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General Secretariat

**Brussels, 27 June 2022**

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## **WORKING DOCUMENT**

From:	European Commission
To:	Trade Policy Committee (Experts - Services and Investment)
Subject:	Energy Charter Treaty modernisation



## EUROPEAN COMMISSION

Directorate-General for Trade

Directorate B - Asia (I), Services and Digital Trade, Investment and Intellectual Property  
**Investment and Intellectual property**

Brussels, 27 June 2022  
Trade/B3/JGW/cg/5097621

**SENSITIVE\***

### **NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE (SERVICES & INVESTMENT)**

***SUBJECT:*** *Energy Charter Treaty modernisation*

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***OBJECTIVE:*** *For information*

#### ***REMARKS:***

Please find attached the draft text to which the Contracting Parties tentatively agreed on Friday 24 June in the context of the ECT's Ad Hoc Conference. Of course, this agreement is without prejudice regarding the Contracting Parties' final assessment of the outcome of the negotiations.

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Brussels, 24 June 2022

**AD HOC MEETING OF THE ENERGY CHARTER CONFERENCE**

**24 June 2022**

**AGREEMENT IN PRINCIPLE ON THE MODERNISATION  
OF THE ENERGY CHARTER TREATY**

At its Ad Hoc meeting on 24 June 2022, the Energy Charter Conference **confirmed** the attached Agreement in principle on the modernisation of the Energy Charter Treaty.

The Agreement in principle follows the existing formatting of the ECT. In addition:

- proposed new wording is underlined and text suggested to be deleted is shown in ~~striketrough~~;
- the provisional location of newly proposed articles is without prejudice to the discussions;
- only new proposed annexes and annexes on which there are changes or are considered as potentially obsolete are reproduced in full.

## THE ENERGY CHARTER TREATY

(Annex 1 to the Final Act of the European Energy Charter Conference)

*[UNDERSTANDING                      With respect to the Treaty as a whole*

*(a) The representatives underline that the provisions of the Treaty have been agreed upon bearing in mind the specific nature of the Treaty aiming at a legal framework to promote long-term cooperation in a particular sector and as a result cannot be construed to constitute a precedent in the context of other international negotiations.*

*(b) The provisions of the Treaty do not:*

*(i) oblige any Contracting Party to introduce mandatory third party access; or*

*(ii) prevent the use of pricing systems which, within a particular category of consumers, apply identical prices to customers in different locations.*

*(c) Derogations from most favoured nation treatment are not intended to cover measures which are specific to an Investor or group of Investors, rather than applying generally.]*

*[DECISION                              With respect to the Treaty as a whole*

*In the event of a conflict between the treaty concerning Spitsbergen of 9 February 1920 (the Svalbard Treaty) and the Energy Charter Treaty, the treaty concerning Spitsbergen shall prevail to the extent of the conflict, without prejudice to the positions of the Contracting Parties in respect of the Svalbard Treaty. In the event of such conflict or a dispute as to whether there is such conflict or as to its extent, ~~Article 16 and~~ Part V of the Energy Charter Treaty shall not apply.]*

## PREAMBLE

The Contracting Parties to this Treaty,

Having regard to the Charter of Paris for a New Europe signed on 21 November 1990;

Having regard to the European Energy Charter adopted in the Concluding Document of the Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991;

Recalling that all signatories to the Concluding Document of the Hague Conference undertook to pursue the objectives and principles of the European Energy Charter and implement and broaden their cooperation as soon as possible by negotiating in good faith an Energy Charter Treaty and Protocols, and desiring to place the commitments contained in that Charter on a secure and binding international legal basis;

Desiring also to establish the structural framework required to implement the principles enunciated in the European Energy Charter;

Wishing to implement the basic concept of the European Energy Charter initiative which is to catalyse economic growth by means of measures to liberalise investment and trade in energy;

Affirming that Contracting Parties attach the utmost importance to the effective implementation of full national treatment and most favoured nation treatment, ~~and that these commitments will be applied to the Making of Investments pursuant to a supplementary treaty;~~

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
Having regard to the objective of progressive liberalisation of international trade and to the principle of avoidance of discrimination in international trade as enunciated in the General Agreement on Tariffs and Trade and its Related Instruments and as otherwise provided for in this Treaty;	Having regard to the objective of progressive liberalisation of international trade and to the principle of avoidance of discrimination in international trade as enunciated in the Agreement Establishing the World Trade Organization and as otherwise provided for in this Treaty;
Determined progressively to remove technical, administrative and other barriers to trade in Energy Materials and Products and related equipment, technologies and services;	Determined progressively to remove technical, administrative and other barriers to trade in Energy Materials and Products and Energy-Related Equipment, technologies and services;
Looking to the eventual membership in the General Agreement on Tariffs and Trade of those Contracting Parties which are not currently members thereof and concerned to	Looking to the eventual membership in the World Trade Organization of those Contracting Parties which are not currently

provide interim trade arrangements which will assist those Contracting Parties and not impede their preparation for such membership;	members thereof and concerned to provide interim trade arrangements which will assist those Contracting Parties and not impede their preparation for such membership;
Mindful of the rights and obligations of certain Contracting Parties which are also parties to the General Agreement on Tariffs and Trade and its Related Instruments;	Mindful of the rights and obligations of certain Contracting Parties which are also members of the World Trade Organization;

