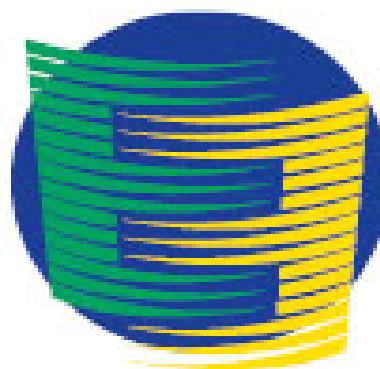




Challenges for energy transit regulation: is specialised approach necessary?

**Workshop on the Role of Intergovernmental
Agreements in Energy Policy**
Geneva, 29 April 2013

Yulia Selivanova
Trade expert, Energy Charter Secretariat



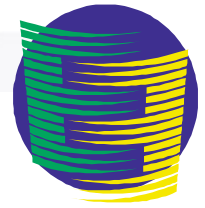
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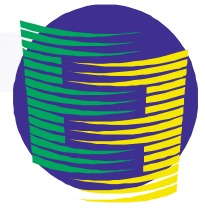
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Common rules for global energy security



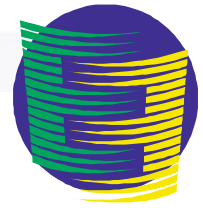
Outline

- *Is energy different?*
- *Are special disciplines for energy transit necessary?*
- *Transit under ECT – multilateral investment treaty applying WTO rules with respect to energy*



How energy transit is different?

- Energy difficult to store => timing matters
- Reliance of energy trade on fixed infrastructure (pipelines, grids) – built for transporting specific energy products
- **Conditions of access to infrastructure at right time**
- Fixed infrastructure investment – capital intensive
- Energy transportation is capacity restricted =>
- **Importance of investment framework**
- Access to pipelines – controlled often by incumbent companies and STEs disciplines do not address it
- Time aspect – an energy transit dispute in a cold winter...

