

SECURING ENERGY FLOWS FROM CENTRAL ASIA TO CHINA:

RELEVANCE OF THE ENERGY CHARTER TREATY

OCCASIONAL PAPER

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ENERGY CHARTER SECRETARIAT
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Securing Energy Flows from Central Asia to China: Relevance of the Energy Charter Treaty

Occasional Paper

Energy Charter Secretariat Knowledge Centre

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Introduction

Since the implementation of the “Reform and Opening-up” policy, over the past three decades China has maintained a rapid pace of economic growth with an average annual GDP increase of 9.8%. This strong economic performance has very much been underlined by the necessary build-up of accompanying energy infrastructure and the rationalising of energy markets.

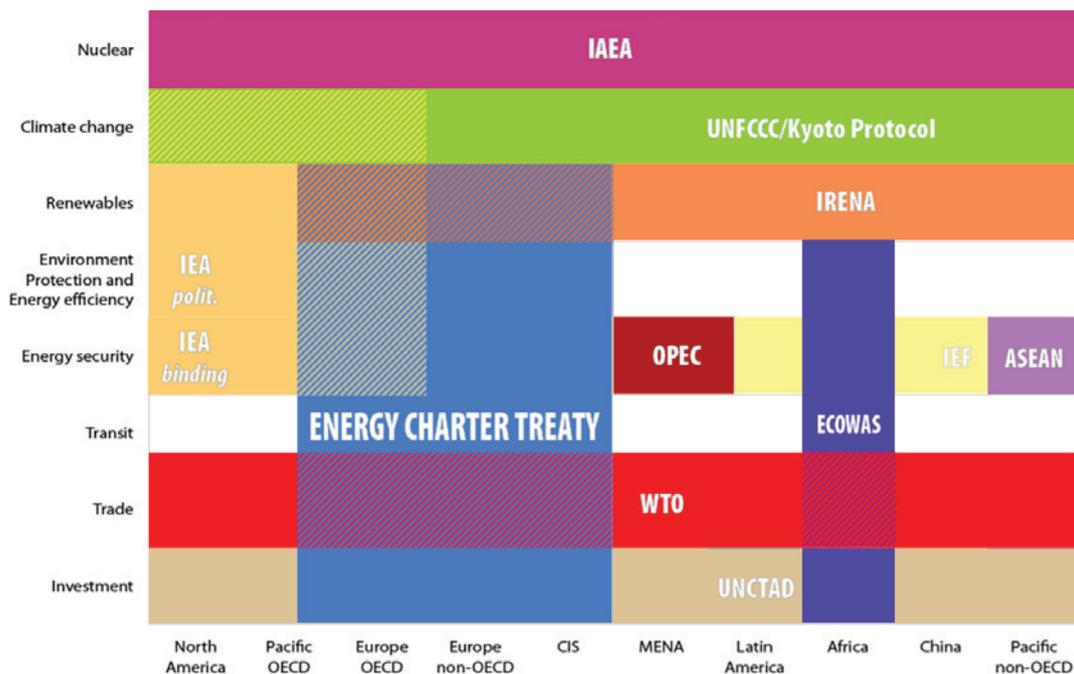
The Central Asian and Caspian Regions are buttressed by considerable wealth in energy resources, especially in hydrocarbons. In recent years, rapid growth in energy cooperation between China and the Central Asian countries has been achieved in terms of volume and importance, ranging from the extraction of petroleum and uranium resources to more downstream areas such as refining, pipeline operations and electricity grid transmission. In terms of resource bases, many productive partnerships have also been achieved in renewable energy sources such as solar, wind and hydropower.

While pipelines and accompanying projects gather momentum in recent years, potential risks such as emergency response mechanisms and divergence of the allocation of new transit capacity from different counterparts along pipeline routes have become the main issues that China needs to tackle in terms of securing its national energy supply. However, the legal protections stipulated in existing bilateral IGAs (Intergovernmental Agreements) or multilateral cooperative mechanisms under the frameworks of the SCO (Shanghai Cooperation Organisation) seem bleak and insufficient to ensure a stable energy flow through established and planned pipelines. Moreover, some of China’s investments are protected by first generation Bilateral Investment Treaties (BITs), some provisions of which now seem rather conservative and less investor-oriented. A more efficient and comprehensive international legal framework, like the Energy Charter Treaty (ECT), is needed to ensure the security of energy flows to China.