Having regard to competition rules concerning mergers, monopolies, anticompetitive practices and abuse of dominant position;

Having regard also to the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines and other international nuclear non-proliferation obligations or understandings;

Recognising the necessity for the most efficient exploration, production, conversion, storage, transport, distribution and use of energy;

Recalling the relevant instruments regarding sustainable development and environment to which they adhere to such as Rio Declaration on Environment and Development and Agenda 21 of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the UN 2030 Agenda for Sustainable Development of 2015 with its Sustainable Development Goals and the 2015 Paris Agreement and the United Nations Framework Convention on Climate Change;

Recalling the ~~United Nations Framework Convention on Climate Change~~, the Convention on Long-Range Transboundary Air Pollution and its protocols, and other international environmental agreements with energy-related aspects;

Acknowledging the inherent rights of the Contracting Parties to regulate investments within their territories in order to meet legitimate and public policy objectives;

Recalling that measures to pursue essential security objectives may be subject to exceptions in accordance with the Treaty;

and Recognising the increasingly urgent need for measures to protect the environment, including the decommissioning of energy installations and waste disposal, and for internationally-agreed objectives and criteria for these purposes,

**HAVE AGREED AS FOLLOWS:**

## **PART I: DEFINITION AND PURPOSE**

**ARTICLE 1: DEFINITIONS**

As used in this Treaty:

(1) “Charter” means the European Energy Charter adopted in the Concluding Document of the Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991; signature of the Concluding Document is considered to be signature of the Charter, and the International Energy Charter adopted in the Concluding Document of the Hague II Conference on the International Energy Charter signed at The Hague on 20 May 2015; signature of the Concluding Document is considered to be signature of the Charter.

(2) “Contracting Party” means a state or Regional Economic Integration Organisation which has consented to be bound by this Treaty and for which the Treaty is in force.

(3) “Regional Economic Integration Organisation” means an organisation constituted by states to which they have transferred competence over certain matters a number of which are governed by this Treaty, including the authority to take decisions binding on them in respect of those matters.

(4)

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
“Energy Materials and Products”, <del>based on the Harmonised System of the Customs Co-Operation Council and the Combined Nomenclature of the European Communities,</del> means the items included in Annex EM.	“Energy Materials and Products”, <del>based on the Harmonised System of the World Customs Organization and the Combined Nomenclature of the European Communities,</del> means the items included in Annexes EM I or EM II.

Introduced by Article 2 of the Amendment to the Trade-Related Provisions
(4bis) “Energy-Related Equipment”, <del>based on the Harmonised System of the World Customs Organization,</del> means the items included in Annexes EQ I or EQ II.

(5) “Economic Activity in the Energy Sector” means an economic activity concerning:

- the exploration, extraction, refining, production, storage, land transport, transmission, distribution, trade, marketing, or sale of Energy Materials and Products except those included in Annex NI,



- the capture, utilisation and storage of carbon dioxide in order to decarbonise the energy system except as included in Annex NI; or
- ~~or concerning~~ the distribution of heat to multiple premises.

*[UNDERSTANDING**With respect to Article 1(5)*

*(a) It is understood that the Treaty confers no rights to engage in economic activities other than Economic Activities in the Energy Sector.*

*(b) The following activities are illustrative of Economic Activity in the Energy Sector:*

- (i) prospecting and exploration for, and extraction of, e.g., oil, gas, coal and uranium;*
- (ii) construction and operation of power generation facilities, including those powered by wind and other renewable energy sources;*
- (iii) ~~land transportation~~, distribution, storage and supply of Energy Materials and Products, e.g., by way of transmission and distribution grids and pipelines or dedicated rail lines, and construction of facilities for such, including the laying of oil, gas, and coal-slurry pipelines;*
- (iv) removal and disposal of wastes from energy related facilities such as power stations, including radioactive wastes from nuclear power stations;*
- (v) decommissioning of energy related facilities, including oil rigs, oil refineries and power generating plants;*
- (vi) marketing and sale of, and trade in Energy Materials and Products, e.g., retail sales of gasoline; and*
- (vii) research, consulting, planning, management and design activities related to the activities mentioned above, including those aimed at Improving Energy Efficiency.]*

(6) “Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor of a Contracting Party in the Area of another Contracting Party (“host Contracting Party”) that is made or acquired in accordance with the applicable laws in the latter and that have the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, a certain duration or the assumption of risk. Investment refers to assets associated with an Economic Activity in the Energy Sector and 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 licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.

For the avoidance of doubt in this Article:

- (a) claims to money arising solely from commercial contracts for the sale of goods or services by a natural person, a company or other organisation in the territory of a Contracting Party to a natural person, a company or other organisation in the territory of the other Contracting Party, or the extension of credit in relation to such transactions are less likely to have the characteristics of an investment;
- (b) an order or judgment entered in a judicial or administrative action or an arbitral award does not constitute an Investment.
- (c) A minor violation of the laws applicable in the host Contracting Party at the time the investment was made or acquired does not mean an asset is not an Investment.

