Securing Energy Flows from Central Asia to China and the Relevance of the Energy Charter Treaty to China

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for the Energy Charter Secretariat
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Since the implementation of the Reform and Opening-up policy in the 1980s, 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 been very much underlined by the necessary build-up of its accompanying energy infrastructure and the rationalizing of energy markets. Especially during the past five years, from 2008 to 2013, China has experienced exponential growth in its energy demand. The total production of primary energy resources increased dramatically, from 2.47 billion tons of coal equivalent to 3.4 billion tons of coal equivalent. Installed power generation capacity increased from 720 gigawatts to 1.14 terawatts.

In the wake of rapid industrialization and sprawling urbanization, the challenges China faces in terms of meeting its burgeoning energy demand could be marked by its reliance on domestic coal and foreign oil and gas. As China increasingly looks outward for its oil and gas supplies and strives to ameliorate its reliance on domestic coal usage by developing alternatives, these challenges will necessitate closer cooperation between China and the rest of the world, including the Middle East, Russia and Central Asia, the Asia-Pacific, Africa and Latin America. On the flip side, the economic weight China carries and its impact on global energy governance issues also makes cooperation with it a priority for the rest of the world. Besides, in the context of increasing geo-political complexities, China is also turning its attention to the potential benefits of participating in multilateral organizations and other forums. China's vulnerability as an energy importer could lead toward greater cooperation and integration within multilateral institutions.

It should be recalled that, shortly after his inauguration as the leader of the People's Republic of China, Chairman Xi Jinping paid his first formal visit to four Central Asian countries (Kazakhstan, Kyrgyzstan, Turkmenistan, and Uzbekistan) in September 2013. The trip not only opened a new chapter in the enhancement of bilateral relationships, but also gave further impetus to long-term multilateral cooperation in the fields of transportation, energy, communication and agriculture. Epitomizing this national strategy for reciprocal cooperation in terms of more exclusive trade and investment flows, Chairman Xi used the occasion to outline his conceptualization of the 'New Silk Road Economic Belt', which extends from China's north-west to the seaboard of the Mediterranean. One essential element of such multilateral cooperation will be in the area of energy, where considerable mutual benefits could be realized by linking the abundance of energy resources in Central Asia with the enormous growth of energy consumption in China.

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 were achieved in renewable energy sources such as solar, wind and hydropower. More mature forms of cooperation such as joint ventures and foreign direct investments (FDI) have emerged in place of less complicated ones such as EPCs (engineering, procurement and construction).

Although pipelines and other energy infrastructure projects have gathered positive momentum in recent years, some potential risks such as emergency response mechanisms and divergence in the allocation of new transit capacity 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 framework of the SCO (Shanghai Cooperation Organization) seem bleak and insufficient to ensure stable energy flows 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. It is important to note that China was granted Observer Status at the Energy Charter Conference in 2001. In the subsequent decade, cooperation between the Energy Charter parties and China has been fairly stable and mutually beneficial. The Energy Charter Process plays a key role in international multilateral cooperation on energy matters. Its quintessential component, the Energy Charter Treaty (ECT), is legally binding and applicable to the entire energy value chain, containing provisions on investment promotion and protection, trade and transit, and dispute settlement and energy efficiency. These may assist China in its energy cooperation with the Central Asian countries and ameliorate the aforementioned potential risks. It is important to note that all Central Asian states are full members of the ECT.

This paper argues that China could secure profitable, lasting relationships with hydrocarbon-producing states in Central Asia through membership of the ECT. The ECT, with its vast membership and relevant institutional mechanisms, could become the most appropriate and efficient institutional energy cooperation framework for securing increasing energy exports from Central Asia to China. The Energy Charter has all the necessary legal instruments and institutions to promote regional energy cooperation and facilitate implementation of transit infrastructure projects. The Energy Charter Treaty could therefore become a relevant legal framework for securing and stabilizing complex energy relations in the region.

This study investigates the relevance and potential for China of the Energy Charter in terms of long-term multilateral cooperation in the energy sector. It is divided into five parts. The first chapter presents China’s current energy investment in Central Asian countries, as well as the existing relevant legal frameworks and multilateral cooperation mechanisms. The second chapter provides an overview of the Energy Charter process and China’s participation. The third part unravels the benefits of the ECT for China in terms of securing energy relations with Central Asian countries, demonstrated by comparison of the ECT with BITs in terms of investment protection, trade and transit, energy efficiency and international arbitration. The fourth part concludes with an analysis of the pros and cons of China’s accession to the ECT. The final part contains recommendations and future activities for enhanced cooperation between the Energy Charter and China, which include proposals to organize translation of the ECT into the Chinese language; continue 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; organize Energy Charter Forums, IAP meetings and training programmes in China; and eventually establish a task force for cooperation between China and the Energy Charter parties. The proposed activities should be considered in the context of China signing the International Energy Charter (IEC) Declaration in the month of May 2015.
Figure 1. Recommendations for enhancing cooperation between the Energy Charter and China

- Translation of the ECT into Chinese language
- Continue secondment/fellowship programs
- Establish a task force for cooperation between China and the Energy Charter parties
- Engage the Energy Charter in New Silk Road regional and Asian Super Grid initiatives
- Recommendations for future cooperation between the Energy Charter parties and China
- Organize Energy Charter Forum, IAP meeting and training programme in China
- Prepare in-depth energy efficiency review of China
1. Securing energy flows from Central Asia to China
Triggered by a new round of industrialization and urbanization, oil and natural gas consumption is expected to rise dramatically in the future, along with nuclear and hydroelectric power projects. It is reported that China’s annual net total oil imports reached 282 million tons in 2013, equivalent to 5.64 million bpd, and the increase made up nearly a third of global oil demand growth in 2013. It is estimated that China is likely to surpass the United States in net oil imports on an annual basis by 2014, as US oil production and Chinese oil demand increase simultaneously at a moderate pace. China is on track to need approximately 11.1 million bpd of oil, and its net imports will reach 6.6 million bpd. Though the current Chinese Five-Year Plan targets oil imports meeting no more than 61% of demand by the end of 2015, it is projected that actual import dependence will be over 66% and China’s primary oil demand will rise to 12.2 bpd by 2020, as demand is expected to grow faster than domestic crude supply. Meanwhile, total natural gas demand will reach 400 bcm annually by 2020, and may be as high as 420 bcm.

However, China’s domestic deposits of oil and gas are limited. Proven oil reserves are estimated to be 17.4 billion barrels, or 1.0% of world reserves, and gas reserves are 3.1 trillion cubic metres, or 1.7% of the world. They are mainly located in the north and west of the country, far from the centres of consumption in the east and south. Fields that have been in production since the 1960s and 1970s, mainly Daqing and Shengli, are slowly being exhausted. New fields in Tibet and, notably, in Xinjiang, may contain up to one-third of the country’s oil and gas reserves, yet are expensive to develop and still far from fulfilling the expanding domestic energy demand. The expanded offshore oil fields in the South and East China Seas are difficult to exploit because of territorial disputes with Vietnam, the Philippines and Japan.

Aside from oil and gas, there is no reason to suspect that the dominance of coal in China will subside, given that it is thus far the world’s largest producer of coal, possessing about 14% of the world’s coal reserves. Yet it is remarkable that China is also the world’s largest coal importer, because of the cost, quality and transportation advantages of imports compared with those of domestic coal. What is more, the reinvigoration of the nuclear generation industry coincided with a comparative scarcity of domestic uranium resources, which has compelled China to go abroad for more raw uranium to meet its burgeoning demand.

The above circumstances led to China making a shift in its energy supply structure on a national level, which is articulated in the 11th Five-Year Plan. It addresses four areas of energy reorientation, including:

- the diversification of energy sources by increasing the production of natural gas and nuclear power, by generating gasoline and diesel from coal, and by increasing the usage of renewable resources;
- the enhancement of existing oil and gas supply sources, and the diversification of import routes;

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Securing energy flows from Central Asia to China

- the strengthening of energy exploration and the development of new domestic oil fields, as well as further encouragement of international cooperation in offshore oil exploration and production;
- the increase of the volume of strategic petroleum reserves and the securing of supplies through overseas equity investment and long-term supply contracts.  

As a result of this policy reorientation, China’s oil companies have, since the late nineties, embarked on a campaign to secure oil and gas rights in Central Asia and in other regions of the world.

The Central Asian and Caspian Regions, once hailed as ‘the second Persian Gulf’, are buttressed by a considerable wealth of energy resources, especially hydrocarbons. Though oil production in Central Asia can by no means replace the role of the Middle East as the world’s largest oil supplier, it will play an essential role in the international energy community, especially for neighbouring powers such as Russia and China. With close to 40 billion barrels, Kazakhstan possesses 3.2% of the total world oil reserves. Kazakh crude oil production is expected to reach 120 million tons annually by 2020, once the Kashagan oil field is commercialized. Uzbekistan is reported to have close to 600 million barrels of proven reserves, mainly concentrated in the regions of Bukhara and Khiva. Turkmenistan possesses similar amounts of reserves to its neighbour, a little less than 600 million proven barrels, and also has a greater chance of discovering new offshore deposits estimated to be as many as 1.5 million barrels. Regarding the exploitation of natural gas, Turkmenistan plays a dominant role in this sector among Central Asian countries. As the sixth largest natural gas reserve holder in the world, and among the top 15 dry natural gas producers in 2012, Turkmenistan has proven natural gas reserves of approximately 265 trillion cubic feet (Tcf). The Amu Darya basin in the south-east, the Murgab Basin in the south, the South Caspian basin in the west and the new site of Yolotan-Osman are all well-known gas fields under exploitation. Uzbekistan has estimated reserves of 1.8 trillion m³, without taking into account the unknown deposits of the Ustyurt Plateau and the Aral Sea.

Central Asian energy resources are helping China reduce its dependence on Middle Eastern oil (Saudi Arabia, Iran, Oman, Yemen, Kuwait, and Iraq), which currently supplies more than half of China’s petroleum imports. Meanwhile, China is also seeking to reduce its dependence on energy imported by tanker. The government is concerned about the continuous threat of piracy and the geopolitical risks of energy transit controlled by the United States, in particular the US Navy-patrolled Strait of Hormuz in the Persian Gulf and the Strait of Malacca in South-East Asia, through which 60% of Chinese oil imports pass. Thus, it is a policy goal to avoid tanker transportation as much as possible and give priority to continental oil and gas pipelines. Since further expansion of the Burma-China pipeline is constantly hampered by Burma’s political changes and civil protests, and the new China-Russia pipeline will not be fully commissioned until 2018, Central Asian pipelines are seemingly the optimal choice for the enhancement of China’s energy security. Furthermore, as it is geographically situated between major energy supply centres and religious regions, the Central Asian region’s significance is bolstered by its position not only as an Eurasian land-based bridge but also as a culture buffer zone. The Chinese government believes stronger economic development though energy collaboration is strategically beneficial for regionally political stability and social prosperity.

After a period of experiment and light collaboration over the last two decades, energy cooperation between China and Central Asian countries has now entered a more stable and mature phase. The relationship is characterized by the following.

- **Extension and diversification of the value chain in energy cooperation**, from traditional upstream exploitation and exploration of fossil energy and uranium resources to downstream activities such as pipeline construction and petrochemical operation associated with renewable energy development.

- **More diverse energy cooperation in terms of ownership and contractual structures**, including the utilization of structures such as joint ventures, production sharing agreements (PSA), mergers and acquisitions, and swaps; all of which signal the legal maturation of China-Central Asia energy cooperation.

- **The emergence of multi-dimensional frameworks and mechanisms for cooperation**. As economic and political relationships between the countries and their entities become closer and more complex, bilateral agreements on the national level are now complemented by specific energy project contracts. There are several multilateral forms of cooperation, such as the Shanghai Cooperation Organization (SCO), which is focused on regional security and economic development. In the energy sector, there is the ‘Four Country Seven Parties’ mechanism which emphasizes technical transit operation issues.

- **A growing tendency for major Chinese state-owned enterprises (SOEs) seeking Western partnership in energy investment, trade and transit outside Central Asian host countries is to form consortiums**. This practice serves as a cautious, risk-diversification measure, as investors seek additional foreign investment protection.

### 1.1. An overview of China’s investment in Central Asia

*Figure 2. Chinese oil and gas investment in Central Asian countries*
1.1.1. Exploration and exploitation of petroleum and natural gas

The map above shows the participation of Chinese companies in exploration and exploitation projects in Central Asia. Oil and gas have been produced in the region for a century, but it was only after the collapse of the former Soviet Union that massive exploitation of the region’s considerable fossil resources was rejuvenated by international investment. China’s first foray into the Central Asian oil and gas sector dates back to 1997, when a high-profile and wide-ranging investment deal worth nearly US $9 billion was signed with Kazakhstan by China National Petroleum Corporation (CNPC). That agreement gave CNPC a 60% stake in AktobeMunay Gas (Kazakhstan), a production licence for the Zhanazhol, Kenkiyak, Oversalt and Kenkiyak subsalt oil fields, and a contract for an exploration block and two pipelines. AktobeMunay Gas currently controls one-seventh of the oil production of Kazakhstan, and produced nearly 6.5 million tons of oil and 3.3 bcm of gas in 2009. Though parts of this deal were later revised or revoked, it did set the tone for subsequent Chinese investments in Central Asian oil and gas sectors. Moreover, it opened the door for active participation of other Chinese state-owned firms and the private sector in oil and gas exploitation and asset acquisition in Central Asian countries.

Among all Chinese oil and gas companies, CNPC is the leading player. For preparation of future supply to the China-Kazakhstan Oil Pipeline and the China-Central Asia Gas Pipeline, CNPC launched a new round of acquisitions and financial assistance in onshore fields in 2003 to further solidify the energy relationship between China and the countries along the pipeline. By various manoeuvres like mergers or acquisitions of local entities, joint ventures, and associated company agreements, CNPC has managed to obtain several important exploitation licences such as the Texaco-North Buzachi oil field in Kazakhstan, the Bagtyyarlyk gas contract area on the right bank of the Amu-Darya River, the South Yolotan field in Turkmenistan, and the Mingbulak field in the Namangan region of Uzbekistan. In 2013 CNPC struck a deal for paying more than US $5 billion to purchase an 8.4% stake in the North Caspian Operating Company (NCOC). The consortium is developing the Kashagan oil deposit, the largest oil field discovered in the past 30 years outside the Middle East, which contains around 13 billion barrels of crude in recoverable reserves. This, which represents most of Kazakhstan’s offshore proved oil reserves, is roughly equivalent to Brazil’s entire proved oil reserves, both onshore and offshore. A possible second phase would boost the production of the Kashagan oil field to 1.5 million bpd.

