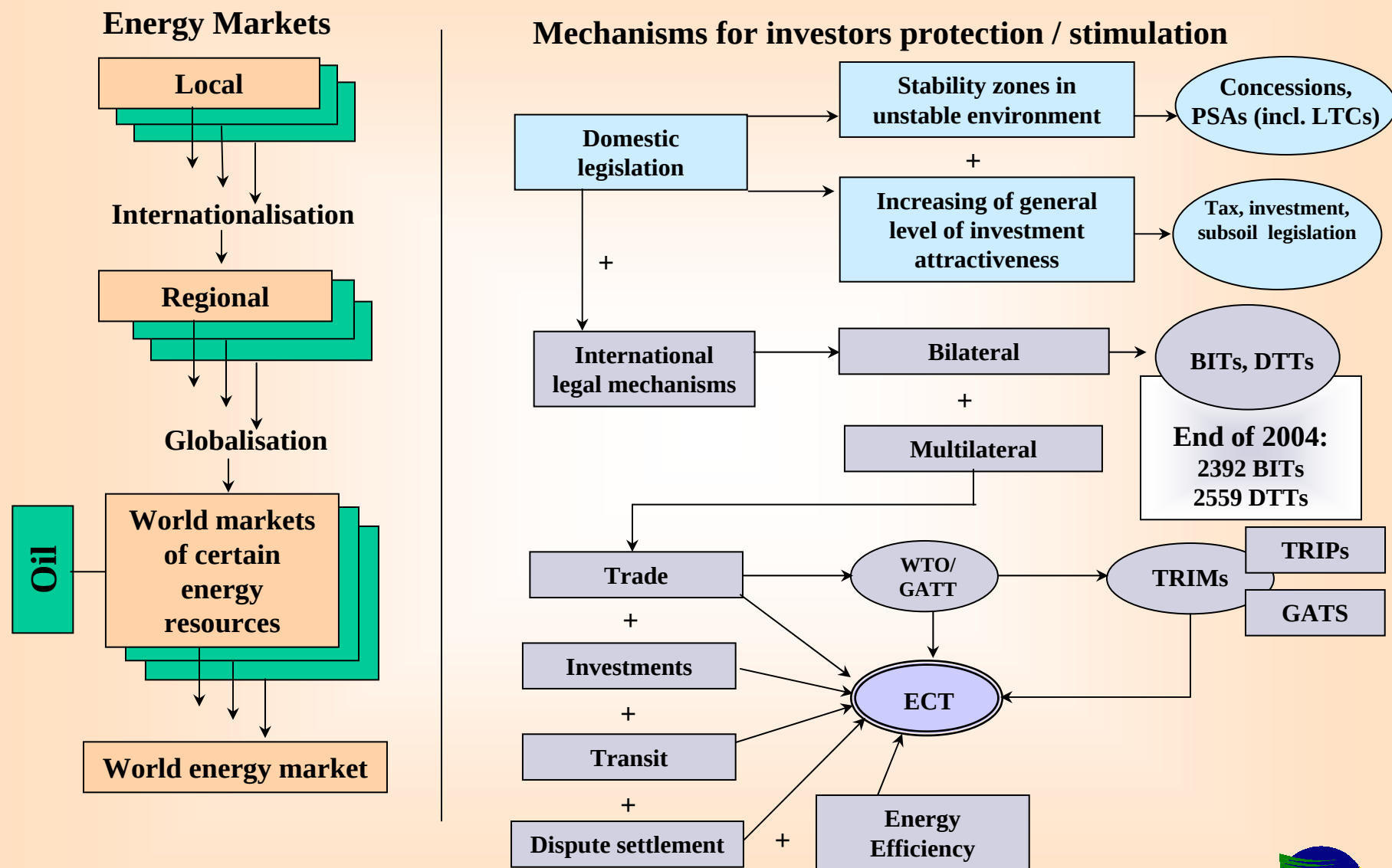
+ Futures

+ Options

+ ...