A change in the form in which assets are invested or reinvested 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.~~

*[UNDERSTANDING                      With respect to Article 1(6)*

*For greater clarity as to whether an Investment made in the Area of one Contracting Party is controlled, directly or indirectly, by an Investor of any other Contracting Party, control of an Investment means control in fact, determined after an examination of the actual circumstances in each situation. In any such examination, all relevant factors should be considered, including the Investor’s*

(a) financial interest, including equity interest, in the Investment;

(b) ability to exercise substantial influence over the management and operation of the Investment; and

(c) ability to exercise substantial influence over the selection of members of the board of directors or any other managing body.

Where there is doubt as to whether an Investor controls, directly or indirectly, an Investment, an Investor claiming such control has the burden of proof that such control exists.]

~~[DECLARATION With respect to Article 1(6)]~~

~~The Russian Federation wishes to have reconsidered, in negotiations with regard to the supplementary treaty referred to in Article 10(4), the question of the importance of national legislation with respect to the issue of control as expressed in the Understanding to Article 1(6).]~~

(7) “Investor” means:

~~(a) with respect to a Contracting Party:~~

(i) a natural person having the ~~citizenship or~~ nationality of or who is a permanently residing resident of in a Contracting Party in accordance with its applicable law, provided that such person does not have the nationality or is not a permanent resident of the host Contracting Party at the time the investment was made or acquired;<sup>1</sup>

(ii) a company or other organisation constituted organized in accordance with the law applicable in that a Contracting Party and with substantial business activities in the Area of that Contracting Party. The existence of substantial business activities should be established by an overall examination, on a case-by-case basis, of the relevant circumstances, which may include whether the enterprise (a) has a physical presence in the Area of that Contracting Party; (b) employs staff in the Area of that Contracting Party; (c) generates turnover in the Area of that Contracting Party; or (d) pays taxes in the Area of 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.~~

(8) “Make Investments” or “Making of Investments” means establishing new Investments, acquiring all or part of existing Investments or moving into different fields of Investment activity.

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<sup>1</sup> The term “natural person” includes persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the law of the Republic of Latvia, to receive a non-citizen’s passport.

~~[UNDERSTANDING — With respect to Article 1(8)~~

~~Consistent with Australia's foreign investment policy, the establishment of a new mining or raw materials processing project in Australia with total investment of \$A 10 million or more by a foreign interest, even where that foreign interest is already operating a similar business in Australia, is considered as the making of a new investment.]~~

(9) “Returns” means the amounts derived from or associated with an Investment, irrespective of the form in which they are paid, including profits, dividends, interest, capital gains, royalty payments, management, technical assistance or other fees and payments in kind.

(10) “Area” means with respect to a state that is a Contracting Party:

(a) the territory under its sovereignty, it being understood that territory includes land, internal waters and the territorial sea; and

(b) subject to and in accordance with the international law of the sea: the sea, sea-bed and its subsoil with regard to which that Contracting Party exercises sovereign rights and jurisdiction.

With respect to a Regional Economic Integration Organisation which is a Contracting Party, Area means the Areas of the member states of such Organisation, under the provisions contained in the agreement establishing that Organisation.

(11)

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
(a) “GATT” means “GATT 1947” or “GATT 1994”, or both of them where both are applicable.	(a) “WTO” means the World Trade Organization established by the Agreement Establishing the World Trade Organization.
(b) “GATT 1947” means the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified.	(b) “WTO Agreement” means the Agreement Establishing the World Trade Organization, its Annexes and the decisions, declarations and understandings related thereto, as subsequently rectified, amended and modified from time to time.
(c) “GATT 1994” means the General Agreement on Tariffs and Trade as specified	(c) “GATT 1994” means the General Agreement on Tariffs and Trade as specified

<p>in Annex 1A to the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified from time to time.</p> <p>(d) “Related Instruments” means, as appropriate:</p> <p>(i) agreements, arrangements or other legal instruments, including decisions, declarations and understandings, concluded under the auspices of GATT 1947 as subsequently rectified, amended or modified; or</p> <p>(ii) the Agreement Establishing the World Trade Organization including its Annex 1 (except GATT 1994), its Annexes 2, 3 and 4, and the decisions, declarations and understandings related thereto, as subsequently rectified, amended or modified.</p>	<p>in Annex 1A to the Agreement Establishing the World Trade Organization, as subsequently rectified, amended or modified from time to time.</p>
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(12) “Intellectual Property” includes ~~copyrights and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and the protection of undisclosed information.~~

(a) all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C of the WTO Agreement (hereinafter referred to as the “TRIPS Agreement”) namely:

(i) copyright and related rights;

(ii) patents (which, in the case of the Union, include rights derived from supplementary protection certificates);

(iii) trademarks;

(iv) industrial designs;

(v) layout-designs (topographies) of integrated circuits;

(vi) geographical indications;

(vii) protection of undisclosed information; and

(b) plant variety rights.