Regarding the downstream presence of Chinese companies in Central Asia, the China Petroleum & Chemical Corporation, or Sinopec, China’s largest oil refiner, has been playing a more active role. In 2009, Sinopec signed an EPC contract with KazMunaiGaz for the construction of a new processing facility at the Atyrau oil refinery. The plan is to build two sets

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12 The construction of one of the included two pipelines, which goes through Turkmenistan and Iran, was temporarily withdrawn because of US embargoes against Iran.
of 1 million tons/year continuous re-forming units, one 500,000 tons/year aroma production unit and one polypropylene plant. In 2012, Sinopec won a contract for a US $1.7 billion modernization project at the Atyrau oil refinery. Besides downstream participation, Sinopec is also carrying out activities upstream and intends to reallocate investments to geological exploration projects. It was recently confirmed by LUKoil, Russia's second largest oil producer, that it has agreed to sell its 50% share in Caspian Investment Resources Ltd (CIR) to Sinopec for about US $1.2 billion\(^{16}\). As a result of the deal, Sinopec will take control of assets in Kazakhstan including four projects – Northern Buzachi, Karakuduk, Arman and KazakhOil-Aktobe. In 2013, LUKoil’s share of production from these assets totalled 10.2 million barrels of oil equivalent. State-owned Sinopec and its parent company, the Sinopec Group, already own 50% of CIR through a joint venture, so the deal with LUKoil will bring their stake up to 100%.

Other state-owned and private companies are also very keen to gain footholds in the oil and gas sector of Central Asian countries. In 2005, the China National Offshore Oil Corporation (CNOOC), the third largest oil company in China, signed a memorandum of understanding (MOU) with Kazakhstan’s state-owned KazMunaiGaz to jointly explore the Darkhan field on the Kazakh shelf of the Caspian Sea, which has been estimated to hold about 11 billion barrels\(^{17}\). Although the Darkhan site cannot be compared to Kashagan, its acquisition finally makes it possible for China to become a player in the vast offshore Caspian reserves\(^{18}\). Another active player, the CITIC Group (formerly the China International Trust and Investment Corporation), announced in 2006 that it had just acquired the KarazhanbasMunay firm, which holds twenty-year exploitation rights for the oil fields north of Aktau\(^{19}\), with US $2 billion from its former controller Nations Energy (Indonesia). Oil production at Karazhanbas averaged 35,600 bpd in 2010, and there are reserves of over 300 million barrels\(^{20}\). In 2011, the Xinjiang Guanghui Industry Company, a private company with diversified businesses, announced that its subsidiary oil company was planning to establish a joint venture with Weyn Investment Ltd for the acquisition of the Kazakhstani LLC MunaiMangyshlak field for about US $ 50 million\(^{21}\).

It can easily be observed from the above map that Kazakhstan and Turkmenistan have dominated the Central Asian side of Chinese-Central Asian hydrocarbon cooperation. The bulk of these hydrocarbon investments are located in the Aktobe region in the Caspian Basin and on the right bank of the Amu-Darya River. It is reported that joint ventures partially or majority-owned by Chinese firms account for about 30% of total Kazakh crude production\(^{22}\). Moreover, Chinese banks are participating in a state-approved programme to modernize Kazakhstan’s refining complex. The rationale behind these locations is twofold: these areas are the traditional energy centre of the Central Asian countries and have a comprehensive energy infrastructure, and they are the primary origin of supply for the two essential cross-border pipelines to China, with rich oil and gas endowment.

\(^{16}\) China Oil and Gas Monitor, 24 April 2014, Week 16, Issue 490, p.9.
\(^{17}\) China Oil and Gas Monitor, 05 November 2008, Week 44, Issue 218, News Base, p.10.
\(^{20}\) China Oil and Gas Monitor, 11 May 2011, Week 18, Issue 343, News Base, p.4.
\(^{22}\) China Oil and Gas Monitor, 19 January 2011, Week 02, Issue 327, News Base, p.3.
In recent years, other modest Central Asian partners, such as Uzbekistan, have sought further cooperation with China. As large Western companies are absent from the Uzbek hydrocarbon market, China can more easily enter the oil market in the underdeveloped Aral Sea and Ustyurt Plateau areas. In 2006, CNPC took part in an Aral Sea project in Uzbekistan in the Ustyurt Basin, with an exploration area of 12,000 square kilometres, acting as a member of a consortium comprised of Uzbekneftegaz, Lukoil of Russia, Petronas of Malaysia and KNOC of Korea. In 2009, CNPC and Uzbekneftegaz reached an agreement for the joint exploitation of the Mingbulak oil field in the Namangan region. In 2012 high-yield gas flows were obtained from certain wells drilled by CNPC as part of the Aral Sea project, an important discovery in the Aral Sea Basin. In August 2014, Chinese President Xi Jinping and his Uzbek counterpart Islam Karimov agreed in Beijing to cement their bilateral strategic partnership on the basis of mutual benefits, common security and win-win cooperation. In the energy sector, the two presidents agreed to give priority to building line D of the China-Central Asia natural gas pipeline. The respective companies from China and Uzbekistan signed new deals worth over US $6 billion, ranging from trade and loans to the construction of natural gas pipelines and treatment plants.

Kyrgyzstan has also tried to rouse China's interest in its upstream exploitation and downstream refinery construction. Zhongda, a state-owned Chinese company, invested US $250 million in building a refinery in Kyrgyzstan in 2013, which would reduce the country's dependence on imported processed petroleum products.

In July 2012, an updated independent resource report for Tajikistan was issued with estimated gross mean recoverable resources at 27.5 billion barrels of oil equivalent (BOE) - 114 trillion cubic feet of gas plus 8.5 billion barrels of oil and condensate. The new resource report was prepared by Gustavson Associates of the United States for Tethys Petroleum. The published data drew the attention of Chinese SOEs and led to Chinese investment in Tajikistan later on. In 2013, Tethys Petroleum signed an agreement with subsidiaries of French oil major Total and CNPC on joint exploration in Tajikistan. In the same year, China's Dong Ying Heli Investment & Development were reportedly preparing to start building an oil refinery in the Free Economic Zone of the southern Dangara region of Tajikistan with Khasan and Co. The plant should be completed two years after the beginning of construction, and will be able to process some 1.2 million tons per year (24,000 barrels per day) of oil.

30 China Oil and Gas Monitor, 01 May 2014,Week 17, Issue 491, News Base, p.10.
1.1.2. Construction and operation of cross-border transit pipeline

The above map shows all major operating and planned oil and gas pipelines between Central Asia and China. The China-Kazakhstan crude oil pipeline, China-Kazakhstan gas pipeline (the second stage of the China-Central Asia gas pipeline) and the China-Central Asia gas pipeline are the three major transit routes of Chinese hydrocarbon imports from the region. These pipelines are fundamental to the success of other downstream and upstream activities. Considerable Chinese investment can also be found in domestic pipeline networks within the region.

The Kazakhstan-China crude pipeline, as Kazakhstan’s first pipeline directly connected to a market without passing through any third country, travels through a marsh for 340 kilometres, a desert area for 1,500 kilometres and a windy area for 830 kilometres, while also crossing four rivers, nine highways and two railways. The construction of the whole pipeline was separated into three sections. The first section, which was finished in 2003, connects the deposits of Atyrau with Kenkiyak, and allows the oil extracted from the CNPC-controlled fields in Kenkiyak and Zhanazhol to join the Atyrau-Samara pipeline and the Caspian Pipeline Consortium, for export to European markets. The second section connected the pumping station and railway terminal of Atasu, in the region of Karaganda, with the China-Kazakhstan border post of Dostyk-Alashankou in 2006. The third section, which was completed in mid-2009, links Kenkiyak to the Kumkol fields via the town of Araisk, and the last part of the pipeline, situated between Kumkol and Atasu, has existed since Soviet times. On the Chinese side, the Kazakhstan-China pipeline is connected with a domestic pipeline, the Alashankou-Dushanzi Crude Oil Pipeline, which connects the border post with the Dushanzi refinery. This domestic trunk line then transports most of the imported crude oil to major oil consuming cities in the middle and littoral regions of China.

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Kazakhstan began exporting oil from Atasu to Alashankou in 2006, when the second section of pipeline was finished. When the whole project was inaugurated in 2009, the pipeline enabled the continuous transit of Caspian oil to China. The link was originally built to handle 10 million tons per year (200,000 barrels per day), but its capacity was increased to 12 million tons (240,000 bpd) in 2012 and is expected to rise again to 14 million tons per year (280,000 bpd) by the end of 2014. In 2013, CNPC and its Kazakhstan counterpart KazMunayGas (KMG) signed a framework agreement on capacity expansion of the China-Kazakhstan crude oil pipeline, which would be completed in 2018. By then, the crude oil pipeline would have a length of around 3,000 km and improve annual handling capacity to 20 million tons (400,000 barrels per day). From January to July 2014 the China-Kazakhstan crude oil pipeline pumped 6.62 million tons of crude oil to China, the import volume of which was at the highest level in comparison with the same period in previous years. The total accumulated number of imports from the beginning of the operation in 2006 to the end of July 2014 was 70.22 million tons of crude oil.

Besides transporting crude oil from Kazakhstan, China can also import oil from Russian under the framework of oil swaps via the connection between Atasu and the existing Omsk-Pavlodar-Shymkent oil pipeline. In 2013, Kazakhstan signed an inter-governmental agreement (IGA) with Russia on crude oil transit shipments to China. The IGA provides for Russia's state-controlled oil company Rosneft to use the Omsk-Pavlodar-Shymkent and Atasu-Alashankou pipelines to ship 140,000 barrels of crude per day to China over a period of five years, with the option of extending the deal for another five years. Delivery volumes may later rise to 200,000 bpd. It is worth noting that Kazakhstan would be allowed to execute the transit deal by means of swaps – that is, by exporting its own oil to China on Rosneft’s behalf, while directing a corresponding amount of Russian oil to domestic refineries in Pavlodar and Shymkent.

The second major pipeline that CNPC constructed in Kazakhstan is the China-Kazakhstan Gas Pipeline, also known as the second phase of the Central Asia Gas Pipeline. This new link will be 1,475 kilometres long. The construction of the whole project is divided into two sections. The first section, which was finished in July 2012, originates in Bozoi, runs to Shymkent, and is then connected to the existing Central Asia Gas Pipeline. The second section links Beyneu with Bozoi, and will be completed in 2015. By then, the China-Kazakhstan Gas Pipeline will gradually reach its full design capacity of 25 bcm per year. It will pump natural gas from fields in Kazakhstan’s western regions, and may also handle associated gas from oil deposits such as Tengiz and Kashagan. Besides exporting oil to China, this pipeline will also deliver gas from Western Kazakhstan to different parts of the domestic market. Finally, it will be able to pump gas from Uzbekistan and Turkmenistan to domestic consumers.

The third pipeline, the China-Central Asian Gas Pipeline, is strategically the most important continental energy conduit to the whole of China’s energy architecture. Thus far it consists of four trunk gas pipelines, which are lines A, B, C, and D.
Lines A and B were inaugurated in 2009 and 2010, respectively. These two gas pipelines were installed in parallel, with a length of 1,833 kilometres. They draw from the Turkmen reserves of Samandeppe, on the right bank of the Amu Darya, run 188 kilometres to Gedaim at the Turkmen-Uzbek border, and then go across Uzbekistan for 530 kilometres and Kazakhstan for roughly 1,300 kilometres. They ultimately reach the Chinese border at Khorgos, Xinjiang Autonomous Region of China, where they are connected with the Chinese West East Gas Pipelines 2, 3, 4 (under construction) and 5 (in the survey phase). The existing West-East 2 pipeline can then pump gas from Xinjiang to Hong Kong. It has several branch lines, bringing the total length of the network up to 9,102 km. The maximum designed transportation capacity of lines A and B is 40 bcm, with currently around 25 bcm of gas being pumped annually to China. The capacity will be fully utilized once the supply capacity of certain gas fields is increased and coordination with countries along the lines is finalized.

Line C was completed at the end of 2013 and was inaugurated in May 2014. It was constructed along the same route as lines A and B, with a total length of 1,830 km. The designed capacity is 25 bcm annually, of which Turkmenistan will supply 10 bcm, Uzbekistan 10 bcm and Kazakhstan 5 bcm. Currently, line C transports 7 bcm annually and will be fully operational at 25 bcm by the end of 2015, which will bring the total transportation capacity of the Central Asia China Gas Pipeline to 65 bcm per year.

The construction of line D will start in December 2014, and will be completed in 2016. Line D follows a different route compared with lines A, B and C. It will pump gas from fields in eastern Turkmenistan through Uzbekistan, Tajikistan and Kyrgyzstan to the Chinese border. The Kyrgyz section of the pipeline will run from Karamyk, a town on the border with Tajikistan, to Chon-Alai. The capacity of line D will be 25 bcm per year, but initially the pipeline will carry some 5 bcm per year. Its capacity is then expected to rise by an additional 5 bcm each year until it reaches 25 bcm per year by 2020. At that time, the maximum capacity of the Central Asia China Gas pipeline will be brought up to 90 bcm, which is equivalent to more than 50% of China’s current gas annual consumption.

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41 “Hong Kong to Begin Receiving Natural Gas This Year”, Cainxin Online, Mar 30th 2012, http://english.caixin.com/2012-03-30/100374941.html
42 “China to increase Central Asian Gas Imports Through Multiple Pipelines”, The Jamestown Foundation, Aug 9th 2012, http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=39751&no_cache=1#content
1.1.3. Hydropower cooperation and power grid cooperation

In addition to fossil resources, hydropower resources are another natural advantage that Central Asian countries are endowed with. Most of them originate from Pamir glaciers and then flow into the Amu Darya, Panj and Vakhsh Rivers\(^47\). Among all Central Asian countries, Tajikistan is the largest hydroelectricity producer, with huge untapped potential hydropower of roughly 140,000 megawatts. The annual amount of electricity generated there by hydropower is more than 527 terawatt-hours\(^48\), which is far more than domestic electricity demand. Its annual per capita potential of hydropower is around 88 thousand KW/H, ranking second worldwide\(^49\).

After Tajikistan, Kyrgyzstan has the second largest hydropower endowment in Central Asia\(^50\). Among more than 250 domestic rivers of different types and sizes, the Syr Darya River is the driving core of hydropower in Kyrgyzstan. It originates from the glaciers of Tianshan, and has a


potential generation capacity of 18.5 million kilowatts. However, only 10% of its resources are currently being exploited.

Kazakhstan, Uzbekistan and Turkmenistan have sufficient electricity supply for internal use based on sufficient hydrocarbon resources. Tajikistan and Kyrgyzstan, on the other hand, suffer from large electricity shortages in the winter, but have strong hydro power development potential. With domestic demand for electricity expected to remain weak because of industrial crisis coupled with high production potential, exports of electricity are predicted to experience considerable growth.

In order to seek comparatively cheap electricity for the north-west region of China, in case of electricity shortfall occurrences (especially in Xinjiang Autonomous Regions), China has embarked on a campaign of exploring hydropower resources and constructing associated high voltage power grids since the 2000s. Through this strategy, not only can China maintain social stability in terms of electricity supply in the north-west, but it is also beneficial for China to transport hydro-electricity from Central Asia to southern corridor countries including India, Pakistan and Afghanistan, and thereby enhance its regional influence.

Figure 5. Central Asia hydropower resources


Underpinned by a framework that followed the initiation of the China-Kazakhstan strategic partnership in 2005, the national electricity companies of both sides, KEGOC and China's State Grid Corporation, sought to establish an electricity bridge between the two countries. The plan was to construct a power station on the Irtysh River, with an expected output of 3,600 megawatts, making it the most powerful in the CIS. The costs was to be totally covered by Beijing and the electricity generated by this joint project transported through a 4000 kilometre, 1,500 KV high voltage line to reach Xinjiang, in the north-west of China.