DEVELOPMENT OF ENERGY MARKETS AND MECHANISMS FOR INVESTORS PROTECTION / STIMULATION



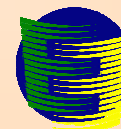
SELECTED INTERNATIONAL INVESTMENT-RELATED AGREEMENTS

Organisation (member- states/CPs)	Legal Status	Scope	Investment	Trade	Transit	Energy Efficiency	Dispute Settlement
ECT (51/52)	LB	Energy	Yes	Yes	Yes	Yes	Yes
WTO (149)	LB	General	(Yes?) (Services)	Yes	Yes/No*	No	Yes
NAFTA (3)	LB	General	Yes	Yes	No	No	Yes
MERCOSUR (4)	LB	General	Yes	Yes	No	No	Yes
OECD (30)	LB	General	Yes	No	No	No	No
APEC (21)	Non- LB	General	Yes	Yes	No	No	No

* application of GATT Art.V to grid-bound transportation systems is under debate

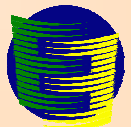
Plus specialised energy-related organisations: OPEC, IEA, IEF, UN ECE (partly), IAEA, ...

Plus specialised “regional” organisations: BSEC, BASREC, ...



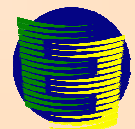
ENERGY CHARTER SPECIFIC ROLE

- **Energy Charter *Treaty*:**
 - **Unique coverage of different areas for *energy* cooperation:**
 - investment, trade, transit, energy efficiency, dispute settlement,
 - energy materials & products + energy-related equipment,
 - 51 member-states (52CPs) + 19 observer-states + 10 observer organisations
 - **First and only one multilateral investment agreement with high standard of investment protection, incl. dispute settlement**
- **Energy Charter *process*:**
 - **Specialized forum for “advanced” discussion of the issues of energy markets evolution that might create new risks for development of energy projects in ECT member-states,**
 - **Platform for preparation of new legally binding instruments to diminish such risks within ECT member-states.**



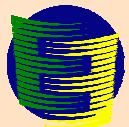
ECT = THE FIRST MULTILATERAL INVESTMENT AGREEMENT (1)

- **Based on:**
 - well-established practice of BITs (about 500 BITs as of early 1990's - around 2400 BITs as of today)
 - investment chapter XI of NAFTA (US, Canada, Mexico)
 - some interaction with then proposed “Multilateral Agreement for Investment” (MAI – aborted in 1998)
- **Within 51 ECT member-states equal to 1275 BITs**
- **MFN and National Treatment for investors:**
 - binding guarantee of non-discriminatory treatment for *post-establishment* phase,
 - soft-law obligations for *pre-establishment* phase (stage of making investment)



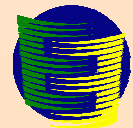
ECT = THE FIRST MULTILATERAL INVESTMENT AGREEMENT (2)

- **Protection against key political/regulatory risk:**
 - expropriation and nationalisation,
 - breach of individual investment contracts,
 - unjustified restrictions on transfer of funds
- **Reinforced by access to binding international arbitration in case of dispute:**
 - State-to-state, and **(NOVELTY!)** investor-to-state => direct dispute settlement at investor's choice at ICSID, UNCITRAL or ICC Stockholm,
 - Awards:
 - ✓ final and enforceable under NY convention,
 - ✓ usually as entitlement to payment (no risk of vicious circle for retaliating measures),
 - ✓ retroactive to start of dispute, may include interest (no incentive to delay process)