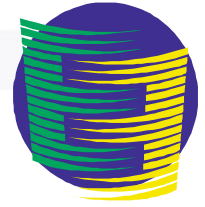


International transit regulation

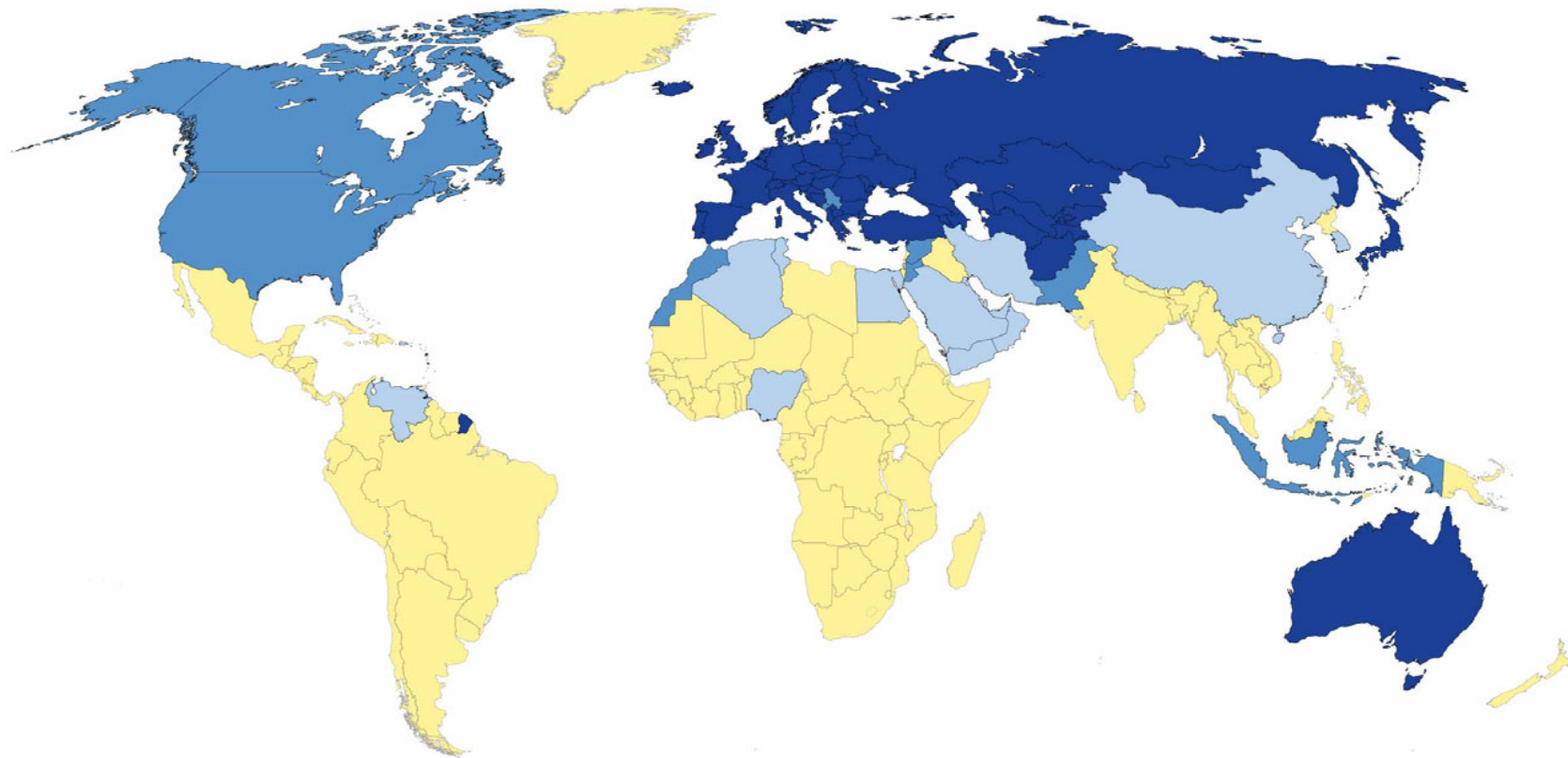
- Barcelona Conventions on Transit (1921, 1923)
- GATT Art. V:
 - freedom of transit
 - no rent seeking from transit position
 - non-discrimination
 - reasonable, cost reflective charges (inclusive interest and risk premium)

General principles but

- No right to build facilities and infrastructure
- Resolution of disputes takes time...

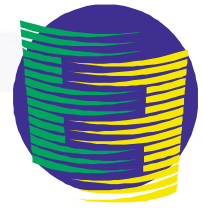


Energy Charter Constituency



■ Members ■ Observers (signed 1991 Charter) ■ Observers (by invitation)

This map is without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area

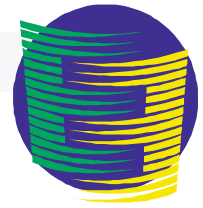


Energy Transit: GATT V => ECT Article 7 => Draft Transit Protocol

- **ECT Article 7:** Freedom of energy transit
 - Specifying GATT V for energy materials and products using fixed infrastructure
 - Non-discrimination as to origin, destination, ownership or pricing
 - Transit treated no less favourably than energy originating in or destined for transit country itself

PLUS IMPORTANTLY

- No obstacles to the creation of new capacity
- Non-interruption of transit in case of dispute
- **Dispute resolution procedures**
 - ECT Art. 27 / Draft Transit Protocol Art. 21
 - ECT Art. 7(7) (conciliation, party to dispute can invoke)
- **Draft Transit Protocol** - further elaborate ECT Art. 7



Energy Charter's Transit Protocol negotiations

Further elaborate and detail the ECT Article 7

Transit Protocol provides:

- Definition of available capacity
- Principles of transit tariffication
- Transparent and non-discriminatory congestion management rules
- Detailed provisions for new capacity creation
- Remaining disputed issues :
 - Avoidance of mismatch between the duration of supply and transit contracts
 - Application of the TP inside the EU



Conclusions: special rules are necessary to address energy transport / transit

- Energy transit is linked to investment rules!
- It is not only about non discriminatory access to transport infrastructure
- Possibility to create new transit capacity is most important
- Non interruption of existing transit
- Fast track dispute resolution procedure



THANK YOU