The second joint project is the Moinak Hydro Power Plant, on the Charyn River in Almaty Province of Kazakhstan, which is equipped with two individual turbines with a nominal generation capacity of 150 MW each and can generate 1.27 billion kilowatt-hours of electricity per year. It is the first infrastructure joint project in a non-fossil energy field between China and Kazakhstan, and, as a standard EPC project, is funded by the National Development Banks of Kazakhstan and China. It will be able to make up part of the electricity deficit in the south of the country.

In Tajikistan, China has decided to invest mainly in a hydropower project on the Zaravshan River in the Penjikent region near Uzbekistan. In 2009, China invested US $650 million in the construction of a new hydropower station at Nurabad, on the Khingob River. Tebian Electric Apparatus of China (TBEA) built two strategic electric lines: the Lolazor-Obi Mazor line in the Khatlon region, and the 350 kilometre 500 KW high-voltage power transmission grid which constitutes the backbone of the Tajik state grid network and integrates the south with the north. It was completed in 2010, and could serve as a main transmission line to supply 1,300 MW of electricity to Afghanistan and Pakistan.

Regarding hydropower cooperation between China and Kyrgyzstan, a primary agreement was signed as early as 1995 for the supply of electricity in exchange for oil, but the country's permanent energy deficit has not enabled this cooperation to bear fruit. In 2006, Beijing and Bishkek reached a new in-principle agreement for exporting 50 megawatts to Xinjiang, but they have been unable to agree on the price per KWh. Most recently, the two sides are negotiating financing issues involved in the construction of a hydropower station on the Enilchek, the Sarydzhaz, and the Akshiirak rivers, running from Kyrgyz glaciers in the eastern areas of Tianshan to China.

1.1.4. Uranium exploration and trade

Except for Turkmenistan, the other four Central Asian countries are all geographically attached to the Tian-Shan mountain range, which is well endowed with various kinds of minerals. Among them, uranium plays an essential role in the economic partnership between China and Central Asian countries.
To contend with its exponential energy demand growth, China’s government plans to boost nuclear installed capacity from 14.7 GW in 2013 to 58 GW by 2020. It is reported that China commissioned 20 reactors by the end of 2013, with 31 reactors under construction. These new nuclear plants will provide an additional 35 GW capacity when they are commissioned by 2017. Therefore, the demand for uranium will soar in the foreseeable future, and supply priority will be given by the Chinese authorities to partners with whom they have already established economic cooperation, like Kazakhstan.

After Australia, Kazakhstan has the second largest uranium reserve in the world. The reasonably assured resources (RAR) uranium is estimated to be 378,000 tons, and inferred uranium is another 439,200 tons. The total amount of reserve accounts for about 14.9% of the world’s total uranium resources. The country has been a leader in uranium production for many years. Total production of uranium in 2013 was 22,500 tons, about 38% of the world’s total uranium production, and is estimated to reach 30,000 tons annually by 2018.

Figure 6_Uranium mine status in Central Asian countries


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67 “Global Struggle for Kazakh Uranium Resources”, The Jamestown Foundation, April 15 2011, http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=37802&no_cache=1#VeWAwvulJk
The cooperation in terms of uranium exploitation between China and Kazakhstan can be dated to 2006 when a strategic partnership cooperative agreement was signed between Kazatomprom, the main uranium supplier in Kazakhstan, and the China General Nuclear Power Corporation (CGNPC), one of two sole uranium importers in China. From then on, CGNPC, together with the China National Nuclear Corporation (CNNC), have sought to increase their stake in uranium exploitation in Kazakhstan. In September 2008, Kazatomprom and CGNPC signed several agreements on Chinese participation in uranium exploitation through joint ventures. In November 2008, following a nuclear cooperative partnership agreement signed by the prime ministers of the two countries, Kazatomprom reached an agreement with CGNPC on joint development and exploration of uranium, fuel production, long-term trade, and power plant construction. Several joint ventures with 51% Chinese control were created to supply Beijing with natural uranium, mainly sourced from three uranium mines: Irkol, Semibay and Zhalpak.

In 2010, an additional agreement signed by the Chinese chairman and Kazakh president allowed for China to increase annual imported uranium to 24,000 tons by 2012, mainly from the Semizbay-U joint venture in Irkol, Kazakhstan. A later 2011 deal enabled China to import an additional 55,000 tons of Kazakhstan’s uranium over the next decade.

China’s efforts in seeking uranium resources can also be observed in other Central Asian countries. Uzbekistan, for example, was a main uranium supplier to Russia before 1991. After independence, uranium production is still ongoing in the combined region of Uzbekistan, Kyrgyzstan and Tajikistan, with much of the treatment happening in Tajikistan. Today, most of the uranium reserve still lies sporadically around Navoi, which is in the middle of Uzbekistan. In 2013, 1663 tons of uranium were supplied to China from Uzbekistan, and in May 2014 CGNPC agreed to buy $800 million worth of uranium by 2021.

1.1.5. Wind and photovoltaic power cooperation

Central Asia is endowed with abundant wind and solar resources, which provide a new market for technologies and equipment for renewable energies (RE) produced in China. Currently, Chinese companies have relatively small-scale investments in the RE sector of Central Asia.
Kazakhstan is the leader in the Central Asian region in terms of per capita wind energy resources. The strong wind belt in the areas of Astana, Aralk, Djungar Gate, Ft. Shevchenko, Ereymentau, Karakalinks, Zhuzhymdik, Korday, Karabatan and the Shekik Corridor, which covers only 2% of the nation’s territory, provides 56% of the country’s wind energy resources with a wind speed of seven metres per second. It is estimated that potential wind energy in Kazakhstan is about 1,820 billion KW/h per year, indicating huge possibilities for development of and investment in wind farms. Many international wind energy companies are now players in the Kazakh market.

Wind power cooperation involving Chinese partners has been going well. In April 2009, the Chinese company Guodian Xinjiang began to build the Alashankou wind farm, which has one million-kilowatt capacity, near the Djungar Gates—one of the most promising areas in Kazakhstan with abundant wind resources totalling 1.3 trillion kWh of electric energy per year. It is expected in the foreseeable future that China and Kazakhstan will negotiate joint construction of a wind power station and an international wind power grid in this region in order to share the wind energy to their mutual benefit.

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76 http://www.renewablemarketwatch.com/country-reports/cis/kazakhstan
Securing energy flows from Central Asia to China

(CGN) and the China Datang Corporation began wind power cooperation by wrapping up an MOU with Samruk, a Kazakhstan sovereign rights fund. Both sides declared their commitment to exploring the rich wind resources in central and southern parts of Kazakhstan.

Later in the same year, the Goldwind Science & Technology Corporation moved cooperation forward by signing an MOU with the Trade Promotion Bureau of the Ministry of Industry and Trade of Kazakhstan, highlighting the importance of Goldwind’s participation in policy formulation, exploratory resource assessment, and technical training involving wind power in Kazakhstan. In 2012, the construction of a 300,000 kilowatt wind farm was launched by Kazakh Samruk Fund in the Shekik Corridor of Almaty Province, and will be completed in 2018 by the China Guangdong Nuclear Energy Corporation.

Regarding solar energy cooperation, Kazakhstan, Turkmenistan and Uzbekistan could be the optimal choices as they are underpinned by vast deserts with long solar duration and strong radiation. The southern and south-eastern parts of Turkmenistan, largely covered by the Karakum Desert, receive a large amount of sunlight with nearly 300 clear days per year. The average solar radiation reaches up to 2,000 kW/m²/year. Gross potential for solar energy within the whole territory of Uzbekistan is 50,973 * 10^6 tons of oil equivalent (TOE), with a technically realizable potential of 176.8 * 10^6 TOE, which is more than 10 times that of Central Asia’s proven oil reserves. At the same time, two large deserts in Kazakhstan, the Moyinkumu Desert and the Aral Sea coastal deserts, cover more 50% of the country’s territory and receive

![Mean wind speed at 80 m in Kazakhstan](http://atlas.windenergy.kz/)

**Figure 8** Mean wind speed at 80 m in Kazakhstan

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82 "Неисчерпаемый источник энергии" (Inexhaustible source of energy), May 2012, http://kp.kazpravda.kz/c/1338428689
2,200 to 3,000 hours of annual sunshine and an insolation (direct radiation from the sun) of 1,300-1,800 kWh/m²/yr

Extensive efforts have been made by central Asian countries to maximize utilization of the abundant solar energy, and good momentum in terms of solar cooperation between China and Central Asian countries has been maintained in recent years by a patchwork framework of MOUs and general agreements. A few solar projects have also been realized that are underpinned by mutual collaboration. The construction of a 500 kilowatt photovoltaic grid-connected plant in Kazakhstan was completed by the Tebian Electric Apparatus Stock Corporation (TBEA) in 2013. However, the cooperative level between the two sides remains nascent and much more substantial work needs to be achieved in the field of solar energy in the future.

1.1.6. Thermal power cooperation

Productive dialogue has been ongoing in the thermal power sector for years between the two sides. In 2008, the China Datang Group signed an MOU with Samruk confirming mutual cooperation in R&D and exploration of the thermal power sector, such as the integration of coal and electricity and the development of a mega assembling unit and an ultra parameter thermal power plant. The China Power Engineering Consulting Group Corporation has already completed the construction of a 180 megawatt self-aid thermal power plant project owned by the Kazakhstan SBS Group.

Moreover, TBEA has almost completed construction of a 200 MW combined head and power (CHP) plant in the Luchob area of the Tajik capital. Within the next three years, the capacity of the Dushanbe-2 CHP plant will be increased to 400 MW.

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In 2014, TBEA invested around $386 million in a project to modernize the thermal power plant in the Kyrgyz capital, Bishkek. The modernization project will increase the plant’s generating capacity to 600 MW. The power plant now generates almost a billion kWh of electricity, and more than two million gigacalories of heat energy a year. The plant provides heating and hot water to 85% of Bishkek.

1.2. Existing legal frameworks and cooperative mechanism between China and Central Asian countries

1.2.1. Bilateral Investment Treaties (BITs)

The analysis of this section will start with a review of the bilateral investment treaties (BITs) signed by China, which are considered to be the principal legal instruments that underpin foreign direct investment (FDI) promotion and protection within the realm of international law. Since it signed its first BIT with Sweden in 1982, China’s conclusion of BITs is described by two distinctive phases covering two different policy orientations. During the first phase, shortly after implementation of the ‘reform and opening up’ policies in 1978, China was rather conservative in terms of BIT practice, which reflected its scepticism with respect to international law and wariness with regard to the issue of state sovereignty. As a result, a national treatment clause was seldom incorporated into BITs. At the same time, China only allowed international arbitration for disputes concerning the amount of compensation given for expropriation. Given the fact that China was fundamentally a FDI recipient at that time, the focus of China’s BIT policy at this stage was undoubtedly to protect and promote inward, rather than outward, investments. There were a few deals, however, in which China was motivated by the protection of its own outward FDI, as it signed BITs with other developing states and transition economies.

The trajectory of China’s FDI policy smoothed to shift towards liberalization in parallel with international law in 1998, which saw the introduction of the ‘going out’ strategy that encouraged Chinese companies to explore outward, to research new markets and to acquire technologies. This led to the inclusion of clauses such as national treatment and full access to international arbitration into newly concluded BITs during that period. In 2001, the momentum of outward foreign direct investment (OFDI) from China was further enhanced by the inclusion of the ‘going abroad’ strategy in the Outline of the Tenth Five-Year Plan for National Economy and Social Development. On the other hand, following the successes Chinese firms had enjoyed in Latin American and African markets, neo-liberal economic and trade measures received greater political support. Another driving factor of further liberalization was China’s accession to the WTO in 2001, which dramatically drew more FDI to China. Against this backdrop, and in contrast to the IFDI emphasis in the first phase, the second stage of Chinese BIT practices exhibited a more balanced approach towards inward and outward Chinese FDI.

Regarding the BITs that China has concluded with Central Asia countries, most of them date back to 1992 and 1993, only the Uzbek BIT being updated in 2011. It is undeniable that all of these BITs have set positive political tones for boosting China’s OFDI in this region. However, they are not practical legal instruments for defence of China’s enterprises should they suffer loss because of discriminative administrative obstacles imposed by host states. For instance, the national treatment standard does not appear in any of the BITs with these countries, except that with Uzbekistan, and only investor-state disputes concerning compensation amounts can

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be submitted for international arbitration. With the advent of increased mass-scale and cross-border energy investment pouring into the Central Asia region, it is an axiomatic trend that the China’s BITs signed with Central Asian countries need to be improved to be more legally practical than political slogans.

1.2.2. Memorandums of Understanding (MOUs) and Inter-Governmental Agreements (IGAs)

Another mainstream cooperative framework between China and Central Asian countries in the energy field is memorandums of understanding (MOUs) and inter-governmental agreements (IGAs). Most MOUs are bilaterally signed on different levels and are not legally binding, only stating general intentions of collaboration and cooperation in energy industries based on reciprocity and mutual benefits. A good example is the MOU on renewable energy cooperation signed between China’s Datang Corporation and the Kazakh sovereign wealth fund Samruk, which outlined the principal structure of cooperation between the two sides. Conversely, an MOU can be legally binding if it is ratified by both of the government bodies.

With regard to IGAs between China and Central Asian countries, they are legally binding in most cases and usually temporarily related to specific energy infrastructure projects, rather than being permanent multilateral agreements covering all parts of the energy-related value chain. For instance, an IGA on construction and operation of a Central Asia-China natural gas pipeline was signed by China, Kazakhstan, Uzbekistan and Turkmenistan from 2003 to 2006, with an option to prioritize pipeline construction issues at an early stage, but without further elaboration of legal provisions on pipeline operation and maintenance such as transit interruption or dispute arbitration.

1.2.3. Shanghai Cooperation Organization (SCO)

The Shanghai Cooperation Organization (SCO) was founded by Russia, China, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan and Uzbekistan with the joint Declaration of Shanghai Cooperation Organization signed in 2001. The primary objective of the SCO was to safeguard regional security and broaden multilateral cooperation against terrorism, separatism and extremism, and it was based on the principles of non-intervention in the internal affairs of sovereign states, a non-confrontational way of thinking, and incremental movement towards democratization of international relations. This at the same time provided all member states with a unique opportunity for participation in the process of forming a fundamentally new model of geopolitical integration.