Cooperation between China and the Energy Charter

Over the last decade the Energy Charter Secretariat (ECS) pursued different cooperation schemes with Chinese counterparts. China has been actively participating in the Energy Charter process due to its increasingly strong presence on international energy markets. It is important to note that China received Observer Status to the Energy Charter Conference by invitation in 2001.

Figure 1: Distinguishing Features of the Energy Charter Compared to Other International Organisations



The above chart illustrates the coverage of different energy-related international organisations according to two main attributes: energy category and geographical area. It is well perceived that all of these organisations have gathered positive momentum and made great contributions to the establishment and optimisation of international energy governance from different dimensions.

Among those organisations, there are few with which China has been extensively involved in during recent years. The core competence of the International Energy Agency (IEA) lies in emergency response mechanisms for major oil interruptions, as it was founded in response to the 1973/4 oil crisis. Yet a country needs to be an OECD member before applying for membership of the IEA, indicating that prospects for China to become a member are likely hampered by this precondition. The WEC embraces a broad network of different levels of leaders and practitioners from governments, corporations, academia, NGOs and energy related-stakeholders, while the International Energy Forum (IEF) is deemed to be a neutral facilitator of informal, open and continuing energy dialogue characterised by its biennial Ministerial Meetings, the world's largest gathering of Energy Ministers. However, the commitments of these two organisations are of more significance to enhancing political momentum rather than creating multilateral, legally binding rules of law. Regarding the World Trade Organisation (WTO) and the International Renewable Energy Agency (IRENA), China has become a member country of both of them. However, coverage of the two is considered to be not broad enough to cover the whole energy sector value chain. IRENA is an intergovernmental organisation that supports countries in their transition to integration of renewable energy, while the WTO is mainly characterised by its system of legally binding trade rules but does not have a specific energy trade category.

In comparison with the above organisations, the Energy Charter is distinguished by its unique feature, the Energy Charter Treaty (ECT), a multilateral framework for energy cooperation under international law. It is designed to promote energy security through the operation of more open and competitive energy markets, while respecting the principles of sustainable development and national sovereignty over energy resources. It covers almost the whole value chain of the energy sector by focusing on four broad areas: promotion and protection of foreign energy investments, ensuring non-discriminatory flows of energy trade and cross-border transit, resolution of disputes between participating states, and promotion of energy efficiency.

Over the last few years, the National Energy Administration (NEA) of China has sent four officials to work at the Secretariat as secondees, as part of the secondment programme. Ambassador Urban Rusnák, Energy Charter Secretary General, recognises the importance of engaging China and therefore visited Beijing three times over 2013 and 2014. The Secretary General successfully held several bilateral talks with high-ranking officials of the Chinese government and companies engaged in overseas investments. The Chinese side appreciated the ongoing cooperation, and expressed hope that the Energy Charter would play an important role in global energy governance.

Within the Energy Charter process, China takes part in the Task Force for Regional Energy Cooperation in Central Asia. The leading role of the Energy Charter Secretariat in promoting the development of the Asian Super Grid and Gobitec for renewable energies in Northeast Asia² offers a promising platform for China

2 The Gobitec concept represents the idea of producing clean energy from renewable sources in the Gobi Desert and delivering it to regions with high electric demand. The delivery of the produced energy is planned to be via power corridors such as the planned Asian Super Grid (ASG) connecting Russia, Mongolia, China, South Korea and Japan. The Gobitec and Asian Super Grid initiatives will deliver a number of economic, social and environmental benefits to the countries in the Northeast Asian region, including, among others, improved energy security, job creation, economic growth and reduction of carbon dioxide emissions. The Gobitec and Asian Super Grid projects are jointly initiated by the Energy Charter Secretariat and the Ministry of Energy of Mongolia. The Energy Economics Institute of the Republic of Korea, the Japan Renewable Energy Foundation, and the Energy Systems Institute of the Russian Federation have also participated in several preliminary joint studies of these projects. The Chinese Academy of Social Science (CASS) has shown interest in the projects and,

to engage with other countries of the region in the development of sustainable energy and connected markets. In August 2014, the Chinese Natural Gas and Petroleum Corporation (CNPC) formally requested a membership in the Energy Charter Industry Advisory Panel (IAP), which is perceived as a concrete milestone in the mutual cooperation process.