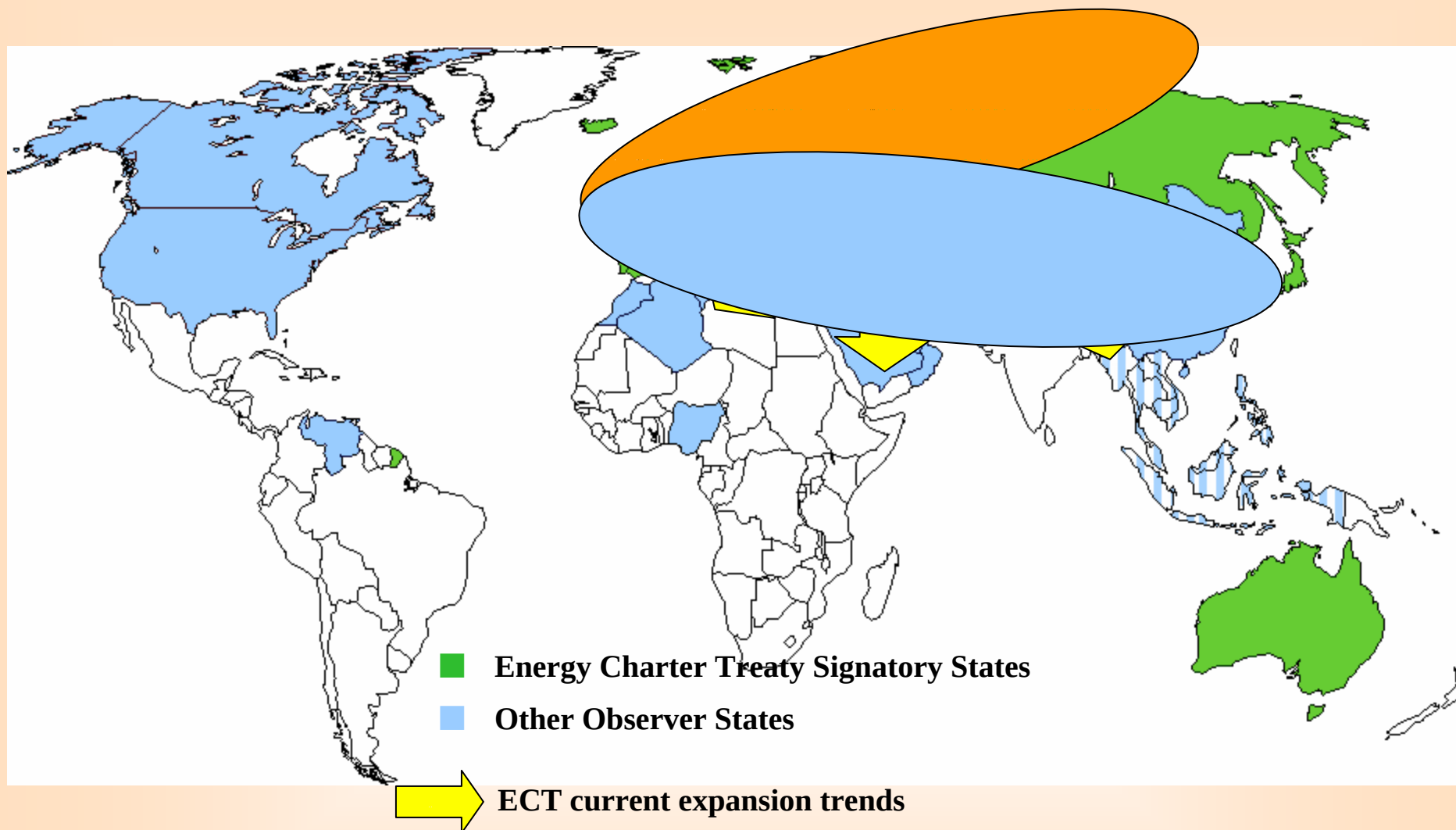


ECT EXPANSION PROCESS: ASIAN DIMENSION DOMINATES

- **New ECT members:**
Mongolia - 1999
- **New ECT observers:**
China – 2001
Korea Rep. – 2002
Iran – 2002
Nigeria – 2003
ASEAN – 2003
Pakistan – 2005
Afganistan – 2006