In more than 14 years of existence, the SCO has allowed Central Asian governments to familiarize themselves with China. This mutual knowledge has given rise to an intense diplomatic ballet throughout all sectors, from the political to the cultural level. It has helped to ease long-standing tensions between the Russian and Chinese borders, to put in place cooperative mechanisms for border management, and to establish a collective narrative on the common threats members allegedly face. But now that the threshold of development and institutionalization has been reached, the organization faces challenges. In economic terms, more work needs to be done in order to enable the SCO to compete with the Eurasian Economics Community and the Customs Union. With regard to the issue of energy cooperation, the absence of common jurisdiction in most areas and the lack of internal coordination on important matters considerably weaken the scope for potential energy cooperation. Though Russia reiterated as early as in 2006 its strong intention to develop plans for an SCO ‘Energy Club’ amongst member states, the proposal is still lingering on the discussion table and the SCO itself remains a talking shop to a certain extent, only contemplating interwoven commitments and demonstrating the feasibility of plans; there is no decisive consensus on advancing from the theoretical stage.
1.2.4. *Four Countries and Seven Partners (FCSP) coordination mechanism*

The Four Countries and Seven Partners (FCSP) coordination mechanism was originally initiated by the China Natural Gas and Petroleum Corporation (CNPC) in 2010. The four countries are China, Kazakhstan, Turkmenistan and Uzbekistan, which are all the countries along the Central Asian-China Gas Pipeline, and the seven partners are the above four countries plus the three joint-venture companies that CNPC separately established with Kazakhstan, Turkmenistan and Uzbekistan. The aim is to systematically coordinate all involved partners in maintaining the operational stability of the entire pipeline. Specifically, the possible approaches include formulating coherent transmission plans that are implemented by instructions dispatched from only one administrative headquarters and consolidating emergency solutions to smooth the asymmetrical fluctuation between the producing and consuming sides in case transit interruption occurs. However, this mechanism is not legally binding and only remains at the company level, which means it is far from effective in protecting the pipeline and the national security of the energy supply.
2. The relevance of the Energy Charter to China
2.1. Background

The Energy Charter Process dates back to the early 1990s, following the fall of the former Soviet Union. As the Eurasian countries envisaged transforming their economies on a market-oriented basis, the necessity to ensure multilateral cooperation for promotion of international energy investments was apparent. As some of the newly independent countries became indispensable transit areas for gas and oil supplies to Western Europe, cross-border transit security emerged as a priority issue for national strategies throughout various countries. Even today, the basic principles of the Energy Charter remain focused on the enhancement of international energy security through the promotion of multilateral cooperation on trade and transit, investments, dispute resolution mechanisms, and promotion of energy efficiency policies.

A first important step towards multilateral cooperation on energy was the European Energy Charter, a political declaration that was signed in The Hague in December 1991, and to which 54 countries currently adhere. It represents a political commitment to cooperation in the energy sector based on common objectives and principles. The Energy Charter emphasized the need for the establishment of an appropriate international legal framework for energy cooperation between participants. As a result, negotiations on the Energy Charter Treaty (ECT) were conducted from 1992 until 1994. The ECT was signed in Lisbon on 17 December 1994, and entered into force on 16 April 1998. The Treaty established a commonly accepted legal framework for energy investment, transport, and trade, and mitigation of political and regulatory risks. The Treaty allows for settling various disputes in the energy sector, including via state-to-state and investor-to-state arbitration schemes. The provisions of the Treaty have been used for the arbitration settlement of investor-state disputes in more than 50 cases from more than 20 countries.

With regard to membership, as of June 2013, 52 countries have signed the Energy Charter Treaty and 46 of those countries have ratified it. Belarus applies the Treaty provisionally. Australia, Iceland, Norway and the Russian Federation have signed but have not ratified the Treaty. The Energy Charter Treaty is open to all countries for accession, bringing together energy-producing, consuming, or transiting countries. The last country that became a contracting party to the ECT was Afghanistan, which ratified the Treaty in 2013. In addition to the signatory countries, there are also 21 observer countries and international organizations including Canada, China, Iran, Indonesia, Pakistan, Saudi Arabia, South Korea, the United States, International Energy Agency (IEA) and Association of Southeast Asian Nations (ASEAN). Many South-East Asian countries benefit from observer status of ASEAN with the Energy Charter.

In 2009, in view of new challenges in the energy sector, the constituency of the Energy Charter Conference launched a modernization process designed to ensure the continuing relevance of the Energy Charter. A key element of modernization is renewed focus on expanding the membership of the Treaty to major new energy markets, notably those in Asia, the Middle East and Latin America. In this context, the Energy Charter Conference pursues a dialogue among energy-producing, consuming, and transit countries, including developed and developing economies, that is aimed at adjusting common interests within the organization. Under a policy of ‘Consolidation, Expansion and Outreach’ (CONEXO) the Secretariat received a mandate to facilitate ratification of the Treaty by all signatories that have not yet ratified the Treaty, facilitate further accessions, and promote the Energy Charter’s principles throughout the world. China has been a leading partner in this.

In order to engage countries all over the globe in a dialogue on the Charter’s principles, and to take into account their specific concerns, the Charter’s signatories recently launched negotiations
The relevance of the Energy Charter to China

on an International Energy Charter, on the basis of the European Energy Charter of 1991. The new declaration will give new relevance to the Charter’s core principles, such as state sovereignty over energy resources, political and economic cooperation, efficient markets, non-discrimination, a favourable investment climate, and environmental aspects. In the future, signing up to the International Energy Charter will provide observer status at the Energy Charter Conference.

2.2. Distinguishing features of the Energy Charter compared with other international organizations

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

Among those organizations, 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 1973/74 oil crisis. Yet a country needs to be an OECD member before applying for membership of the IEA, indicating that the likelihood of China becoming a member will be 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, and the International Energy Forum (IEF) is deemed to be a neutral facilitator of informal, open and continuing energy dialogue characterized by biennial ministerial meetings, the world’s largest gathering of energy ministers. However, the commitments of these two organizations are of more significance in terms of enhancing political momentum rather than creating multilateral,

Figure 10_Comparison of energy-related organizations

<table>
<thead>
<tr>
<th>Nuclear</th>
<th>Climate change</th>
<th>Renewables</th>
<th>Environment Protection and Energy efficiency</th>
<th>Energy security</th>
<th>Transit</th>
<th>Trade</th>
<th>Investment</th>
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<tr>
<td>IAEA</td>
<td>UNFCCC/Kyoto Protocol</td>
<td>IRENA</td>
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<td>UNECE</td>
<td>OPEC</td>
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<td>ASEAN</td>
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legally binding rules of law. Regarding the World Trade Organization (WTO) and the International Renewable Energy Agency (IRENA), China has become a member of both of them. However, membership of these two alone is not considered to be broad enough to cover the whole energy sector value chain. IRENA is an intergovernmental organization that supports countries in their transition to integration of renewable energy, and the WTO is mainly characterized by its system of legally binding trade rules but does not have a specific energy trade category.

In comparison with the above organizations, 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.

2.3. China's participation

Over the last decade the Energy Charter Secretariat pursued different cooperation schemes with its Chinese counterparts. An overview of joint events and activities conducted from 1998 to 2014 is provided in Annex I.

China actively participates in the Energy Charter process thanks to its increasingly strong presence in international energy markets and engagement as an investor in the energy sectors of all continents. China received observer status in 2001. In the past few years alone, the National Energy Administration of China has sent four officials to work at the Secretariat as secondees as part of a secondment programme which aims to facilitate the improvement of relationships between the two sides and promote mutual exchange of ideas for further cooperation. China was among the first countries to participate in the negotiations on the International Energy Charter, and has submitted several constructive comments on the new Charter during the negotiations.

The Secretary General of the Energy Charter, Ambassador Urban Rusnák, recognizes the importance of engaging China and therefore visited Beijing three times during 2013 and 2014. The Secretary General held 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 the 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, which aims to promote market principles and energy cooperation in the region, particularly in the field of electricity. The leading role of the Energy Charter Secretariat in promoting the development of the Asian Super Grid and Gobitec for renewable

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91 The Gobitec concept represents the idea of producing clean energy from renewable sources in the Gobi Desert and delivering it to regions with high electricity 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 North-East 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, during the Secretary General’s visit to Beijing in June 2014, promised to be an academic partner in these initiatives.
energies in North-East Asia offers a promising platform for China to engage with other countries of the region in the development of sustainable energy and connected markets.

A leading Chinese company, CNPC, has recently requested membership of the Energy Charter Industry Advisory Panel (IAP). The Panel was set up by the Energy Charter Conference in 2004 as a means to build on existing contacts with industry and strengthen dialogue with the private sector on the main directions of the Charter Process, with a particular focus on investment, cross-border energy trade, transit, risk mitigation and improvement of the business climate. The members of the Panel are representatives of 40 multinational and national energy companies, industry associations and financial institutions from over 20 countries.
3. Benefits of the ECT to China in terms of its energy relations with Central Asian countries
In recent years, China has been expediting the process of looking outward for energy supply providers in Central Asian countries, in order to safeguard its energy supply security and achieve long-term sustainable development. Chinese companies and financial institutions have made significant investments abroad in energy infrastructure, cross-border energy pipelines, increased trade and promotion of renewables and energy efficiency technologies. In contrast to the above tendency, the existing bilateral legally binding agreements that China has signed in this region are comparatively sluggish and do not provide a sufficient level of legal protection for outward-looking Chinese energy enterprises and investors. It is important to analyse the benefits of multilateral investment protection mechanisms under the ECT and how they complement existing bilateral agreements which cover Central Asia and other regions of the world and ensure China's energy stability and security.

The purpose of the Treaty 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. It is a milestone in international energy cooperation. Its fundamental aim is to strengthen the rule of law on energy issues by creating a level playing field of rules to be observed by all participating governments, thereby mitigating risks associated with energy-related investment and trade.

A detailed comparison and comprehensive review of all energy frameworks, mechanisms and initiatives will be provided in this chapter to illustrate the potential relevance, and some superiorities, of the ECT in ensuring security of energy relations between China, Central Asian countries, and other regions of the world.

3.1. The Energy Charter Treaty and Chinese BITs: An overview of key contrasts

The ECT’s investment provisions build upon the content of bilateral investment treaties as they have developed during the last half-century. The ECT and BITs have common principles and rules which are recognized universally. Nevertheless, the ECT has some added value as compared with BITs. The ECT:

• is the first multilateral agreement on the promotion and protection of foreign investment, covering all important investment issues and providing high standards of protection;
• reflects the close inter-relationship between investment and trade and transit in the energy sector by covering not only investment issues per se, but also related areas;
• establishes a permanent discussion forum between members on all energy-related aspects of foreign investment;
• provides for the future establishment of the principle of non-discrimination, in a legally binding manner, with regard to making investments.

The Treaty contains a comprehensive dispute settlement mechanism, covering both investor-state arbitration and inter-state arbitration. It is important that the Treaty also includes a ‘best-efforts’ clause concerning non-discrimination in the pre-establishment phase for foreign investors.

Investment protection and promotion are the primary component of the ECT’s balanced approach to investors’ access to resources. The investment chapter is a cornerstone of the ECT, and its provisions aim to promote and protect foreign investment in member countries. To this end, the Treaty grants a number of fundamental rights to foreign investors with regard to their investment in the host country. Foreign investors are protected against the most important political risks, such as discrimination, expropriation and nationalization, breach of individual
investment contracts, damages owed to war and similar events, and unjustified restrictions on the transfer of funds. In contrast, the corresponding provisions in BITs signed between China and Central Asian states are regulated or specified to a lesser extent. In order to analyse the difference between the legal regime of the ECT and BITs, this chapter will look at the different legal issues that are important for investors in the energy sector.

3.1.1. Definition of ‘Investor’ and ‘Investment’

The investment provisions of the ECT largely reflect international legal standards for investment protection and promotion. The definition of investor and investment is not only the cornerstone for the applicable scope of a treaty or agreement, but also serves as a decisive legitimate reference for international arbitration settlements. In accordance with the Treaty, investor means:

(a) with respect to a Contracting Party: (i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law; (ii) a company or other organization organized in accordance with the law applicable in that Contracting Party; (b) with respect to a ‘third state’, a natural person, company or other organization which fulfils, mutatis mutandis, the conditions specified in subparagraph (a) for a Contracting Party.

In contrast with that, the ‘investor’ in China’s BITs with Central Asian countries is defined distinctively. In the BIT with Kazakhstan, for instance, in Article 1 (2) the ‘investor’ is: ‘(a) a natural person having citizenship who is permanently residing in the Contracting Party in accordance with its applicable law; (b) an enterprise or corporation organized in accordance with the law applicable in the Contracting Party.’

Ostensibly, the ECT enhances the prominence of investor-emphasized protection through the augmentation of the definition of investors compared with BITs—that is, easing the threshold of a ‘natural person’ from permanent citizenship in a BIT country to a natural person with the nationality.

Regarding the difference in the definition of ‘investment’ between the ECT and BITs, the ECT contains a broad, non-exhaustive, ‘asset-based’ definition of an ‘investment’, with stress on ‘a change in the form in which assets are invested does not affect their character as investments and the term’. The ECT definition covers every kind of asset, owned or controlled directly or indirectly by an investor. Furthermore, the definition extends to any investment ‘associated with’ an economic activity in the energy sector. The term ‘associated with’ implies inclusion not only of the establishment of an energy company as such (e.g. a refinery), but also investments

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92 ECT, art 1(7)
94 In Article 1 (6), investment: ‘includes: (a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges; (b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise; (c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment; (d) Intellectual Property; (e) Returns; (f) any right conferred by law or contract or by virtue of any licenses and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector’. A change in the form in which assets are invested does not affect their character as investments and the term ‘investment’ includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the contracting party of the investor making the investment and that for the contracting party in the area of which the investment is made (hereinafter referred to as the ‘effective date’) provided that the Treaty shall only apply to matters affecting such investments after the effective date. ‘Investment’ refers to any investment associated with an economic activity in the energy sector and to investments or classes of investments designated by a contracting party in its area as ‘charter efficiency projects’ and so notified to the Secretariat.
indirectly linked to economic activity in the energy sector (e.g. office space associated with a refinery). Such an emphasis on the essence of the investment beyond the form is not mentioned in the BITs with Central Asian countries, which only define the regular investment.\(^95\)

It is important to note that the ECT expressly reserves the right of contracting parties to deny to foreign companies the advantages of Part III, which comprises substantive investment protection provisions. Such rights are reserved in case a company is an entity that is incorporated in the territory of a contracting party but has no substantial business activities in that state, and it is owned or controlled by nationals of a ‘third state.’ Thus the Treaty excludes ‘free-riders’ and strengthens the ECT multilateral network of reciprocal benefits and obligations. However, applicability of the ECT provision related to denial of benefits will be refined as more cases come before arbitral tribunals. In contrast to the ECT legal regime, some Chinese BITs do not contain a denial of benefits clause.

### 3.1.2. National treatment in ECT v. Most Favoured Nation (MFN) treatment in BITs

The ECT intends to ensure a basic standard of treatment for foreign investors. According to Article 10(1), each contracting party shall encourage and create stable, equitable, favourable and transparent conditions for investors to make investments. Such conditions include a commitment to accord to investments of investors of other contracting parties, at all times, fair and equitable treatment. Investments shall enjoy the most constant protection and security. In no case shall an investment be accorded treatment less than that required by international law, including treaty obligations.

Protection against discrimination is one of the most important components in creating a favourable investment climate. The ECT obliges host countries to accord to investments of investors of other contracting parties (CPs), and their related activities including management, maintenance, use, enjoyment or disposal, treatment at least as favourable as that which they accord to the investments of their own investors or to investors of other countries, i.e. whichever is the better of national treatment or most-favoured-nation ('MFN') treatment.

BITs between China and Central Asian countries reflect a more conservative stance towards bilateral investment cooperation, via incorporation of MFN statuses in related provisions.

### 3.1.3. Direct expropriation and indirect expropriation

Protection of foreign investors in the case of expropriation is a core element of investment agreements. Although the risk of politically motivated expropriations has decreased substantially during the last decade, giving way to the opposite movement of de-nationalization and privatization, it has not completely disappeared.