Benefits of the ECT to China versus Chinese BITs: An Overview of Key Contrasts

The purpose of the ECT is to establish 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 Energy Charter. China's future accession to the ECT might yield additional synergy with existing BITs and IGAs. The ECT grants a number of fundamental rights to foreign investors with regard to their investment in a host country, compared to the more conservative provisions and less focus on investor's rights found in typical BITs.

The ECT obliges host countries to accord to investments (and other related activities) of investors from other contracting parties (CPs) treatment that is at least as favourable as that they accord to the investments of their own investors or of investors of other countries: the better of national or Most Favoured Nation ("MFN") treatment. As far as BITs between China and Central Asian countries, only the Most Favoured Nation treatment is stipulated in related provisions.

As for expropriation, the ECT's investment protection mechanism does not entirely prohibit expropriation (subject to certain conditions), which may occasionally be an essential tool under relevant circumstances for various public policy concerns. More importantly, the Treaty's legal protection regime ensures that expropriation is accompanied by the payment of prompt, adequate and effective compensation to the foreign investors concerned. Comparatively, the corresponding expropriation provisions in typical BITs are less specific.

With regards to capital transfer and key personnel protection, the ECT stipulates that transfers shall be made at the market rate of exchange in a freely convertible currency. In contrast, most BITs state that the inflow and outflow of investment capital is only permitted under the precondition of entirely fulfilling taxation obligations, in accordance with domestic laws and regulations.

Cross-border Transit

The existing bilateral intergovernmental agreements signed between China and Central Asian countries are much more concentrated on the systematic maintenance of pipeline operation, and have less attention given to dispute resolution. In addition, these intergovernmental agreements are not legally sufficient to handle the tricky multilateral problems emerging among Central Asian countries.

The transit provisions of the ECT are built upon the non-discrimination principle embodied in Article V of the GATT. The aim of these provisions, included in Article 7 of the ECT, is to provide for a balance between the sovereign interests of states and the need for security and stability of transit. Transit countries must not interrupt or reduce existing transit flows, even if they have disputes with any other country concerning this transit. These provisions go beyond the WTO, as they contain explicit obligations relative to energy transit.

Trade

The ECT trade provisions, which were initially based on the trading regime of the GATT, were modified by the adoption of a Trade Amendment to the Treaty in April 1998. This brought the Treaty's trade provisions

during Secretary General's visit to Beijing in June 2014, preliminarily promised to be an academic partner of these initiatives.

in line with WTO rules and practice. The Trade Amendment also expands the Treaty's scope to cover trade in energy-related equipment, and sets out a mechanism for introducing, in the future, a legally binding stand-still³ on customs duties and charges for energy-related imports and exports.

The Treaty's amended trade regime represents an important stepping stone for those Signatory states that have not yet acceded to the WTO. In this perspective, the ECT could provide those Central Asian countries which are still not members state of WTO such as Kazakhstan, Uzbekistan and Turkmenistan with a quasi-WTO framework for the sake of facilitating energy trade regimes with China.

Dispute Settlement

The two basic forms of binding dispute settlement are state-state arbitration on the interpretation or application of almost all aspects of the Treaty (except for competition and environmental issues), and investor-state arbitration for investment disputes. There are special provisions, based on the WTO model, for the resolution of inter-state trade issues, and the Treaty also offers a conciliation procedure for transit disputes. All of these dispute settlement mechanisms outlined by the ECT have profound implications that could enhance the current legal protection for Chinese enterprises in Central Asian countries.

Energy Efficiency and Related Environmental Issues

Article 19 of the ECT requires that each Contracting Party minimise, in an economically efficient manner, harmful environmental impacts arising from energy use. The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (PEEREA) was negotiated, opened for signature and entered into force at the same time (16 April 1998) as the ECT. Building on the provisions of the Treaty, PEEREA requires its participating states to formulate clear policy aims for improving energy efficiency and reducing the energy cycle's negative environmental impact.