~~[UNDERSTANDING — With respect to Article 1(12)]~~

~~The representatives recognise the necessity for adequate and effective protection of Intellectual Property rights according to the highest internationally accepted standards.]~~

(13) (a) “Energy Charter Protocol” or “Protocol” means a treaty, the negotiation of which is authorised and the text of which is adopted by the Charter Conference, which is entered into by two or more Contracting Parties in order to complement, supplement, extend or amplify the provisions of this Treaty with respect to any specific sector or category of activity within the scope of this Treaty, or to areas of cooperation pursuant to Title III of the Charter.

(b) “Energy Charter Declaration” or “Declaration” means a nonbinding instrument, the negotiation of which is authorised and the text of which is approved by the Charter Conference, which is entered into by two or more Contracting Parties to complement or supplement the provisions of this Treaty.

(14) “Freely Convertible Currency” means a currency which is widely traded in international foreign exchange markets and widely used in international transactions”.

(15) “Third-Party Funding” means any funding provided by a natural or legal person who is not a party to the dispute, to finance, directly or indirectly, the pursuit or defence of the arbitral proceedings under Article 26(4) through a donation or grant or through an agreement in return for a remuneration dependent upon the outcome of the dispute.

(16) Labour Laws means laws and regulations, or provisions of laws and regulations, of a Contracting Party that are required in order to implement the internationally recognised labour rights of:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour, a prohibition on the worst forms of child labour and other labour for children and minors;
- (d) the elimination of discrimination in respect of employment and occupation; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

**ARTICLE 2: PURPOSE OF THE TREATY**

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

## **PART II: COMMERCE**



**ARTICLE 3: INTERNATIONAL MARKETS**

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
The Contracting Parties shall work to promote access to international markets on commercial terms, and generally to develop an open and competitive market, for Energy Materials and Products.	The Contracting Parties shall work to promote access to international markets on commercial terms, and generally to develop an open and competitive market, for Energy Materials and Products and Energy-Related Equipment.

**ARTICLE 4**

<p>Original text of the Energy Charter Treaty</p> <p><b>Non-Derogation from GATT and Related Instruments</b></p>	<p>Modification by Article 2 of the Amendment to the Trade-Related Provisions</p> <p><b>Non-Derogations to WTO Agreement</b></p>
<p>Nothing in this Treaty shall derogate, as between particular Contracting Parties which are parties to the GATT, from the provisions of the GATT and Related Instruments as they are applied between those Contracting Parties.</p>	<p>Nothing in this Treaty shall derogate, as between particular Contracting Parties which are member of the WTO, from the provisions of the WTO Agreement as they are applied between those Contracting Parties.</p>

**ARTICLE 5: TRADE-RELATED INVESTMENT MEASURES**

~~[DECLARATION] With respect to Articles 5 and 10(11)~~

~~Australia notes that the provisions of Articles 5 and 10(11) do not diminish its rights and obligations under the GATT, including as elaborated in the Uruguay Round Agreement on Trade-Related Investment Measures, particularly with respect to the list of exceptions in Article 5(3), which it considers incomplete.~~

~~Australia further notes that it would not be appropriate for dispute settlement bodies established under the Treaty to give interpretations of GATT articles III and XI in the context of disputes between parties to the GATT or between an Investor of a party to the GATT and another party to the GATT. It considers that with respect to the application of Article 10(11) between an Investor and a party to the GATT, the only issue that can be considered under Article 26 is the issue of the awards of arbitration in the event that a GATT panel or the WTO dispute settlement body first establishes that a trade-related investment measure maintained by the Contracting Party is inconsistent with its obligations under the GATT or the Agreement on Trade-Related Investment Measures.]~~

(1)

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
A Contracting Party shall not apply any trade-related investment measure that is inconsistent with the provisions of article III or XI of the GATT; this shall be without prejudice to the Contracting Party's rights and obligations under the GATT and Related Instruments and Article 29.	A Contracting Party shall not apply any trade-related investment measure that is inconsistent with the provisions of article III or XI of the GATT 1994; this shall be without prejudice to the Contracting Party's rights and obligations under the WTO Agreement and Article 29.

~~[UNDERSTANDING] With respect to Article 5(1)~~

~~The representatives' agreement to Article 5 is not meant to imply any position on whether or to what extent the provisions of the "Agreement on Trade-Related Investment Measures" annexed to the Final Act of the Uruguay Round of Multilateral Trade Negotiations are implicit in articles III and XI of the GATT.]~~

(2) Such measures include any investment measure which is mandatory or enforceable under domestic law or under any administrative ruling, or compliance with which is necessary to obtain an advantage, and which requires:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production; or

(b) that an enterprise's purchase or use of imported products be limited to an amount related to the volume or value of local products that it exports

or which restricts:

(c) the importation by an enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports;

(d) the importation by an enterprise of products used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise; or

(e) the exportation or sale for export by an enterprise of products, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production.