The legal regime of investment protection is of prime concern to investors. One of the most straightforward provisions of such a regime relates to the availability of adequate legal protection in the case of expropriation of investments made in a foreign country. The ECT’s investment protection mechanism does not entirely prohibit expropriation, which may occasionally be an essential tool in relevant circumstances for various public policy concerns. Nonetheless, it is obvious that there is a need to lay down clear rules under which a decision for expropriation can be taken. The ECT deals with this requirement through its provisions. More importantly, the

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95 In Article 1 (1) of the BIT between China and Kazakhstan, investment means various assets which are invested within the territory of the contracting party in accordance with domestic laws and regulations, in particular with: ownership of tangible and intangible and any relevant property rights; shares or other forms of equity participation in enterprises or companies; claim rights on money or other behaviours with economic value; intellectual property including copyrights, industrial property rights, trademarks, company brands, origins of products, commercial confidentiality and technical procedures; rights of engagement in economic activities based on the law or contracts, particularly the rights of exploration and exploitation of natural resources.
Benefits of the ECT to China in terms of its energy relations with Central Asian countries

Treaty’s legal protection regime ensures that expropriation is accompanied by the payment of prompt, adequate and effective compensation to the foreign investors concerned.

Expropriation is classified into two categories, including direct and indirect expropriation. Generally, the typical case of direct expropriation refers to nationalization and the transfer of title of the investor’s property, based on public benefits or national security. Indirect expropriation means state measures with the indirect effect of substantially depriving the investor of the value of the investment, such as regulatory interference like the revocation of a licence, dramatically increasing a tax rate, or erosion of the investor’s rights over time through a series of actions. Comparatively, the compensation mechanism owed to expropriation in the ECT has advantages over that in the BITs. For example, an additional precondition for expropriation in Article 13(1) of the ECT is incorporated ‘accompanied by the payment of prompt, adequate and effective compensation’, emphasizing the timeliness and effectiveness of the compensation. Moreover, when considering the potential commercial loss caused by expropriation, the ECT specifies that the fair market value of the expropriated investment not only refers to ‘fair market value shall at the request of the Investor be expressed in a Freely Convertible Currency on the basis of the market rate of exchange existing for that currency on the Valuation Date’, but also must include ‘interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment’.

The dispute of direct expropriation has rarely been seen amidst international arbitrations of energy investments in recent years, since it can be easily identified by obvious evidence. More prevalent in areas of international arbitration is the dispute of indirect expropriation. However, because of the elusiveness and complications involved in the identification of indirect expropriation, it is sometimes very hard to conclude expropriation compensation arbitration without consolidated legal regulations and compensation.

3.1.4. Capital transfer and key personnel protection

A considerable disincentive for foreign investors is the risk of not being able to transfer capital connected with their investment to another country. This risk exists in particular for countries with high inflation, long delays in transfer systems, widely fluctuating exchange rates, or poor foreign exchange reserves. Article 14(2) obliges host countries to proceed with transfers without delay.

Most Chinese energy infrastructure investment in Central Asian countries is characterized by long duration, technological orientation and capital intensification. Therefore, it is crucial to ensure the free inflow and outflow of capital as a basic precondition of construction and operation without difficulty.

According to ECT Article 14(3), transfers shall be made at the market rate of exchange in a freely convertible currency. Such transfers include the initial and additional capital, returns, payments under a contract, unspent earnings and other remuneration of personnel, proceeds from the sale or liquidation of the investment, payments arising out of the settlement of an investment dispute and compensation for losses or expropriation.

In contrast, conservatism and protectionism are typically dominant in BITs: for example, Article 5 in the BIT between China and Kazakhstan states 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.

Although BITs are totally silent regarding provisions for the protection of key personnel employment, ECT Article 11 permits foreign investors to employ key personnel of their
choice, regardless of nationality, so long as such personnel have the required work and residence permits. The Treaty requires the host country, subject to its laws and regulations, to examine requests by the foreign investor in good faith concerning the entry and temporary stay of employed key personnel to be engaged in activities connected with the making or development, management, maintenance, use, enjoyment or disposal of relevant investments.

### 3.2. Cross-border transit

China signed an agreement with Kazakhstan to build its first cross-border crude oil pipeline, and construction started in 2004. After signing agreements with several countries in Central Asia for the construction and operation of a gas pipeline, China has gained a lot of expertise in the implementation phase of these giant projects. However, there is no multilateral legal protection mechanism for the interruption of transit or potential risks or losses caused by regional instability. Existing bilateral IGAs signed between China and Central Asian countries are much more concentrated on the systematic maintenance of pipeline operation, with focus to a lesser extent on dispute resolution. These IGAs are also not legally sufficient to handle the tricky multilateral problems emerging among the Central Asian countries. There is a need for legally binding emergency response coordination in the case of transit interruption owed to regional religious conflicts, commercial disputes and/or any discrepancy in the allocation of transit capacity of the pipeline based on various strategic considerations of supply and transit countries. Therefore, to safeguard national energy supply security, it is essential to establish a multilateral legally binding framework as an effective instrument to secure the energy flow from Central Asian countries to China.

Before the entry into force of the ECT in 1998, the international rules applicable to transit were those included in Article V of the GATT (currently WTO), which enshrines the principle of non-discrimination towards goods in transit. With rapidly increasing energy transit flows over recent decades, transit transactions have become more complex, in particular with regard to fees for services provided and to transit routes. It thus became apparent that, in the specific context of energy transit, Article V of the GATT could not solve all the related problems, and that more elaborate rules were needed that would ensure transit on reasonable terms.

Such rules were developed through the ECT, whose transit provisions build 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. The transit provisions of the Treaty confirm the principle of non-discrimination with regard to access to energy resources and markets. The important new element contained in the Treaty is its explicit coverage of grid-bound energy transport and the enforceability of its provisions.

The aforementioned legal frameworks and documents might serve as supporting material and an inspiring reference for China to consolidate the development of its own multilateral legal frameworks in the Central Asian Region, or to inspire the possibility of its deeper engagement in the Energy Charter Process by becoming a contracting party in the foreseeable future.

### 3.2.1. Provisions on transit in Energy Charter treaty

Under the Treaty, measures to facilitate transit are to be taken without distinction as to origin, destination, ownership, or pricing of energy, and without imposing any unreasonable delays, restrictions or charges. This means that countries may not refuse transit, or refuse to agree to the construction of a new pipeline or network capacity, solely on the basis of the origin, destination or ownership of the energy.
Article 7 of the ECT is a unique multilateral legal framework in the field of cross-border transit. It obliges contracting parties to facilitate transit on a non-discriminatory basis, consistent with the principle of freedom of transit enshrined in the WTO/GATT. These provisions go beyond WTO in that they contain explicit obligations relative to energy transit, including for fixed infrastructure with a wide range of coverage consisting 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 designed for handling energy materials and products.

To be specific, it is stipulated in Article 7 that each contracting party shall treat energy materials and products in transit in a no less favourable manner than those for its own area, unless an existing international agreement provides otherwise. At the same time, contracting parties shall not place obstacles in the way of new capacity being established when transit of energy materials and products cannot be achieved on commercial terms, except via some special legislative circumstances. Additionally, in the event of a transit dispute, a contracting party shall not interrupt or reduce the existing transit flow prior to the conclusion of the dispute resolution set out by the ECT, except in circumstances specified in other contracts or agreements.

Under the ECT, transit countries must not interrupt or reduce existing transit flows, even if they have disputes with any other country concerning this transit. In such cases, they have the opportunity to invoke a special, rapid conciliation procedure under Article 7(7) of the Treaty. Under this mechanism, an independent conciliator is appointed, who is empowered to fix interim transit tariffs for up to twelve months if the parties to the dispute fail to reach an agreement.

However, ECT conciliation procedures have not yet been used in a major cross-border gas interruption. The dispute settlement procedures for transit interruption outlined in ECT are not enough to cover all the complex multilateral issues in the real world. First, Russia, the largest oil and gas producer within the Eurasian region, has not yet ratified the ECT, which means the ECT cannot currently be a legal leverage in dispute settlement of transit interruption between Russia and other contracting parties. In 2009, Russia officially gave notice that it does not intend to become a contracting party to the treaty and the related protocol, terminating the provisional application of the ECT and the PEEREA.

Second, there is concern that the ECT dispute settlement mechanism for transit is not sufficiently swift to address urgent transit problems. The existing provisions regarding dispute settlements set out several timelines. For instance, the Energy Charter Secretariat shall appoint a conciliator within 30 days of receiving a contracting party notification, and, after 90 days of appointment without concrete progress, the conciliator shall recommend a resolution to the dispute or a procedure to achieve such resolution. These rational steps are so time-consuming that they could result in considerable losses during the conciliation phase. After all, economic losses are estimated in hours, not days. Third, the definition of some legal terms in the provisions in Article 7 of the ECT are too vague to be applied in real-life circumstances.

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97 According to Article 45 (3) (b), ‘In the event that a signatory terminates provisional application under subparagraph (a), the obligation of the signatory under paragraph (1) to apply Parts III and V with respect to any Investments made in its Area during such provisional application by Investors of other signatories shall nevertheless remain in effect with respect to those Investments for twenty years following the effective date of termination, except as otherwise provided in subparagraph (c). This means that the Russian Federation must still fulfil the obligation to apply Parts III and V with respect to any Investments made in Russia for the 20 years following 2009.'
For this reason, the Energy Charter initiated the Transit Protocol negotiation framework in 2000 to define much more specific rules on transit issues.

### 3.2.2. Transit protocol negotiation

Shortly after the entry into force of the Energy Charter Treaty in 1998, in order to ensure secure and unimpeded transit, to promote more efficient use of transit infrastructure and to facilitate the construction or modification of transit infrastructure, the Charter Conference decided to go even further and to agree on more specific rules on energy transit with a separate Transit Protocol.

Agreement was reached on most of the Protocol’s text by the end of 2002, notably on: the definition of available capacity for transit; the rules on the utilization of available capacity (access rules) providing for non-discriminatory and good-faith negotiations on access to energy transport facilities; the obligation to have in place objective, transparent and non-discriminatory authorization procedures or legislation concerning the expansion, extension, reconstruction, and operation of energy transport facilities used for transit; the requirement for transit tariffs and other conditions to be objective, reasonable, transparent, non-discriminatory and based on operational and investment costs, including a reasonable rate of return; good-faith negotiations on the supply of energy materials and products to the transit country based on transparent and non-discriminatory procedures; provisions on government charges, technical and accounting standards, metering and measuring, measures in case of accidental interruption, reduction or stoppage of transit as well as international energy swap agreements.

However, the transit protocol negotiation was temporarily terminated because of three outstanding issues between the European Union and the Russian Federation and, later on, among all Energy Charter Treaty member states: long-term capacity booking and creation of transit infrastructure, the cost-reflectiveness of tariffs arising from auctions, and a clause introduced by the European Union stipulating that the Protocol would not apply to energy flows within the EU (‘REIO clause’).

The transit protocol negotiation served as a water-testing instrument in an attempt to establish a multilaterally legal framework with elaborate rules. Though it ultimately failed, it demonstrated the difficulties of consolidating the diversified discrepancies and contradictions in an 11-year-long marathon-like negotiation among so many countries. Still, the Transit Protocol document itself, along with the relevant expertise gained in the negotiation, could provide China with a significantly genuine reference for setting up its own regional transit agreements in the foreseeable future.

### 3.2.3. Energy Charter Early Warning Mechanism

The Road Map for the Modernization of the Energy Charter Process, adopted at the 21st Meeting of the Energy Charter Conference in Brussels on 24 November, 2010, stated that the objective of the ECT is to secure established flows of energy as a key requirement for energy security, and that the Energy Charter’s approach is a dual one—based on the legally binding provisions of the Energy Charter Treaty as well as the multilateral forum of peers established under the Energy Charter Conference.

In 2014, the Trade and Transit Group of the Energy Charter Conference started active discussions on the first draft of an early warning mechanism and dispute resolution process.

The objective of the Energy Charter Early Warning Mechanism is to prevent and overcome emergency situations in the energy sector related to the transit and supply of electricity.

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natural gas, oil and oil products through cross-border grids and pipelines. The methodology of
the Energy Charter Early Warning Mechanism includes exchange of information and response
to requests for information, consultations, verification and monitoring, risk evaluation, and
recommendations for action in an emergency situation or the threat of one.
The consultations are ongoing and the mechanism could be adopted, but probably only on
condition that it would not constitute an international agreement or other legally binding
document.

3.2.4. Model agreements
The Energy Charter Secretariat has developed a set of model agreements with a view to
providing parties interested in energy-related projects with a neutral and non-prescriptive
starting-point for negotiations, thus facilitating project-specific talks. This work was done with
the help of a professional consultant and with the valuable assistance of the voluntary Legal
Advisory Task Force. The model agreements were based on best international practices, with
the aim of reflecting the interests of the different parties concerned as much as possible.
This work began with the preparation of model agreements for cross-border pipelines
(pipeline model agreements, or PMAs), which were released in 2004 following the approval
of the Energy Charter Conference. Subsequently, the PMAs were revised and updated; the
second edition was published in 2008.
The Secretariat then developed model agreements for cross-border electricity projects
(electricity model agreements, or EMAs) and, as a supplement to EMAs, the Market and System
Inter-Operability Agreement Guidelines for Cross-Border Electricity Projects (Guidelines to
Electricity Model Agreements, or GEMA)99.

3.3. Trade
One of the necessary conditions for forging open and non-discriminatory energy markets
through the Energy Charter process has been to create a stable, predictable and non-
discriminatory regime for energy and energy-related trade between all member countries.
The Energy Charter Treaty’s trade provisions, which were initially based on the trading
regime of the GATT, were modified by the adoption in April 1998 of a Trade Amendment to
the Treaty. This brought the Treaty’s trade provisions into line with WTO rules and practice,
which are founded on the fundamental principles of non-discrimination, transparency and
a commitment to the progressive liberalization of international trade. The Trade Amendment
also expands the Treaty’s scope to cover trade in energy-related equipment, and sets out a
mechanism for introducing in future a legally-binding stand-still on customs duties and
charges for energy-related imports and exports.
The Trade Amendment follows the same mechanism concerning the applicability of trade
rules as the ECT. Therefore, all rules of the WTO Multilateral Agreements on Trade in Goods
apply, except those listed in Annex W of the Trade Amendment.
The trade provisions of the ECT originally only applied to trade in energy materials and products
- which includes fossil fuels such as coal, natural gas, petroleum and petroleum products as
well as nuclear energy, electricity, fuel wood and charcoal. The Trade Amendment extended
the ECT trade rules to energy-related equipment. As a result, the ECT trade regime now
covers more than 70 categories of items of energy-related equipment, such as pipeline pipes,
turbines, power masts, furnaces, platforms, transformers, etc. The listing of equipment items is based on the tariff headings of the World Customs Organization’s Harmonized System. This is a significant enlargement of the scope of the ECT. It ensures that investors will have access to equipment of their choice on a non-discriminatory basis, both in terms of MFN treatment and national treatment.

The ECT does not affect the trade regime between the ECT CPs that are likewise WTO members. It continues to be governed by their WTO obligations. However, in trade involving at least one ECT CP that is not a WTO member, the ECT CPs that are WTO members are under a ‘soft law’ commitment not to increase their tariffs beyond a ‘ceiling’ of their duty rates bound in the WTO (‘best endeavours’ clause). ECT CPs that are not yet WTO members undertook a ‘soft law’ pledge not to raise their import and export tariffs above the applied levels.