Discussion on the Feasibilities and Implications for China's Accession to the ECT

The Pros of China's Accession to the ECT

The Energy Charter, with its unique, multilateral legally binding Treaty and influence on global energy governance, might be an entry point for China to invigorate its multilateral energy cooperation in a much more substantial way. As China's economy continues to develop and its institutions continue to mature, it is very likely that China will have to strengthen its commitment to the rule of law and to further integrate itself with the global community. Therefore, it is high time to analyse the current status and further steps that could be taken by both sides.

Enhancement of the legal protection of China's outward energy investment, trade and transit

As more and more Chinese energy investments flow into Eurasian countries, there is a potential risk that those investments might be blocked by unfair and/or discriminatory treatments imposed by the host countries. A certain amount of Chinese multilateral cooperative frameworks or mechanisms that exist in the Central Asian region are not legally binding. Thus far, political conciliation and diplomatic mediation are the most frequently used measures in case of energy investment disputes or transit interruptions. China's accession to the ECT will substantially strengthen the legal protection of China's outward energy investment and trade. Regarding transit, the freedom of transit and the principle of

3 Stand-still here refers to a kind of agreement among the contracting parties to (a) limit to the minimum the exceptions to the treatment described in paragraph (3) of Article 10 of the ECT ("Treatment" means treatment accorded by a Contracting Party which is no less favorable than that which it accords to its own Investors or to Investors of any other Contracting Party or any third state, whichever is the most favorable), and (b) progressively remove existing restrictions affecting investors of other contracting parties.

non-discrimination which the ECT embraces might enhance uninterrupted hydrocarbon transit from Central Asia to China.

Improving investors' confidence in China's domestic legal environment

With many obligations and responsibilities stipulated in the Treaty for a host country's government to undertake, China's accession to the ECT will not only promote the optimisation of the domestic legal environment, but also help enhance the confidence of foreign investors in the Chinese energy market. This will ultimately lead to win-win prosperity for the energy industry in China. It is reasonable to believe that after accession to ECT, more foreign energy investment with outstanding expertise will flow into the domestic Chinese energy industry.

Solid amplification of China's influence on global energy governance

It is an axiomatic trend that the enormous energy demand in developing countries, especially BRICS countries, is changing the global energy landscape. China, as the biggest developing country and energy consumer in the world, is inevitably reckoned to play a prominent role in global energy governance. The Energy Charter is a comparatively transformative ground for China to deepen its involvement in global energy governance. Through participation in various multilateral initiatives pioneered by the Energy Charter, China is in a position to communicate and cooperate with all 54 members of the Charter. Chinese institutions and companies can improve their knowledge base and increase expertise in energy via frequent communication with counterparts in different regions of the world. Moreover, the Energy Charter could be a platform to further the visualisation of multilateral mega projects or holistic strategies, which are very difficult for one country to achieve alone. The implementation of the "New Silk Road Economic Belt" strategy launched by the new leadership of China could be an initiative of potential high interest to the Energy Charter, since most of the countries on that economic belt are the member states of the Energy Charter and thus have a perfectly matching cooperation platform.

The Cons of China's Accession to the ECT

Limited potential of increasing the arbitration burden on the Chinese government

The first impediment standing in the way of China's accession to the ECT is the fact that there is sprawling anxiety about a spate of international arbitration cases against the Chinese government. While China is continuously promoting reforms to liberalise different sectors of the economy, a degree of support still exists within the government for the idea that the energy industry remains of great significance to national security and social stability. This means that the road to a fully competitive energy market in China will be paved with periodic legislative modifications, which could cause economic losses and thus result in complicated arbitration cases.

While this concern is reasonable, it should be analysed with a comparison between China's Out-Bound Foreign Direct Investment (OFDI) and In-Bound Foreign Direct Investment (IFDI) in the energy sector. In 2013, the total amount of OFDI was 107.84 billion dollars,⁴ which is higher than the 22.77 billion dollars⁵ of IFDI. China's aggressive domestic energy demand has boosted its energy project OFDI, which increased by 772% from \$6.5 billion in 2005 to \$56.7 billion in 2010, and accounted for nearly 64.4% of total OFDI in 2010. Furthermore, inherent administrative regulations on national security and exploration of domestic energy resources have constrained foreign investment from substantial involvement in the entire value chain of the energy sector in China, rendering the scale of IFDI far less

4 A Brief Report on China's FDI 2013, Ministry of Commerce, People's Republic of China, 19 September 2014, www.mofcom.gov.cn/article/ae/ai/201409/20140900725025.shtml.