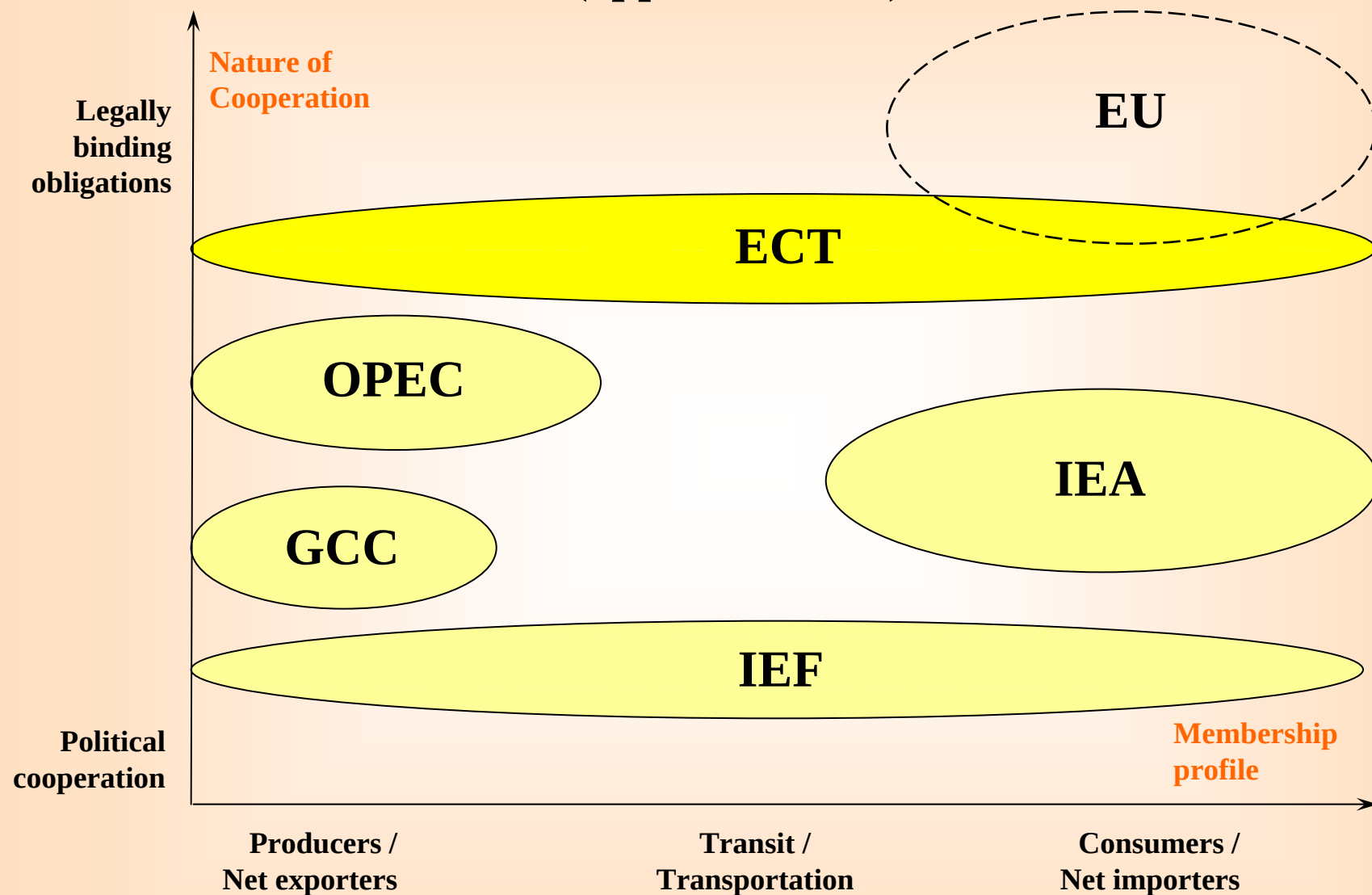
ENERGY CHARTER PROCESS: GEOGRAPHICAL DEVELOPMENT



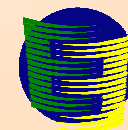
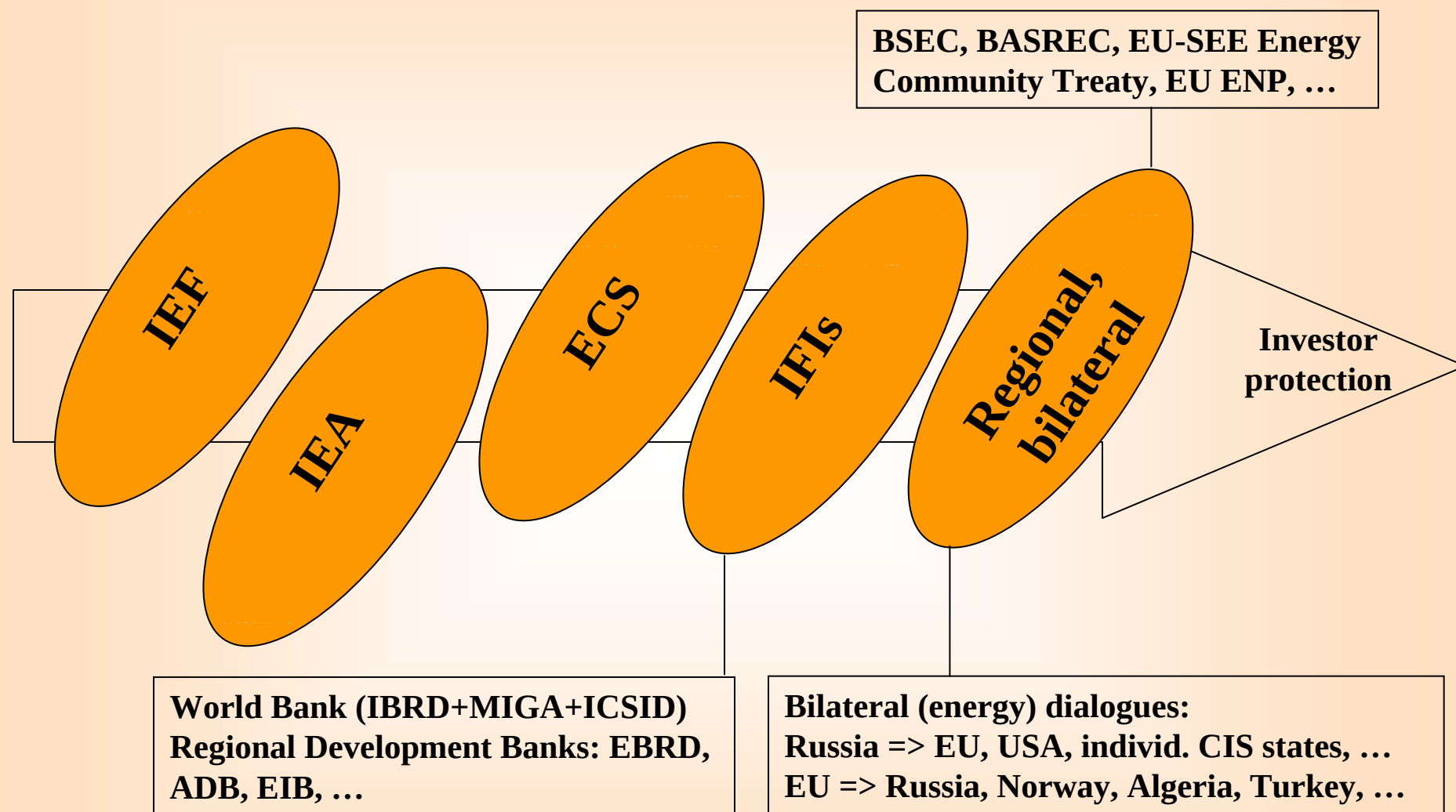
1. From trans-Atlantic political declaration to broader Eurasian single energy market
2. ECT expansion - objective and logical process based on clear economic and financial reasoning



SOME ENERGY-RELATED INTERNATIONAL ORGANISATIONS (approximation)

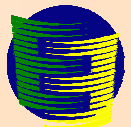


COMPLIMENTARITY OF ENERGY-RELATED INTERNATIONAL ORGANISATIONS (IN PROTECTING ENERGY INVESTMENTS)



Thank you for your attention!

www.encharter.org



www.encharter.org