A mechanism has been incorporated allowing the moving of items into a ‘basket’ (Annexes EM II and EQ II) where legally binding tariff commitments apply at a later date. In annual reviews, the Energy Charter Conference has to examine the possibility of such moving of items. In the case of a positive conclusion, only a conference decision by unanimous vote is required without the need to go through a formal amendment procedure. Up to now, no legally binding tariff commitments have been made.

During the negotiations of the Trade Amendment, it was discussed whether or not to incorporate the provisions of the WTO General Agreement on Trade in Services (‘GATS’). It was finally decided that this issue was too complex and that it merited more time for reflection. Therefore, neither the ECT Interim Provisions on Trade-Related Matters nor the Trade Amendment declares any provisions of the GATS applicable under the ECT. However, trade in services is not completely outside the scope of the ECT. Through the ECT provisions on investment and movement of key personnel, trade in energy services provided through commercial presence and presence of natural persons (i.e. as defined as modes of delivery 3 and 4 in the GATS) is covered by the Treaty, although the substantive provisions of the ECT concerning market access and national treatment differ from those of the GATS.

The Treaty’s amended trade regime represents an important stepping stone for those signatory states that have not yet acceded to the WTO. It allows them to familiarize themselves with the practices and disciplines that WTO membership entails, through application of its rules ‘by reference’ to trade in energy materials and products and energy-related equipment. In this context, the ECT could provide those Central Asian countries which are still not member states of WTO such as Kazakhstan, Uzbekistan and Turkmenistan with a quasi WTO framework for facilitating the energy trade regime with China. The ECT trade regime will have fulfilled its purpose once all member countries have also become members of the WTO.

3.4. Dispute settlement

The Energy Charter Treaty contains a comprehensive system for settling disputes on matters covered by the Treaty. By providing an alternative means of dispute resolution before international tribunals, the ECT contributes to increasing confidence of investors and traders and promoting investment and trade flows between members. This is of particular relevance in the energy sector, because disputes may often be very complex and involve huge amounts of money.

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 ECT have profound implications for enhancing the current legal protection for Chinese enterprises in Central Asian countries101.

3.4.1. Investor-state arbitration for investment disputes

Based on the model of bilateral investment agreements, Article 26 grants foreign investors the right to sue the host country in the case of an alleged breach of an obligation of the host State under Part III of the Treaty, i.e. the provisions relating to investment promotion and protection. By contrast, Article 26 does not apply to other disputes in which a foreign investor might be involved. For instance, if a country fails to promote the conditions for access of foreign investors to its capital markets, such investors would not have access to dispute resolution under the Treaty, because the relevant provision (Article 9) does not fall under Part III of the ECT.

According to Article 26(1), disputes shall be settled, if possible, amicably. Both sides have a period of three months for consultations. If consultations/negotiations fail, the foreign investor has three options regarding where to submit the dispute for resolution (Article 26 (2)):

- to the domestic courts or administrative tribunals of the host state to the dispute;
- to any applicable, previously agreed dispute settlement procedure, e.g. an arrangement under bilateral investment treaties;
- to international arbitration.

If foreign investors choose to submit a dispute to international arbitration, they have the choice of three alternative arbitration procedures (Article 26 (4)).

- The International Centre for the Settlement of Investment Disputes (ICSID), Washington, D.C., established by the ICSID Convention of 1965. This option is available if both the home state of the investor and the host state are parties to the ICSID Convention. Alternatively, the foreign investor may invoke the ICSID Additional Facility Rules for the Administration of Proceedings by the Centre. These arbitration rules are applicable where either the home state of the investor or the host state - but not both - is a party to the ICSID Convention.

- A sole arbitrator or an ad hoc arbitration tribunal established under the UNCITRAL Arbitration Rules.

- The Arbitration Institute of the Stockholm Chamber of Commerce.

After submission, the established tribunal shall decide the issues in dispute in accordance with the ECT and applicable rules and principles of international law. The awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute.

Where disputes arise out of an act by a sub-national entity of the host country, Article 26 (8) further stipulates that the award may authorize the host state to pay monetary damages in lieu of any other remedy. This provision ensures that the central government, in cases where it lacks the authority to ensure compliance by a sub-national entity, may discharge its obligation to comply with the award by a pecuniary payment.

Each contracting party of the ECT shall carry out without delay any such award and shall make provision for the effective enforcement in its area of such awards.\textsuperscript{102}

\textbf{3.4.2. Trade dispute settlement}

In respect of trade-related disputes, Article 29 (7) of the ECT provides for a dispute resolution mechanism (Annex D) that is based on the GATT/WTO panel model. It applies only in cases where at least one of the disputing parties is not a member of the WTO. The ECT fulfils a unique role in this respect, because it makes a GATT/WTO-like dispute settlement system available although not all parties to the dispute are GATT/WTO members.

According to Annex D, if one contracting party considers that the existing measures of the other contracting party might materially affect compliance with provisions applicable to trade under Article 5 or 29, that contracting party can make a written request to any other contracting party for consultations. If, within 60 days from the receipt of the request for consultation, the contracting parties have not resolved their dispute, either contracting party may deliver to the Secretariat a written request for the establishment of a panel. A panel shall be established 45 days after the receipt of the written request of a contracting party by the Secretariat. All procedures involving a panel, including the issuance of its final report, should be completed within 180 days of the date of establishment of the panel. The determination by the panel, be it in the form of a report or otherwise, is final and legally binding.

There are two main differences between the ECT approach and the WTO system.

- When a panel concludes that the disputed measure does not comply with the Treaty, it may recommend that the offending party alter or abandon it. The panel’s report is subject to adoption by the Energy Charter Conference acting by a vote of 3/4 of those present and voting, provided that at least a simple majority of all CPs to the Treaty supports the decision. This is different from the WTO procedures where panel reports are automatically adopted unless disapproved by consensus. Therefore, the Treaty retains an element of political decision-making that could serve as an additional incentive for mutually acceptable out-of-court resolutions of trade-related disputes.

- There is no appellate body under the ECT rules.

The ECT trade dispute resolution mechanism is lighter, less detailed and simpler than that developed in the WTO. Accepting the trade regime of the Treaty may therefore be an important interim step for non-WTO-ECT members towards membership of the WTO.

It is important to recall that the ECT is not a ‘WTO mirror’ and that it does not apply to all trade disputes. In particular, it does not apply to any dispute that arises under an agreement as described in Article XXIV of the GATT (relating to free trade area or customs union).\textsuperscript{103}

\textbf{3.4.3. Transit dispute settlement}

An effective mechanism for the resolution of transit disputes is particularly important, given the economic significance of energy transit and the fragility of transit security. The ECT provides a specialized conciliation mechanism for transit disputes, allowing for a faster and less formal procedure. In Article 7(7), it is stipulated that a contracting party may refer a notification to the Secretary-General summarizing the matters in the dispute. Within 30 days of receipt of


such a notification, the Secretary-General will appoint a conciliator. If, within 90 days of her/his appointment, the conciliator fails to secure an agreement, s/he shall recommend a resolution to the dispute or a procedure to achieve such resolution and shall decide the interim tariffs and other terms and conditions to be observed for transit, from a date which s/he shall specify until the dispute is resolved. The contracting parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision on tariffs, terms and conditions for 12 months following the conciliator’s decision or until resolution of the dispute, whichever is earlier.\textsuperscript{104}

Article 7(6) provides that the transit state shall not, in the event of a dispute over ‘any matter arising from that transit’, interrupt or reduce, or permit or require any entity to interrupt or reduce, the existing flow of energy materials and products prior to the conclusion of the conciliation mechanism set out in paragraph (7). There are only two exceptions to this prohibition: where this is specifically permitted in the original contract or agreement or allowed by the conciliator appointed to seek to resolve the dispute. The Energy Charter Conference has established ad hoc rules concerning the conduct of conciliation and the compensation of the conciliator.\textsuperscript{105}

3.4.4. Competition and environmental issues

Regarding the disputes concerning competition (Article 6) and environmental issues (Article 19), the Treaty provides for bilateral (in the case of competition) or multilateral (in the case of environmental protection) non-binding consultation mechanisms.

The ECT does not establish a common competition regime between CPs. Rather, the ECT confirms the applicability of their domestic competition rules. Consequently, the Treaty establishes only a mutual information and consultation mechanism in respect of the interpretation and application of national competition laws. If a CP considers that any specified anti-competitive practice carried out in the territory of another CP is adversely affecting an important interest concerning the alleviation of market distortions and barriers to competition, it may notify the other CP and request that the latter’s competition authorities initiate appropriate enforcement action. The notified CP, or, as the case may be, its competition authorities may consult with the competition authorities of the notifying CP and shall accord full consideration to the request of the latter in deciding whether or not to initiate enforcement action with respect to the alleged anti-competitive conduct. The notified CP shall inform the notifying CP of the decision. In addition, CPs have the chance to resolve the dispute through diplomatic channels.\textsuperscript{106}

3.5. Energy efficiency and related environmental issues

Nowadays developing and industrialized countries are very concerned about changes in the world’s climate systems. The concept of energy efficiency has gained great importance worldwide. Instruments developed to improve energy efficiency are associated with supporting actions oriented towards a cleaner environment, restructuring of economies, and a higher standard of living. The contribution of improvements in energy efficiency to the security of supply is also not an aspect to be neglected, especially in view of the volatility shown by energy prices in recent years.

\textsuperscript{104} From Article 7 (7) of the ECT, p.49, http://www.encharter.org/fileadmin/user_upload/document/EN.pdf
The importance of energy efficiency and its relation to a cleaner environment were already underlined in the 1991 Energy Charter. The subsequent Energy Charter Treaty, and in particular Article 19 of the Treaty, requires that each contracting party minimize, 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 Energy Charter Treaty. 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. Further, the PEEREA expressly recognizes the need to take into account particular national or regional circumstances in developing and implementing policies and programmes relating to energy efficiency.

The emphasis in the work on energy efficiency is not on legal obligations, but rather on practical implementation of a political commitment to improve energy efficiency. This is promoted through policy discussions based on analysis and exchange of experience between the member countries, invited independent experts and other international organizations. Through the implementation of PEEREA, the Energy Charter provides its member countries with a menu of good practices and a forum in which to share experiences and policy advice on energy efficiency issues. Within this forum, particular attention is paid to such aspects of a national energy efficiency strategy as taxation, pricing policy in the energy sector, environmentally-related subsidies and other mechanisms for financing energy efficiency objectives107.

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4. Discussion of the feasibility of and implications for China’s accession to the ECT
International energy cooperation is an essential issue of global significance, especially for China, the largest energy consumer in the world. China’s crude oil foreign dependence is about 60%, and natural gas foreign dependence is more than 30%, as of 2013. Given the general impression in the past decades that multilateral energy organizations have been structured in the interests of either powerful economies or energy-rich countries, most of the other countries have shown a tendency to develop their relationships with others through bilateral cooperation. On the other hand, the global energy landscape had been changed by rapid entrenchment of globalization, technological advancement and ferocious competition for energy import sources. In response to these changes, and to address new issues, multilateral energy diplomacy has become more practical and policy-focused. The eagerness of existing international organizations to integrate new countries has also generated some expectations that they will make certain adjustments to incorporate the interests of newcomers.

In recent years, the Chinese state and private companies have made considerable energy infrastructure investments abroad, and have realized large-scale mergers and acquisitions in Central Asian countries and other parts of the world. The expansion of Chinese energy operations abroad has aroused some host counties’ suspicions of China's motivations and complaints that Chinese investments in these strategically important industries could ultimately lead to political interference. At the same time, the dominant role played by state-owned companies (SOEs) in China’s energy industry and the scarcity of sufficient legal protection for foreign investment have dampened the confidence of foreign investors considering significant increase in their energy investment in China. Given the above concerns, it is therefore important for China both to protect its outbound foreign investment and to make itself a trustworthy destination for inward foreign investment.

The Energy Charter, with its unique multilateral legally binding Treaty and certain influence on global energy governance, might be an entry point for China to invigorate its multilateral energy cooperation in a much more substantial way. It seems that there is a long way to go in terms of conducting complex political coordination and legal consultation before China’s accession to the Energy Charter Treaty. However, 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 integrate itself further with the global community. Therefore, it is high time to analyse the current status and further steps that could be taken by both the Chinese government and the Energy Charter Conference in order to take ongoing cooperation up to the next level. More confidence on both sides and recognition of mutual benefits could ultimately lead to the accession of China to the Energy Charter Treaty.

4.1. The pros of China’s accession to the ECT

4.1.1. Enhancement of the legal protection of China’s outward energy investment, trade and transit

As more and more Chinese energy investment flows into Eurasian countries, there is a potential risk that those outward investments might be blocked by unfair or discriminative treatments imposed by the host countries in the context of national security concerns or other political and economic considerations. Therefore, the Chinese government is now facing many challenges simultaneously to protect its multilateral overseas investments and guarantee its national energy security in different regions. As presented in the first and the third part of this report, almost all Chinese multilateral cooperative frameworks or mechanisms existing in the Central Asian region are not legally binding. Furthermore, most BITs with Central Asian countries signed in 1992 to
Discussion of the feasibility of and implications for China's accession to the ECT

1993 are not very effective legal protection instruments, with no incorporation of the ‘national treatment’ standard or ‘full access to the international arbitration’. Consequently, thus far political conciliation and diplomatic mediation have emerged as the most frequently used measures when energy investment disputes or transit interruptions occur.

The provisions of the ECT regarding foreign investments are considered to be the cornerstone of the treaty. The aim of the foreign investment regime is to create a ‘level playing field’ for investments in the energy sector and to minimize the non-commercial risks associated with such investments. China has now invested billions of US dollars in the energy sectors of Central Asian countries. The ECT does not create investment opportunities by forcing open access to resources or defining certain market structures, but, once an energy investment is made between two contracting parties, it provides a stable interface between the foreign investor and the host government. The ECT, distinguished from BITs mainly by virtue of its ‘national treatment’ and ‘full access to the international arbitration’ clauses and favourable transit regime, could yield additional synergy with existing BITs and IGAs.

Under the ECT trade regime, China would ensure non-derogation from the GATT and related instruments (Article 4) and trade-related investment measures being consistent with Article III or XI of the GATT (Article 5(1)). As a WTO member, China has already assumed an obligation to ensure compliance with the above GATT rules in its relationships with many of the ECT contracting parties. With regard to the relationships with non-WTO member states that are ECT members, which critically include Kazakhstan, Turkmenistan and Uzbekistan, Article 29 of the ECT incorporates the GATT discipline into China’s energy trade with those states. Accordingly, China’s becoming contracting party to the ECT would permit non-WTO member states, that are ECT contracting parties, to use the ECT’s trade-dispute settlement mechanism with China.

Regarding transit, the ECT embraces freedom of transit and the principle of non-discrimination, which might secure uninterrupted hydrocarbon transits from Central Asia to China. The contracting parties under the ECT have undertaken not to place obstacles in the way of new capacities being established in the event that transit of ‘Energy Materials and Products’ cannot be achieved on commercial terms by means of energy transport facilities. Moreover, the ECT’s transit-dispute settlement mechanism presents a valuable source of uniform dispute settlement for China regarding transit in Central Asia. Finally, the ECT includes a unique conciliation procedure to deal specifically with disputes over transit that may be invoked by contracting parties, which is faster and less formal than taking a dispute to arbitration.