5 Statistics of FDI in China in January-December 2013, Ministry of Commerce, People's Republic of China, 24 January 2014, <http://english.mofcom.gov.cn/article/statistic/foreigninvestment/201402/20140200498911.shtml>.

than that of OFDI. Finally, most energy investment in the domestic market has been dominated by state-owned companies (SOEs) for a long period of time.

Given that the amount of China's OFDI has overwhelmingly exceeded IFDI in the energy sector, the exposure of China's government to international arbitration is limited, but still not negligible. In addition, China does not have enough experienced lawyers with practical expertise in international arbitration. Therefore, a lot of development still needs to be made in the legal sector in order to gain international arbitration expertise before China's accession to the ECT.

Scarcity of sufficient political support and geographically asymmetrical protection coverage for China

While the IEA is mostly embraced by energy consuming countries, with a dominant role of the US, and OPEC supports the benefits of energy producing countries, under the leadership of Saudi Arabia, the Energy Charter was championed by the European Union. Initially the European Energy Charter (EEC) was proposed by the former Prime Minister of the Netherlands, in the 1990s. Once established, the Energy Charter has continued to be supported by the EU, but over time this support has diminished as the EU develops other external policy instruments outside the Charter such as the European Community Treaty. Another major drawback was the 2009 announcement by the Russian Federation about the termination of provisional application of the ECT. These developments have substantially reduced the ECT's political influence.

Another barrier for China's accession to the Treaty is that the geographic coverage of the ECT does not entirely match the map of Chinese outward energy investment. The Middle East region, the Southeast Asia region, most of the African continent and all of the North and South American continents, where most of Chinese energy investment has flowed in recent years, are not covered by the ECT. China's OFDI of \$152.8 billion, including energy and power projects in 42 countries over 2005-2010, was concentrated in 5 countries: Iran, Nigeria, Brazil, Kazakhstan, and Australia.⁶ Energy investment has increased in Sudan, Congo, Angola, Indonesia, Iraq, Venezuela and Ecuador in recent years, places with marginal profitability where western energy tycoons are less incentivised. If more of mentioned countries join the ECT, China's incentive to join would be strengthened.

Suggestions and Recommendations for Enhancement of Mutual Collaboration between China and the Energy Charter

As China puts a heavier emphasis on international cooperation, and the Energy Charter constituency deliberates on the Energy Charter Declaration and the direction of Expansion and Outreach Policies, there are now more favourable conditions and increased impetuses for both sides to strengthen and intensify existing cooperation. Therefore, it is reasonable to come up with some suggestions and recommendations for the enhancement of mutual collaboration between China and the Energy Charter in this pivotal time.

Suggestions and Recommendations for China – More Active Participation in Energy Charter Initiatives

Further substantial engagement with Energy Charter initiatives is needed for a better involvement of China in global energy governance. On the governmental level, signing the Updated Energy Charter (UEC) would be a rational option to reflect China's intention of further engagement in Energy Charter initiatives, since it is a political declaration without any legally binding responsibilities. Regarding the existing secondment programme, it is advisable to upgrade the selection criteria of secondees candidates to make it more focused and directed, with a clear mandate to facilitate substantive progress between

⁶ China global investment tracker, www.heritage.org/research/projects/china-global-investment-tracker-interactive-map.

the two sides. For companies and academic institutions from China, an active involvement in Energy Charter initiatives is also recommended. Valuable information and sparkling ideas are unravelled in the meetings organised by various working groups and mechanisms under the framework of the Energy Charter, which could serve Chinese enterprises well as beneficial guidelines for the enhancement of their competitive advantages.