(3) Nothing in paragraph (1) shall be construed to prevent a Contracting Party from applying the trade-related investment measures described in subparagraphs (2)(a) and (c) as a condition of eligibility for export promotion, foreign aid, government procurement or preferential tariff or quota programmes.

(4) Notwithstanding paragraph (1), a Contracting Party may temporarily continue to maintain trade-related investment measures which were in effect more than 180 days before its signature of or accession to this Treaty, subject to the notification and phase-out provisions set out in Annex TRM.

## ARTICLE 6: COMPETITION

[UNDERSTANDING

*With respect to Article 6*

*(a) The unilateral and concerted anti-competitive conduct referred to in Article 6(2) are to be defined by each Contracting Party in accordance with its laws and may include exploitative abuses.*

*(b) “Enforcement” and “enforces” include action under the competition laws of a Contracting Party by way of investigation, legal proceeding, or administrative action as well as by way of any decision or further law granting or continuing an authorisation.]*

(1) Each Contracting Party shall work to alleviate market distortions and barriers to competition in Economic Activity in the Energy Sector

(2) Each Contracting Party shall ensure that within its jurisdiction it has and enforces such laws as are necessary and appropriate to address unilateral and concerted anti-competitive conduct in Economic Activity in the Energy Sector

(3) Contracting Parties with experience in applying competition rules shall give full consideration to providing, upon request and within available resources, technical assistance on the development and implementation of competition rules to other Contracting Parties.

(4) Contracting Parties may cooperate in the enforcement of their competition rules by consulting and exchanging information.

(5) If a Contracting Party considers that any specified anti-competitive conduct carried out within the Area of another Contracting Party is adversely affecting an important interest relevant to the purposes identified in this Article, the Contracting Party may notify the other Contracting Party and may request that its competition authorities initiate appropriate enforcement action. The notifying Contracting Party shall include in such notification sufficient information to permit the notified Contracting Party to identify the anti-competitive conduct that is the subject of the notification and shall include an offer of such further information and cooperation as the notifying Contracting Party is able to provide. The notified Contracting Party or, as the case may be, the relevant competition authorities may consult with the competition authorities of the notifying Contracting Party and shall accord full consideration to the request of the notifying Contracting Party in deciding whether or not to initiate enforcement action with respect to the alleged anti-competitive conduct identified in the notification. The notified Contracting Party shall inform the notifying Contracting Party of its decision or the decision of the relevant competition authorities and may if it wishes inform the notifying Contracting Party of the grounds for the decision. If enforcement action is initiated, the notified Contracting Party shall advise the notifying Contracting Party of its outcome and, to the extent possible, of any significant interim development.

(6) Nothing in this Article shall require the provision of information by a Contracting Party contrary to its laws regarding disclosure of information, confidentiality or business secrecy.

(7) The procedures set forth in paragraph (5) and Article 27(1) shall be the exclusive means within this Treaty of resolving any disputes that may arise over the implementation or interpretation of this Article.

**ARTICLE 7: TRANSIT***[DECLARATION**With respect to Article 7*

*The ~~European Communities~~ European Union, ~~and its~~ their Member States and ~~Austria,~~  
~~Norway, Sweden and Finland~~ declare that the provisions of Article 7 are subject to the  
conventional rules of international law on jurisdiction over submarine cables and pipelines  
or, where there are no such rules, to general international law. They further declare that  
Article 7 is not intended to affect the interpretation of existing international law on  
jurisdiction over submarine cables and pipelines, and cannot be considered as doing so.]*

(1) Each Contracting Party shall take the necessary measures to facilitate the Transit of Energy Materials and Products consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such Energy Materials and Products or discrimination as to pricing on the basis of such distinctions, and without imposing any unreasonable delays, restrictions or charges. For the purpose of this Article, “Transit” means

- (i) the carriage through the Area of a Contracting Party, with or without storage, ~~or to or from port facilities in its Area for loading and unloading~~, of Energy Materials and Products originating in the Area of another state and destined for the Area of a third state, so long as either the other state or the third state is a Contracting Party; or
- (ii) the carriage through the Area of a Contracting Party, with or without storage, of Energy Materials and Products originating in the Area of another Contracting Party and destined for the Area of that other Contracting Party, unless the two Contracting Parties concerned decide otherwise and record their decision by a joint entry in Annex N. The two Contracting Parties may delete their listing in Annex N by delivering a joint written notification of their intentions to the Secretariat, which shall transmit that notification to all other Contracting Parties. The deletion shall take effect four weeks after such former notification.

(2) Contracting Parties shall encourage relevant entities to cooperate in:

- (a) modernising Energy Transport Facilities necessary to the Transit of Energy Materials and Products;
- (b) the development and operation of Energy Transport Facilities serving the Areas of more than one Contracting Party;
- (c) measures to mitigate the effects of interruptions in the supply of Energy Materials and Products; and

(d) facilitating the interconnection of Energy Transport Facilities.

For the purpose of this Article, “Energy Transport Facilities” ~~consist of~~ means high-pressure gas transmission pipelines, high-voltage electricity transmission grids and lines, crude oil transmission pipelines, coal slurry pipelines, oil product pipelines and other fixed facilities specifically for handling Energy Materials and Products.