4.1.2. Improving investors’ confidence in China’s domestic legal environment

China’s burgeoning energy demand has reoriented traditional development patterns and accelerated the process of opening its domestic energy market to foreign investment. In order to modernize existing mega-scale coal mines and introduce new technology, China opened the coal sector to foreign investment after 2008. A particular area of interest is coal liquefaction. The first joint venture coal liquefaction plant was commissioned in 2009. The power sector has also been opened to foreign investment, albeit with only a modest effect so far. Paradoxically, other energy sectors are mainly dominated by SOEs, with many of the remainder being operated by private energy companies in partnership with de facto state companies.

Given the many obligations and responsibilities stipulated in the Treaty for a host country’s government, China’s accession to the ECT will not only promote the optimization 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. There is no doubt that more investment is needed in the Chinese domestic market. With an ambitious target of shale gas production of 6.5 bcm/yr by 2015 and 60-100 bcm/yr by 2020, increased investment and hydraulic drilling expertise from Western companies is needed in the central-western and western parts of China. At the same time, there is momentum that more advanced energy efficiency and clean technologies such as desulphurization, denitrogenation, and CCS (carbon capture and storage) are needed in order to alleviate the pressure of environment contamination. These will need to be commercialized and adapted to existing energy infrastructure in China, and Western countries currently play a leading role in this area. Therefore, with Chinese accession to the ECT, it is reasonable to believe that more foreign energy investment with outstanding expertise will flow into the Chinese domestic energy industry and, more importantly, will make a certain contribution to the sustainable development of the Chinese economy and society in the long run.

4.1.3. Solid amplification of China’s influence in 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. Increased activities to reduce carbon dioxide emissions and mitigate climate change, initiated by a few developed countries, have also put developing countries in the spotlight of the international community. China, as the biggest developing country and energy consumer in the world, is inevitably reckoned to play a prominent role in global energy governance. This perception has been further entrenched by some comments from the new leadership of the Chinese government on various formal occasions: that China should make a continuous contribution to the perfection of global governance, improvement of developing countries’ discourse rights, and promotion of the established international economic order through more active participation in both bilateral and multilateral cooperation. This is a percolated perception made not only explicitly by established powers (as they try to engineer for themselves less costly means of sharing the global burden), but also implicitly by the other developing countries that no longer categorize China or other BRICS countries in the same class as themselves.

The Energy Charter offers a comparatively transformative way for China to fulfil its deeper 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 member states. Chinese institutions and companies can improve their knowledge bases and advance energy expertise via frequent communications with counterparts in different regions of the world. Moreover, the Energy Charter could be a platform to further the visualization of multilateral mega projects or holistic strategies, which are very difficult for one country to achieve alone. For example, in 2013, the Energy Charter took a leading role in initiating the ‘Gobitec and Asian Super Grid for renewable energies in Northeast Asia’ initiative, aiming at connecting Russia, Mongolia, China, South Korea and Japan through a high voltage grid. The implementation of the ‘New Silk Road Economic Belt’ strategy launched by the new leadership of China could also be a potential initiative of high interest to the Energy Charter, since most of the countries on that economic belt are member states of the Charter.

4.2. The Cons of China’s accession to the ECT

4.2.1. Limited arbitration burdens on Chinese government

The first impediment standing in the way of China’s accession to the ECT is the fact that there is widespread anxiety about a spate of international arbitration cases against the Chinese government. Although China is continuously promoting reforms to liberalize 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.

One of the most well-known pillars of the ECT is the investor-contracting party dispute settlement mechanism (Article 26) under which a contracting party shall give unconditional consent to the submission of a dispute from an investor of another contracting party to international arbitration. Although there are more specific provisions and annexes constraining the applicable scope of this powerful investor-oriented dispute settlement clause, there is grave concern that the utilization of Article 26 could create trouble and impose potential arbitration burdens on the government.

Albeit this concern is reasonable, it should be analysed in the context of China’s exposure to international arbitration, best seen by comparison of 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\(^{108}\), which exceeds the 22.77 billion dollars\(^{109}\) 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 than that of OFDI. Finally, most energy investment in the domestic market has been dominated by state-owned companies (SOEs) for a long 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 take place in the legal sector to provide international arbitration expertise before China’s accession to the ECT.

4.2.2. Scarcity of political support and geographically asymmetrical protection coverage for China

The current global energy governance is quite fragmented. The IEA, for instance, is dominated by the United States and embraced by energy-consuming countries. The OPEC represents major benefits of energy-producing countries with the leadership of Saudi Arabia. The European Energy Charter (EEC) was initially 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 has developed 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.


It is essential for an international organization to assert its superiority over others and maintain a close bond with a corresponding influential political power, especially when the competition amidst various international organizations is increasingly fierce. There is no doubt that the unique advantage of the Energy Charter is the Energy Charter Treaty, which covers the entire value chain of the energy industry with multilateral, legally-binding obligations. However, the focus on legal aspects of the energy value chain might be too wide to be addressed by the Energy Charter. It is better to focus on some specific legal aspects: the investment protection regime, freedom of transit, and energy efficiency in energy markets. Too wide a scope in terms of the different legal aspects of energy markets may consequently lead to the decline of strong political attachment to the Charter. For instance, regarding trade issues, the WTO has more importance and influence than the Energy Charter. As regards transit issues in Eurasia, the European Community and the Third Energy Package under the frameworks of the EU seem to be more progressive in terms of access to the energy infrastructure than the legal regime of the ECT. Further, the energy efficiency obligations stipulated in PEEREA are legally binding but very soft commitments and PEEREA's influence is far less than that of the UNFCCC (United Nations Framework Convention on Climate Change). The overlap of functions among different organizations is inevitable at a time of a rapidly changing energy landscape. It is important to prioritize the core competence of the Energy Charter, instead of spreading its effect thinly on different areas in order to regain sufficient political patronage from its members and observer states. In that sense, much more work needs to be done by the Energy Charter parties if it is to remain actual and beneficial to the energy markets.

Another barrier to China's accession to the Treaty is that the geographic coverage of the ECT does not completely match the map of Chinese outward energy investments. It is important to note that the ECT covers countries in the regions of Eurasia and Central Asia where China has made significant investments. However, as a newcomer to international energy investment, China's OFDI of $152.8 billion, including energy and power projects in 42 countries between 2005 and 2010, was concentrated in only five countries: Iran, Nigeria, Brazil, Kazakhstan, and Australia. 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 incentivized. These countries are not covered by the ECT. The Energy Charter adopted the CONEXO policy and has been running an ambitious expansion project named MENA (Middle East and North Africa) since 2009. A number of countries have improved cooperation with the Energy Charter parties and initiated accession including Jordan, Morocco and Indonesia, but there are no completed accessions from these regions. As a result, should China accede to the Treaty, the benefits that Chinese companies will gain will be asymmetrical with the obligations and risks because the bulk of Chinese energy OFDI in the aforementioned regions will not be under the protection of the ECT.

5. Suggestions and recommendations on enhancement of mutual collaboration between China and the Energy Charter parties
The Energy Charter established contacts with China as early as 1998. Since then, bilateral ties have been maintained by regular correspondence, bilateral visits, the four previous secondees from the National Energy Administration (NEA) of China working at the Secretariat, and Chinese participation in events and conferences organized under the Energy Charter. However, cooperation was rather static because of the reluctance of the Energy Charter constituents to build deeper relationships with non-contracting parties. The situation changed positively, however, towards more dynamic relations after the Energy Charter Conference adopted the new CONEXO policy in 2010, aiming at expansion and giving China priority status.

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 stronger 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 at this pivotal time.

5.1. Suggestions and recommendations for China

5.1.1. More active participation in the Energy Charter initiatives

It is inevitable that the influence of China in the international energy community is becoming greater because of its enormous energy demand and expanding geographical coverage of energy OFDI. Therefore, it is very important for China to strengthen bonds with multilateral energy organizations, including the Energy Charter Conference. Further substantial engagement with Energy Charter initiatives is needed for a better involvement of China in global energy governance.

Over recent years, cooperation has been enhanced in several directions. The Chinese delegation actively participates in negotiations for the International Energy Charter political declaration. On the governmental level, signing the UEC would be a rational option reflecting China’s intention of further engagement in the Energy Charter initiatives, since it is a political declaration without any legally binding responsibility. Regarding the existing secondment programme, it is advisable to upgrade the selection criteria for secondee candidates. The purpose of this is to further develop the working relationship between China and the Energy Charter constituents. The secondment programme should be focused and directed, with a clear mandate to facilitate substantive progress between the two sides, in addition to any report that may be beneficial for mutual understanding.

For companies and academic institutions from China, an active involvement in Energy Charter initiatives is also recommended. Valuable information and ideas are unravelled in the meetings organized 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.

On a more practical level, given that it is unrealistic for the constituency of the Energy Charter Conference to reach consensus regarding raising the annual budget of the Energy Charter Secretariat, not to mention 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 number of voluntary contributions to the Energy Charter. These contributions could be utilized in a wide range of joint activities and events between the two sides, including the Beijing Energy Charter Forum, training courses, 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 what its value, would be deemed by the Constituency as a very positive signal from China of an intention for further engagement in the Energy Charter Process.

5.1.2. 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 require the engagement of a variety of different ministries, corporations and academic institutions from China. The National Energy Administration, the National Development and Reform Commission, the Ministry of Foreign Affairs, the Ministry of Commerce and the Ministry of Environment Protection are major government entities relevant to the Energy Charter which could be supported by SOEs, private companies, academic research institutions and universities in the energy field in 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.

Furthermore, it is recommended that the Chinese government should consider establishing a task force on the assessment of China’s engagement with multilateral organizations. Right now there are many different international organizations embracing distinctive principles and visions in various fields including finance, energy, environment protection, trade and law. Maintaining and developing complex international relations with numerous international organizations is a difficult and resource-consuming task. The task force could have a certain composition of different representatives from ministries, companies, and academic institutions. The main mission of this task force would be to assess the necessity of further engagement with those organizations of which China is already a member—like the International Energy Forum (IEF) and the World Energy Council (WEC)—and to demonstrate the feasibility of becoming a new member of other international organizations such as the Energy Charter. 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.

5.1.3. 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 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 organize more training courses in order to educate the sector about the latest trends in the field of international arbitration.

5.1.4. Embedding principles of the ECT in energy reform and industrial upgrades in China

As the largest energy producer and a carbon-intensive consumer country, China has been striving visibly to re-engineer its energy architecture in order to maintain its robust economic growth while minimizing 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 polices on sustainable integration in China. These standards can be characterized 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 in 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, a raft of irrationalities can be attributed to this feature.

First, energy prices in different sectors are not elastically regulated by the administration, and prices are disconnected from the international market. It is fair to say 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%’ oil price adjustment mechanism in 2009 and the ‘10+50’ mechanism in 2013. On top of that, the scarcity of financial derivatives (such as forwards, futures, options and swaps) in oil and natural gas also reduces 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 compromise after years of institutional mergers and restructuring, at both a central government and a municipal level. This constant change has accomplished a balance of power distribution among ministries, institutions and local governments, at the price of 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 the extent that they have essentially hampered the development of the energy industry. In one case, a sizeable 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.

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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 when the moving average of imported crude prices for diesel and gasoline fluctuated outside a 4% range around the established price within 22 consecutive working days.

Despite the price 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 global changes, the NDRC revised the pricing regime in March 2013 by shortening the retail fuel price adjustment period to every 10 working days when prices automatically adjust to international crude price fluctuations greater than 50 yuan per ton (roughly $1/barrel). Since the revised pricing mechanism was established, the NDRC has approved 15 price changes.

For quite some time, energy governance in China did not fully functioned. Although state-owned companies were brought under the 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 because of 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 the 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 is composed of 21 ministers and directors from different ministries. In 2013, the National Electricity Supervision Commission was merged with the NEA.
The above dilemmas are a reminder that the principles which 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 to the ECT’s provision of technical assistance on the development and implementation of market competition rules, orientation of energy pricing reform in China, and loosening of the monopolies of state-owned companies. Second, the principle of freedom of transit could also be applied in different municipalities and provinces in China, modernizing energy transport facilities and maximizing utilization of diversified transmission networks throughout the country. Concerning environmental aspects, the aim of minimizing harmful environmental impacts in a cost-effective manner, which is embraced by the ECT and PEEREA, could further internalize the cost of pollution in 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.

5.2. Suggestions and recommendations for the Energy Charter

5.2.1. Focus on expansion policy and relationship maintenance

After going through moderate development during the past two decades, the Energy Charter is standing at the crossroads of its evolving trajectory. Several facts should be noted: the changing energy landscape is moving eastwards and will be gradually shaped by those countries with strong energy demands; the relationship between the Energy Charter and Russia is deteriorating, and other international energy organizations are very active in promoting multilateral energy cooperation. Therefore, it is reasonable to suggest that the expansion of the Energy Charter’s geographical coverage and outreach for new contracting parties eastwards might be prioritized over other issues in the Energy Charter. The outline of the Energy Charter’s evolution will possibly be delineated by the degree of its success in terms of expansion and outreach. Since the Energy Charter Conference is the main decision-making body of all Energy Charter initiatives, firm agreement on expansion should be obtained among the Constituency, following a larger amount of financial and human resources allocated to related expansion initiatives. The existing resources allocated to China by the Secretariat are far fewer than those required to handle all the connections with different counterparts in China, not to mention other potential expansion countries in South Asia, South-East Asia and Latin America.

As mentioned in the fourth part of this report, it is a prevailing trend that Chinese companies are more active in the South African, Latin American, South Asian and South-East Asian regions. Most of the countries in these regions are not contracting parties of the ECT, which reduces Chinese interest in acceding to the ECT. Thus, broader geographical coverage and a rejuvenated relationship with Russia are the two important factors if the Energy Charter is to arouse China’s interest in acceding to the ECT. It is 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.

5.2.2. Expanding the Industry advisory panel

The Industry Advisory Panel (IAP) was set up by the Energy Charter Conference in 2004 as a means to build on existing contacts with industry and strengthen dialogue with the private sector on the main directions of the Charter Process, with a particular focus on risk mitigation and improvement of the business climate. Several successful events relating to different energy
industry topics were held by the IAP, and some valuable views were presented to the members of the Energy Charter both in the Charter’s groups and also in regular communications to the Energy Charter Conference. However, this panel is still intended as a consultative board, rather than a main force among all the groups of the Energy Charter.

It has been commonly perceived that energy companies are the main beneficiaries of the ECT, and 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 should 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 on 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. For instance, the China National Petroleum Corporation (CNPC) became a member of IAP in 2014. It could be regarded as a good opportunity for CNPC to get a better understanding of ECT and an optimal means to facilitate cooperation between China and the Energy Charter.

5.2.3. 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 ongoing Asian Super Grid initiative, supported by the Energy Charter Secretariat and the Government of Mongolia, is a good example. There is a 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.

5.2.4. Amending the procedure of accession to the ECT

It is commonly perceived that the ongoing negotiations on the International Energy Charter (IEC) 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 IEC does not fully replace the 1991 European Energy Charter political declaration. Newcomers to the ECT will 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 reluctant to sign the 1991 EEC since they are not part of the European region. Therefore, the Energy Charter constituency should be advised to address this matter in order to remove this potential obstacle for newcomers. A feasible solution might be the formal replacement of the EEC with the IEC.