To be more practical, given that it is unrealistic for the constituency of the Energy Charter Conference to reach an agreement on a consensus basis regarding raising the annual budget of the Energy Charter Secretariat, not to mention of increasing manpower and financial resources allocated to China within the Secretariat, it is imperative for China's relevant counterparts such as the National Energy Administration or the Ministry of Foreign Affairs to make a certain amount of voluntary contributions to the Energy Charter. These contributions could be utilised in a wide range of joint activities and events between the two sides, including the Beijing Energy Charter Forum, training courses, expanding combinations of secondees, fellows and interns dispatched from China to the Secretariat, and/or financial support for staff working on Chinese issues at the Secretariat. Moreover, a contribution from China, no matter how much it is, would be deemed by the Constituency as a very positive signal from China of an intention for further engagement in the Energy Charter Process.

Improving Coordination and Establishing a Special Task Force

The Energy Charter Treaty and its initiatives cover almost the whole value chain of the energy industry, and thus requires engagement of a variety of different ministries, corporations and academic institutions from China. Therefore, it would be beneficial for the Chinese government to facilitate efficient coordination and cooperation of all relevant entities with the Energy Charter. Since the major beneficiaries of the Energy Charter Treaty are companies, it would be particularly pragmatic for the government to discuss benefits of the ECT with relevant companies. Suggestions and recommendations from the business sector would likewise be of great value to the government.

It is recommended to establish a Task Force on the assessment of China's engagement with multilateral organisations, both as a member state and an observer. The task force could have a certain composition of different representatives from ministries, companies, and academic institutions. Symposiums and conferences based on different assessments should be held on a regular basis. The final conclusion, after the assessment, could be circulated among all relevant entities and then corresponding actions could be implemented in accordance with national interest.

Improving the Domestic Legislative Environment and Gaining International Arbitration Expertise

China is proceeding swiftly with reforms in the energy sector. In the coming years it will further develop the domestic legal framework to allow more competition and promote energy security. A comprehensive legal framework and a good investment environment in China will attract additional foreign investment in the energy market. Furthermore, the improved business climate will mitigate the potential arbitration risk from foreign companies. Finally, expertise in international arbitration is rather scarce right now, and it is very important for the Chinese government to organise more training courses in order to educate the sector about the latest trends in the field of international arbitration.

Embedding Principles of the ECT in Energy Reform and Industrial Upgrades in China

Being the largest energy producer and a carbon-intensive consumer country, it is well observed that China has been striving to reengineer its energy architecture in order to maintain sustainability of its robust economic growth while minimising the impact of environmental degradation. In the light of the above circumstances, a set of multi-dimensional standards has been gradually entrenched in the bedrock

of energy policies on sustainable integration in China. These standards could be characterised by three main elements: energy security, social equity and environmental impact mitigation. While these three elements outline succinct guidance for the development of the energy market in China, they also create some energy predicaments, and have led to most participants in the energy sector faltering on their way to sustainable development.

These predicaments in China's energy sector can be encapsulated into one outstanding feature: the deficiency of the market-oriented mechanism, which has resulted in huge discrepancies when energy supply and demand are unbalanced. To be more specific, there are a spate of irrationalities attributed to this feature.

Firstly, energy prices in different sectors are not elastically regulated by the administration, and prices are disconnected from the international market. It could be stated that prices in any single energy industry, from upstream to downstream, are regulated and distorted. Retail oil product prices, for instance, still lag behind the international crude oil market despite implementation of the "22+4%"⁷ oil price adjustment mechanism in 2009 and the "10+50"⁸ mechanism in 2013. Regarding the natural gas, electricity and coal sectors, market-oriented principles have been embedded into domestic market pricing mechanisms without further integration with the international market, leading to the rare fact that some littoral cities prefer importing cheaper raw coal from Indonesia or Australia rather than using domestic coal. On top of that, scarcity of financial derivatives (such as forwards, futures, options and swaps) in oil and natural gas also reduce the fluidity of capital, and sluggish oversight of the financial market aggravates hidden speculation, which then exacerbates distortions of market prices in the energy sector.

The second issue that China might take into account is the need for an upgraded energy governance structure and the degradation of the monopolies of state-owned companies in the energy sector. The existing energy governance in China is more or less a compromise⁹ after years of institutional mergers and

7 The Chinese government launched a fuel tax and reform of the domestic product pricing mechanism in 2009, in efforts to tie retail oil product prices more closely to international crude oil markets. This reform aimed to attract downstream investment, to ensure better profit margins for refiners who must sell fuel at regulated prices, and to reduce energy intensity caused by lower consumer prices and higher demand. The oil product pricing system adopted in 2009 allowed the NDRC to adjust retail prices for diesel and gasoline when the moving average of imported crude prices fluctuated outside of a 4% range around the established price within 22 consecutive working days.