(3) Each Contracting Party shall endeavour to take, subject to its laws and regulations, all appropriate measures to facilitate transparent and non-discriminatory access, for transit purposes, to existing and future Energy Transport Facilities unless the Energy Transport Facility lacks the necessary available capacity or there is an incompatibility with respect to technical parameters or the quality of concerned Energy Materials and Products. In case of denial of access, the reasons shall be duly substantiated. For the purpose of this Article:

- “Access, for transit purposes, to Energy Transport Facilities” means, for transit of natural gas and oil, a permission either contractual or otherwise granted to pass through such Facilities in accordance with commercial contracts related to capacity for transit, intergovernmental and host government agreements, as well as the laws and regulations of the Contracting Party on whose Area the Energy Transport Facilities are located.
- “Available Capacity” means, for transit of natural gas and oil, physical capacity of the Energy Transport Facilities that is not allocated and could be offered to other Contracting Parties in accordance with commercial contracts related to capacity for transit, intergovernmental and host government agreements, as well as the laws and regulations of the Contracting Party in whose Area the Energy Transport Facilities are located.

(4) Each Contracting Party shall endeavour to take, subject to its laws and regulations, the appropriate measures to facilitate that capacity allocation mechanisms and congestion management procedures for Energy Transport Facilities are market-based, transparent and non-discriminatory.

(5) Each Contracting Party shall endeavour to take, subject to its laws and regulations, all appropriate measures to facilitate that tariffs required for access to or the use of Energy Transport Facilities for transit purposes, as well as the methodologies used for their calculation, are applied objectively, transparently and in a non-discriminatory manner. Each Contracting Party shall endeavour to ensure, subject to its laws and regulations, the publication of the terms, conditions and tariffs or charges for access to or the use of Energy Transport Facilities for transit purposes and any other information that may be necessary to facilitate such use.

(63) Each Contracting Party undertakes that its provisions relating to transport of Energy Materials and Products and the use of Energy Transport Facilities shall treat Energy Materials and Products in Transit in no less favourable a manner than its provisions treat such materials and products originating in or destined for its own Area, unless an existing international agreement provides otherwise.



(74) In the event that Transit of Energy Materials and Products cannot be achieved on commercial terms by means of Energy Transport Facilities the Contracting Parties shall not place obstacles in the way of new capacity being established, except as may be otherwise provided in applicable legislation which is consistent with paragraph (1).

[UNDERSTANDING                      With respect to Article 7(74)

*The applicable legislation would include provisions on environmental protection, land use, safety, or technical standards.]*

(85) A Contracting Party through whose Area Energy Materials and Products may transit shall not be obliged to

- (a) permit the construction or modification of Energy Transport Facilities; or
- (b) permit new or additional Transit through existing Energy Transport Facilities,

which it demonstrates to the other Contracting Parties concerned would endanger the security or efficiency of its energy systems, including the security of supply.

Contracting Parties shall, subject to paragraphs (96) and (107), secure established flows of Energy Materials and Products to, from or between the Areas of other Contracting Parties. This shall not be construed as an obligation to renew expired contracts for the use of Energy Transport Facilities in the Area of Contracting Parties.

(96) A Contracting Party through whose Area Energy Materials and Products transit shall not, in the event of a dispute over any matter arising from that Transit, interrupt or reduce, permit any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of Energy Materials and Products prior to the conclusion of the dispute resolution procedures set out in paragraph (107), except where this is specifically provided for in a contract or other agreement governing such Transit or permitted in accordance with the conciliator's decision.

(107) The following provisions shall apply to a dispute described in paragraph (96), ~~but only~~ following an agreement in writing of the Contracting Parties party to the dispute or after the exhaustion of all relevant contractual or other dispute resolution remedies previously agreed between the Contracting Parties party to the dispute or between any entity referred to in paragraph (96) and an entity of another Contracting Party party to the dispute:

- (a) A Contracting Party party to the dispute may refer it to the Secretary General by a notification summarising the matters in dispute. The Secretary General shall notify all Contracting Parties of any such referral.
- (b) Within 30 days of receipt of such a notification, the Secretary General, in consultation with the parties to the dispute and the other Contracting Parties

concerned, shall appoint a conciliator. Such a conciliator shall have experience in the matters subject to dispute and shall not be a national or citizen of or permanently resident in a party to the dispute or one of the other Contracting Parties concerned unless otherwise agreed by the disputing parties.

- (c) The conciliator shall seek the agreement of the parties to the dispute to a resolution thereof or upon a procedure to achieve such resolution. If within 90 days of his appointment he has failed to secure such agreement, 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 he shall specify until the dispute is resolved. The decision regarding interim tariffs shall be made taking into account the provisions of paragraph (5).
- (d) The Contracting Parties undertake to observe and ensure that the entities under their control or jurisdiction observe any interim decision under subparagraph (c) on tariffs, terms and conditions for 12 months following the conciliator's decision or until resolution of the dispute, whichever is earlier.
- (e) Notwithstanding subparagraph (b) the Secretary General may elect not to appoint a conciliator if in his judgement the dispute concerns Transit that is or has been the subject of the dispute resolution procedures set out in subparagraphs (a) to (d) and those proceedings have not resulted in a resolution of the dispute.
- (f) The Charter Conference shall adopt standard provisions concerning the conduct of conciliation and the compensation of conciliators.