5.2.5. 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 incentivize 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 parties. 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.

### 5.3. Recommended activities between China and the Energy Charter in the future

<table>
<thead>
<tr>
<th>No.</th>
<th>Activities in terms of priorities</th>
<th>Output</th>
<th>Responsible partner/ action</th>
<th>Precondition of implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Translation of ECT documents and some publications into the Chinese language</td>
<td>Publications of IEC, updated ECT and other existing national reports of the Energy Charter in Chinese.</td>
<td>ERI</td>
<td>Before signing the IEC</td>
</tr>
<tr>
<td>2</td>
<td>Secondment and fellowship programme</td>
<td>1. Reports on energy transit, investment protection, and global governance. 2. Improve cooperation with Chinese stakeholders</td>
<td>Secondees from NEA and fellowship from ERI and CASS</td>
<td>Before signing the IEC</td>
</tr>
<tr>
<td>3</td>
<td>Study of the potential relevance of implementation of the New Silk Road strategy through the Energy Charter</td>
<td>Strategy on the role of the Energy Charter in facilitating regional energy cooperation</td>
<td>NEA, MFA, ERI, CNPC or other interested counterparts</td>
<td>Before signing the IEC</td>
</tr>
<tr>
<td>4</td>
<td>Energy Efficiency Report</td>
<td>In-depth review of energy efficiency in China. Peer-review report supplemented with policy recommendations</td>
<td>NDRC or ERI will send an official to work at ECS with its experts on the report. ECS will organize field trips and publication of the report</td>
<td>After signing the IEC</td>
</tr>
<tr>
<td>5</td>
<td>Energy Charter Forum</td>
<td>Ministerial-level event that could focus on Central-Asia-China cooperation and the New Silk Road Economic Belt Initiative</td>
<td>ECS will take the lead and partially fund the event. NDRC; NEA; MFA; ERI and CNPC may co-host or co-organize the event by providing financial and logistical support</td>
<td>After signing the IEC</td>
</tr>
<tr>
<td>6</td>
<td>IAP meeting in China</td>
<td>Raise awareness of the ECT in the business sector of China Engage more Chinese companies in IAP</td>
<td>CNPC could organize and host the next IAP meeting in China; ECS will provide relevant material for discussion and publication</td>
<td>Before signing the IEC</td>
</tr>
<tr>
<td>7</td>
<td>Executive training course in China</td>
<td>Training / capacity building programme that focuses on major challenges in energy-related issues and the application of core ECT principles / instruments as possible solutions</td>
<td>ECS will take the lead. NEA, NDRC, MFA, ERI, CNPC and ECS will offer their perspectives</td>
<td>After signing the IEC</td>
</tr>
<tr>
<td>No.</td>
<td>Activities in terms of priorities</td>
<td>Output</td>
<td>Responsible partner/action</td>
<td>Precondition of implementation</td>
</tr>
<tr>
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</tr>
<tr>
<td>8</td>
<td>Participation in the regional initiative Asian Super Grid for electricity interconnections</td>
<td>Modelling, economic analysis of cross-border interconnections</td>
<td>CASS, ECS, Ministry of Energy of Mongolia and international partners from Russia, Japan, South Korea</td>
<td>After signing the IEC</td>
</tr>
<tr>
<td>9</td>
<td>Trade and transit meeting on the New Silk Road Economics Belt</td>
<td>Multilateral dialogue meeting with participants from more than 50 contracting membership countries, offering constructive expertise and experiences.</td>
<td>ECS, NEA and other interested counterparties</td>
<td>After signing the IEC</td>
</tr>
<tr>
<td>10</td>
<td>Joint task force among state entities for facilitation of deeper engagement of China in the Energy Charter Process</td>
<td>Recommendations and action plans</td>
<td>MFA, NEA, NDRC, ERI, CNPC and ECS will set up an action group to coordinate the relevant activities</td>
<td>After signing the IEC</td>
</tr>
</tbody>
</table>
Annex I

Overview of joint events between China and the Energy Charter
### Overview of joint events between China and the Energy Charter

<table>
<thead>
<tr>
<th>Time</th>
<th>Joint events and conducted activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 1998</td>
<td>A joint international Seminar on the ECT was held in Beijing. Following the event, the translation of ECT into Chinese was launched with ERI and finalized in 2000</td>
</tr>
<tr>
<td>July 2001</td>
<td>A symposium was held in Beijing, attended by Vice-Minister Zhang Guobao of NDPC (NDPC was the forerunner of NDRC. Mr Zhang later became Administrator of NEA). China’s request for observer status was granted by Conference in December</td>
</tr>
<tr>
<td>October 2002-03</td>
<td>Cao Wei from CNPC started a one-year secondment at the ECS</td>
</tr>
<tr>
<td>March 2004</td>
<td>Secretary General (SG) Ria Kemper visited China, met with NDRC, MFA and CNPC.</td>
</tr>
<tr>
<td>April–June 2008</td>
<td>Hongtu Zhao from the China Institute for Contemporary International Relations was seconded to ECS</td>
</tr>
<tr>
<td>December 2008</td>
<td>Energy Charter Secretariat delegation went to Beijing for the Senior Expert Seminar on Oil Prices hosted by China National Energy Expert Advisory Committee</td>
</tr>
<tr>
<td>1-2 Sept 2009</td>
<td>SG Andre Mernier went to Beijing, met with Director General of NEA; Director of ERI, and General Counsel of CNPC</td>
</tr>
<tr>
<td>27 Sept 2011</td>
<td>National Energy Administration (NEA) delegation headed by Mr YANG Liangsong (Director General, National Oil Reserve Centre) visits the ECS</td>
</tr>
<tr>
<td>4 – 6 November 2011</td>
<td>ECT delegation presented the Energy Charter at the Boao Forum for Asia, Qingdao</td>
</tr>
<tr>
<td>June 2011 – Dec 2011</td>
<td>Secondee Wang Chen from the National Oil Reserve Center of the NEA began her six-month secondment at the ECS</td>
</tr>
<tr>
<td>May 2012 – 2013</td>
<td>Secondee Wang XiaoWei from the Oil and Gas department of NEA began his one-year secondment at the ECS</td>
</tr>
<tr>
<td>23 October 2012</td>
<td>Energy Research Institute (ERI) delegation headed by Director General Han participated in the ad hoc seminar on global energy governance</td>
</tr>
<tr>
<td>26-27 November 2012</td>
<td>NEA delegation headed by Wu Yin (Vice Administrator) participated in the 23rd Energy Charter Conference and the Ministerial Conference in Warsaw, Poland</td>
</tr>
<tr>
<td>December 2012</td>
<td>Visit of Deputy Secretary General (DSG) V. Rakhmanin to China. He met, among others, with NDRC, NEA and MFA</td>
</tr>
<tr>
<td>November 2013</td>
<td>SG Urban Rusnák visited China and met with officials from the NEA (Vice Administrator Zhang), MFA (Director), ERI (Director Han), CNPC (Director Zhang), CNOOC and Sinopec. Since then, Chinese delegations have been consistently present at forums, strategy group meetings and other events organized by the Secretariat</td>
</tr>
<tr>
<td>February 2014</td>
<td>Secondee Zhuwei WANG arrived in Brussels. This report was prepared during his secondment</td>
</tr>
<tr>
<td>June 2014</td>
<td>SG Urban Rusnák visited China to meet with several Chinese counterparts. He met with NEA (Vice Administrator Zhang Yuqing), ERI (Director Han); MFA (Director General Zhang); CNPC (Vice President Huang), NDRC, CASS, Datang Electricity Group and ex-NEA Administrator Zhang Guobao. Main topics discussed with counterparts were: Chinese participation in UEC negotiation and eventual signature, the relevance of ECT to the New Silk Road Economic Belt initiative, the proposal to combine IAP meeting, Energy Charter Forum and the Executive Training Programme and host Beijing Energy Week in 2015</td>
</tr>
<tr>
<td></td>
<td>SG attended the conference on Global Energy Security organized by the Chinese Academy of Social Sciences. SG’s trip was covered by China Daily and CCTV</td>
</tr>
<tr>
<td>Time</td>
<td>Joint events and conducted activities</td>
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<tr>
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<td>-------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>July 2014</td>
<td>Post-June Beijing trip follow-up yielded these developments / promises:</td>
</tr>
<tr>
<td></td>
<td>1. NEA has promised to send inputs to UEC in August</td>
</tr>
<tr>
<td></td>
<td>2. CNPC applied to join Energy Charter Industry Advisory Panel and committed to sending an expert to ECS</td>
</tr>
<tr>
<td></td>
<td>3. CASS agreed to collaborate with the Secretariat over Asian Super Grid in North-East Asia</td>
</tr>
<tr>
<td></td>
<td>4. ERI agreed to translate and publish ECT material, and will send expert to investigate ECT position in global energy governance</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
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</tr>
<tr>
<td>ASEAN</td>
<td>Association of South-East Asian Nations</td>
</tr>
<tr>
<td>ASG</td>
<td>Asian Super Grid</td>
</tr>
<tr>
<td>BCM</td>
<td>Billion Cubic Metres</td>
</tr>
<tr>
<td>BIT</td>
<td>Bilateral Investment Treaty</td>
</tr>
<tr>
<td>BOE</td>
<td>Barrels of Oil Equivalent</td>
</tr>
<tr>
<td>BPD</td>
<td>Barrels Per Day</td>
</tr>
<tr>
<td>BRICS</td>
<td>Brazil, Russia, India, China, and South Africa</td>
</tr>
<tr>
<td>CASS</td>
<td>Chinese Academy of Social Sciences</td>
</tr>
<tr>
<td>CGN</td>
<td>China General Nuclear Power Group</td>
</tr>
<tr>
<td>CHP</td>
<td>Combined Head and Power plant</td>
</tr>
<tr>
<td>CIR</td>
<td>Caspian Investment Resources Ltd</td>
</tr>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
</tr>
<tr>
<td>CITIC</td>
<td>China International Trust and Investment Corporation</td>
</tr>
<tr>
<td>CNNC</td>
<td>China National Nuclear Corporation</td>
</tr>
<tr>
<td>CNOOC</td>
<td>China National Offshore Oil Corporation</td>
</tr>
<tr>
<td>CNPC</td>
<td>China National Petroleum Corporation</td>
</tr>
<tr>
<td>CONEXO</td>
<td>Consolidation, Expansion and Outreach Policy of the Energy Charter</td>
</tr>
<tr>
<td>CP</td>
<td>Contracting Parties of the Energy Charter Treaty</td>
</tr>
<tr>
<td>DSG</td>
<td>Deputy Secretary General</td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Economic Community Of West African States</td>
</tr>
<tr>
<td>ECS</td>
<td>Energy Charter Secretariat</td>
</tr>
<tr>
<td>ECT</td>
<td>Energy Charter Treaty</td>
</tr>
<tr>
<td>EEC</td>
<td>European Energy Charter</td>
</tr>
<tr>
<td>EPC</td>
<td>Engineering, Procurement and Construction contract</td>
</tr>
<tr>
<td>ERI</td>
<td>Energy Research Institute</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FCSP</td>
<td>Four Countries and Seven Partners (FCSP) coordination mechanism</td>
</tr>
<tr>
<td>FDI</td>
<td>Foreign Direct Investment</td>
</tr>
<tr>
<td>GATS</td>
<td>the WTO General Agreement on Trade in Services</td>
</tr>
<tr>
<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
</tr>
<tr>
<td>GEMA</td>
<td>Guidelines to Electricity Model Agreements</td>
</tr>
<tr>
<td>IAEA</td>
<td>International Atomic Energy Agency</td>
</tr>
<tr>
<td>IAP</td>
<td>Industry Advisory Panel</td>
</tr>
<tr>
<td>ICSID</td>
<td>International Centre for the Settlement of Investment Disputes</td>
</tr>
<tr>
<td>IEA</td>
<td>International Energy Administration</td>
</tr>
<tr>
<td>IEC</td>
<td>International Energy Charter</td>
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<tr>
<td>IEF</td>
<td>International Energy Forum</td>
</tr>
<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>IFDI</td>
<td>Inward Foreign Direct Investment</td>
</tr>
<tr>
<td>IGA</td>
<td>Inter-Governmental Agreement</td>
</tr>
<tr>
<td>IRENA</td>
<td>International Renewable Energy Agency</td>
</tr>
<tr>
<td>KEGOC</td>
<td>Kazakhstan Electricity Grid Operating Company</td>
</tr>
<tr>
<td>KMG</td>
<td>KazMunayGas Company</td>
</tr>
<tr>
<td>KW</td>
<td>Kilowatt</td>
</tr>
<tr>
<td>Kwh</td>
<td>Kilowatt hour</td>
</tr>
<tr>
<td>MENA</td>
<td>Middle East and North African countries</td>
</tr>
<tr>
<td>MFA</td>
<td>Ministry of Foreign Affairs of the People’s Republic of China</td>
</tr>
<tr>
<td>MFN</td>
<td>Most Favoured Nation treatment</td>
</tr>
<tr>
<td>MOU</td>
<td>Momentum Of Understanding</td>
</tr>
<tr>
<td>MW</td>
<td>Megawatt</td>
</tr>
<tr>
<td>NCOC</td>
<td>North Caspian Operating Company</td>
</tr>
<tr>
<td>NDPC</td>
<td>National Development and Planning Commission</td>
</tr>
<tr>
<td>NDRC</td>
<td>National Development and Reform Commission of the People’s Republic of China</td>
</tr>
<tr>
<td>NEA</td>
<td>National Energy Administration of the People’s Republic of China</td>
</tr>
<tr>
<td>OFDI</td>
<td>Outward Foreign Direct Investment</td>
</tr>
<tr>
<td>OPEC</td>
<td>Organization of the Petroleum Exporting Countries</td>
</tr>
<tr>
<td>PEEREA</td>
<td>Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects</td>
</tr>
<tr>
<td>PMA</td>
<td>Pipeline Model Agreements</td>
</tr>
<tr>
<td>PSA</td>
<td>Production Sharing Agreement</td>
</tr>
<tr>
<td>RE</td>
<td>Renewable Energies</td>
</tr>
<tr>
<td>REIO</td>
<td>Regional Economic Integration Organization</td>
</tr>
<tr>
<td>SCO</td>
<td>Shanghai Cooperation Organization</td>
</tr>
<tr>
<td>SG</td>
<td>Secretary General</td>
</tr>
<tr>
<td>Sinopec</td>
<td>China Petroleum and Chemical Corporation</td>
</tr>
<tr>
<td>SOE</td>
<td>State-Owned Enterprise/Company</td>
</tr>
<tr>
<td>TBEA</td>
<td>Tebian Electric Apparatus</td>
</tr>
<tr>
<td>TCF</td>
<td>Trillion Cubic Feet</td>
</tr>
<tr>
<td>TTG</td>
<td>Trade and Transit Group of the Energy Charter Conference</td>
</tr>
<tr>
<td>UEC</td>
<td>Updated Energy Charter</td>
</tr>
<tr>
<td>UNCITRAL</td>
<td>United Nations Commission on International Trade Law</td>
</tr>
<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
</tr>
<tr>
<td>UNECE</td>
<td>United Nations Economic Commission for Europe</td>
</tr>
<tr>
<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
</tr>
<tr>
<td>WEC</td>
<td>World Energy Council</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
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