8 Despite the 2009 reform, international crude oil prices increased at a faster rate than revisions made by the NDRC to retail fuel prices, causing refiners to incur losses on their downstream businesses and increase their fuel product exports. To promote greater market transparency and responsiveness to global change, the NDRC revised the pricing regime in March 2013 by shortening the retail fuel price adjustment period to 10 working days, and adjusting prices automatically for international crude price fluctuations greater than 50 yuan per ton (roughly \$1/barrel). However, the NDRC still did not identify the slate of crude oil types that it uses for price determination. Since the revised pricing mechanism was established, the NDRC has approved 15 price changes.

9 For quite some time, there was no overall energy governance in China. Although state-owned companies were brought under jurisdiction of the newly formed Ministry of Energy in 1988, its authority overlapped with that of the National Planning Commission and its influence was confined to the electric power sector due to the refusal of other industries to coordinate their planning and investment. Consequently, it was abolished in 1993. In 2003, the State Council decided to establish the Energy Administration, which was under supervision of the National Development and Reform Commission (NDRC), making it responsible for the coordination of energy plans, policies and projects. In 2008, renewed attempts were made to create a vice-ministry level regulatory administration, the National Energy Administration (NEA), an oversight body for discussion and strategic planning. In 2010, another attempt at overall coordination was made with the establishment of National Energy Commission (NEC), directed by the prime minister himself. Its key functions are providing consultation on national energy development plans, review of the national energy strategy, and implementation of a unified energy policy. It was composed of 21 ministers and directors from different ministries. In 2013, the National Electricity Supervision Commission was merged into the NEA.

restructuring, at both a central government and municipal level. This constant change has accomplished a balancing of power distribution among ministries, institutions and local governments, at the price of a systematically integrated energy governance. Meanwhile, China's state-owned companies implicitly benefited from the power vacuum in domestic energy governance, and have fortified their monopolies to an extent that they have essentially hampered the development of the energy industry. In one example, a sizable share of renewable installed capacity was not connected to the grid in a timely manner after commissioning, because of inherent discriminatory treatment and inadequate coordination between national developers and private operators.

Regarding the above dilemmas, it is a reminder that the principles the ECT enshrines are intended to resolve incompatibilities during market integration, and could improve synergy in imminent energy reform in China. The alleviation of market distortions and barriers to competition in the energy sector is the core competence of ECT, which means that full consideration should be given for the ECT to provide technical assistance on the development and implementation of market competition rules, orientating energy pricing reform in China, and degrading the monopolies of state-owned companies. Secondly, the principle of freedom of transit could also be applied in different municipalities and provinces in China, modernising energy transport facilities and maximising utilisation of diversified transmission networks through the country. Concerning environmental aspects, the spirit of minimising harmful environmental impacts in a cost-effective manner, which is embraced by the ECT and PEEREA, could further internalise the cost of pollution into the energy price and promote market-oriented price responsiveness. All of these initiatives could be implemented through enacting various laws, regulations and incentives that contain specific and binding commitments for relevant levels of government and the private sector, as well as sanctions in cases of non-compliance.

If China continues maintaining the extensive use of state-owned enterprises, it does not contradict the ECT. In many ECT member countries, state enterprises continue to play a major role in the energy sector. They often have a dominant or even monopolistic position in their home countries. It was important to deal with this issue when negotiating the ECT, and the solution used in the Treaty is to establish various obligations of CPs with regard to the conduct of their state enterprises. By contrast, the ECT does not create direct obligations of these companies themselves. Article 22 of the ECT has special provisions that cover state and privilege enterprises.