(11) This Article shall not be interpreted to prevent Contracting Parties from organising their energy systems based on virtual flows of Energy Materials and Products. Where Contracting Parties organise their energy systems based on virtual flows, this Article does not grant a right to receiving the physical Energy Materials and Products injected into the system.

(12) This Article shall not be interpreted to prevent Contracting Parties from organising their energy systems also based on International swap operations, understood as the physical or virtual exchange of a quantity of Energy Materials and Products in the Area of a Contracting Party to an equivalent quantity of the same Energy Materials and Products in the Area of another state and destined for the Area of a third state provided that either the other state or the third state is a Contracting Party.

(138) Nothing in this Article shall derogate from a Contracting Party's rights and obligations under international law including customary international law, existing bilateral or multilateral agreements, including rules concerning submarine cables and pipelines.

(149) This Article shall not be so interpreted as to oblige any Contracting Party which does not have a certain type of Energy Transport Facilities used for Transit to take any measure

under this Article with respect to that type of Energy Transport Facilities. Such a Contracting Party is, however, obliged to comply with paragraph (74).

~~(10) For the purposes of this Article:~~

**ARTICLE 8: TRANSFER OF TECHNOLOGY**

(1) The Contracting Parties agree to promote access to and transfer of energy technology on a commercial and non-discriminatory basis to assist effective trade in Energy Materials and Products and Investment and to implement the objectives of the Charter subject to their laws and regulations, and to the protection of Intellectual Property rights.

(2) Accordingly, to the extent necessary to give effect to paragraph (1) the Contracting Parties shall eliminate existing and create no new obstacles to the transfer of technology in the field of Energy Materials and Products and related equipment and services, subject to non-proliferation and other international obligations.

## ARTICLE 9: ACCESS TO CAPITAL

*[UNDERSTANDING With respect to Articles 9, 10 and Part V*

*As a Contracting Party's programmes which provide for public loans, grants, guarantees or insurance for facilitating trade or Investment abroad are not Connected with Investment or related activities of Investors from other Contracting Parties in its Area, such programmes may be subject to constraints with respect to participation in them.]*

(1) The Contracting Parties acknowledge the importance of open capital markets in encouraging the flow of capital to finance trade in Energy Materials and Products and for the making of and assisting with regard to Investments in Economic Activity in the Energy Sector in the Areas of other Contracting Parties, particularly those with economies in transition. Each Contracting Party shall accordingly endeavour to promote conditions for access to its capital market by companies and nationals of other Contracting Parties, for the purpose of financing trade in Energy Materials and Products and for the purpose of Investment in Economic Activity in the Energy Sector in the Areas of those other Contracting Parties, on the most favourable a basis ~~no less favourable than that~~ which it accords in like ~~circumstances-situations~~ to its own companies and nationals or companies and nationals of any other Contracting Party or any third state, ~~whichever is the most favourable~~.

(2) A Contracting Party may adopt and maintain programmes providing for access to public loans, grants, guarantees or insurance for facilitating trade or Investment abroad. It shall make such facilities available, consistent with the objectives, constraints and criteria of such programmes (including any objectives, constraints or criteria relating to the place of business of an applicant for any such facility or the place of delivery of goods or services supplied with the support of any such facility) for Investments in the Economic Activity in the Energy Sector of other Contracting Parties or for financing trade in Energy Materials and Products with other Contracting Parties.

(3) Contracting Parties shall, in implementing programmes in Economic Activity in the Energy Sector to improve the economic stability and investment climates of the Contracting Parties, seek as appropriate to encourage the operations and take advantage of the expertise of relevant international financial institutions.

(4) Nothing in this Article shall prevent:

- (a) financial institutions from applying their own lending or underwriting practices based on market principles and prudential considerations; or
- (b) a Contracting Party from taking measures:

- (i) for prudential reasons, including the protection of Investors, consumers, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier; or
- (ii) to ensure the integrity and stability of its financial system and capital markets.

## **PART III: INVESTMENT PROMOTION AND PROTECTION**

**NEW ARTICLE: NON APPLICATION OF PART III TO CERTAIN  
INVESTMENTS**

This Part does not apply to a Contracting Party listed in Annex NPT in respect of an Investment in their Area by an Investor of another Contracting Party regarding Energy Materials and Products, or activities excluded by the latter Contracting Party in Annex NI



**NEW ARTICLE: RIGHT TO REGULATE**

The Contracting Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of the environment, including climate change mitigation and adaptation, protection of public health, safety or public morals.