Suggestions and Recommendations for the Energy Charter

Focus on Expansion Policy and Relationship Maintenance

After going through moderate development over the past two decades, the Energy Charter is standing at the crossroads of its evolving trajectory. It is reasonable to believe that the expansion of the Energy Charter's geographical coverage and outreach for new contracting parties eastwards might be prioritised over other issues in the Energy Charter. The outline of the Energy Charter's evolution will possibly be delineated by the degree of its achievement in expansion and outreach. Since the Energy Charter Conference is the main decision-making body of all Energy Charter initiatives, firm solidarity towards expansion should be attained among the Constituency, following a larger amount of financial and human resources allocated to related expansion initiatives. It is also important to maintain a good level of relations between the Energy Charter and the Russian Federation, since political momentum and commercial cooperative ties between China and Russia are getting stronger.

Expanding the Industry Advisory Panel

On 8 August 2014, the China National Petroleum Corporation applied for membership in the Energy Charter Industry Advisory Panel. It would be crucial to demonstrate, not only to CNPC but also to other large energy companies, the utility of their membership in the IAP.

It has been commonly perceived that energy companies are the main beneficiaries of the ECT, while the host country governments, to a certain extent, undertake more responsibilities. From a rational point of view, companies should be the main drivers and play a more interactive role in lobbying their respective governments during the expansion of the Energy Charter. It is therefore proposed that the structure of the IAP could be expanded into different sub-panels according to different energy industries, such as oil and gas, coal, nuclear, renewable energy, or electricity. Meetings or forums in different topics could be held on a regular basis. The topics of these meetings should be more substantial, leading to in-depth discussion. Attendance of the meetings should be promoted to other non-membership companies in expansion target countries. Overviews of the benefits and challenges of the ECT could be disseminated by the IAP to constituents and other countries.

Facilitating More Overarching Regional Energy Projects

In order to enhance the Energy Charter's authority in the international energy community and facilitate the deeper involvement of China in the Energy Charter process, it is necessary for the Energy Charter to promote more overarching regional energy projects. There is no doubt that the undergoing Asian Super Grid initiative, supported by the Energy Charter Secretariat and the Government of Mongolia, is a good example. There is need to continue supporting the initiative, because additional feasibility studies on technical and commercial aspects of the ASG have to be completed. At the same time, it might be advisable for the Energy Charter to explore other regional energy projects that are underpinned by strong political support from interested countries. A regional initiative among existing member states could be easily promoted, and energy projects along the New Silk road could also be of interest to China.

Amending the Procedure of Accession to the ECT

It is commonly perceived that the undergoing negotiations on the Updated Energy Charter are a good attempt to gather new political momentum for the Energy Charter, and positive statements and fruitful comments were presented at negotiation meetings. However, the UEC does not fully replace the 1991 European Energy Charter political declaration. It is planned that newcomers to the ECT would still need to sign the EEC before they accede to the ECT. However, some newcomers from regions other than Europe, such as countries in Asia, might be hesitant to sign the 1991 EEC since they are not part of the European region. Therefore, the Energy Charter constituency might be advised to address this matter in order to remove this potential obstacle for newcomers. A plausible solution might be the formal replacement of the EEC with the UEC.

Reinvigorating the Role of the Energy Charter on Transit and Energy Efficiency Issues

Transit and energy efficiency are becoming more important for developing countries, especially for China, which has extensive cross-border pipelines under construction and is under pressure from the international community about environmental protection. Strong authoritativeness on cross-border transit and comprehensive guidance on energy efficiency could incentivise cooperation with China and other developing countries. Unfortunately, the comprehensive Transit Protocol has not been adopted, and PEEREA has no energy efficiency targets, which limits the use of the ECT. Therefore, further steps in invigorating the role of the ECT in transit and energy efficiency should be implemented by the Energy Charter. A regional transit protocol, with more specific regulation, might be a good option. Additional follow-up activities after the Energy Efficiency Review report are also recommended.

Recommended Future Activities between China and the Energy Charter

Recommended future activities between China and the Energy Charter include proposals to: organise translation of the ECT into the Chinese language; continue and revise the secondment/fellowship programmes; engage the Energy Charter in the New Silk Road regional and Asian Super Grid initiatives; prepare an In-Depth Energy Efficiency Review of China; organise Energy Charter Forums, IAP meetings and training programmes in China; and eventually establish a Task Force for cooperation between China and the Energy Charter. The proposed activities should be considered in the context of China signing the Updated (World/International) Energy Charter declaration in the beginning of 2015.

Figure 2: Recommended Future Activities between China and the Energy Charter





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