**ARTICLE 10: PROMOTION, PROTECTION AND TREATMENT OF INVESTMENTS**

[UNDERSTANDING                      With respect to Articles 9, 10 and Part V

*As a Contracting Party's programmes which provide for public loans, grants, guarantees or insurance for facilitating trade or Investment abroad are not connected with Investment or related activities of Investors from other Contracting Parties in its Area, such programmes may be subject to constraints with respect to participation in them.]*

[~~DECLARATION~~                      ~~With respect to Article 10~~

~~Canada and the United States each affirm that they will apply the provisions of Article 10 in accordance with the following considerations: For the purposes of assessing the treatment which must be accorded to Investors of other Contracting Parties and their Investments, the circumstances will need to be considered on a case by case basis. A comparison between the treatment accorded to Investors of one Contracting Party, or the Investments of Investors of one Contracting Party, and the Investments or Investors of another Contracting Party, is only valid if it is made between Investors and Investments in similar circumstances. In determining whether differential treatment of Investors or Investments is consistent with Article 10, two basic factors must be taken into account.~~

~~The first factor is the policy objectives of Contracting Parties in various fields insofar as they are consistent with the principles of non discrimination set out in Article 10. Legitimate policy objectives may justify differential treatment of foreign Investors or their Investments in order to reflect a dissimilarity of relevant circumstances between those Investors and Investments and their domestic counterparts. For example, the objective of ensuring the integrity of a country's financial system would justify reasonable prudential measures with respect to foreign Investors or Investments, where such measures would be unnecessary to ensure the attainment of the same objectives insofar as domestic Investors or Investments are concerned. Those foreign Investors or their Investments would thus not be "in similar circumstances" to domestic Investors or their Investments. Thus, even if such a measure accorded differential treatment, it would not be contrary to Article 10.~~

~~The second factor is the extent to which the measure is motivated by the fact that the relevant Investor or Investment is subject to foreign ownership or under foreign control. A measure aimed specifically at Investors because they are foreign, without sufficient countervailing policy reasons consistent with the preceding paragraph, would be contrary to the principles of Article 10. The foreign Investor or Investment would be "in similar circumstances" to domestic Investors and their Investments, and the measure would be contrary to Article 10.]~~

(1) Each Contracting Party shall, ~~in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Area. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties,~~

~~and to such Investors with respect to their Investments, Fair and Equitable Treatment and Full Protection and Security in its Area. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.~~

(2) A Contracting Party breaches the obligation to accord Fair and Equitable Treatment set out in paragraph (1) through a measure or series of measures that constitute

- (i) arbitrariness, such as blatant unreasonableness;
- (ii) targeted discrimination on wrongful grounds, such as, gender, race or religious belief;
- (iii) fundamental breach of due process, including a fundamental breach of transparency in judicial and administrative proceedings;
- (iv) denial of justice in criminal, civil or administrative adjudicatory proceedings;
- (v) abusive treatment such as harassment, duress or coercion; or
- (vi) frustration of an Investor's legitimate expectations<sup>2</sup> where these were central to its Investment, and arose from a clear and specific representation or commitment<sup>3</sup> by that Contracting Party upon which the Investor reasonably relied in deciding to make or maintain the Investment.

For greater certainty, a breach of another provision of this Treaty, or of any other international agreement, does not establish a breach of this paragraph.

(3) The obligation to accord "Full Protection and Security" refers to the physical security of Investors and Investments.

(24) Each Contracting Party shall endeavour to accord, in like situations, to Investors of other Contracting Parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (53).

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<sup>2</sup> For greater certainty, an Investor's legitimate expectations do not include general expectations, such as an expectation (in the absence of clear and specific representations or commitments to that effect) that a Contracting Party's legal or regulatory framework will not change.

<sup>3</sup> For the purpose of this Article, the determination of whether there is a clear and specific representation or commitment requires a case-by-case, fact-based inquiry that considers, among other factors, laws and regulations and the Contracting Party's relevant publicly known policies and their objectives.

~~(35)~~ For the purposes of this Article, “Treatment” means treatment accorded by a Contracting Party which is the most favourable of ~~no less favourable than~~ that which it accords to its own Investors or to Investors of any other Contracting Party or any third state, ~~whichever is the most favourable.~~

~~(4) A supplementary treaty shall, subject to conditions to be laid down therein, oblige each party thereto to accord to Investors of other parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3). That treaty shall be open for signature by the states and Regional Economic Integration Organisations which have signed or acceded to this Treaty. Negotiations towards the supplementary treaty shall commence not later than 1 January 1995, with a view to concluding it by 1 January 1998.~~

~~[UNDERSTANDING — With respect to Article 10(4)]~~

~~The supplementary treaty will specify conditions for applying the Treatment described in Article 10(3). Those conditions will include, inter alia, provisions relating to the sale or other divestment of state assets (privatisation) and to the dismantling of monopolies (demonopolisation).]~~

~~[UNDERSTANDING — With respect to Articles 10(4) and 29(6)]~~

~~Contracting Parties may consider any connection between the provisions of Article 10(4) and Article 29(6).]~~

~~(56)~~ Each Contracting Party shall, as regards the Making of Investments in its Area, endeavour to:

- ~~(a)~~ limit to the minimum the exceptions to the Treatment described in paragraph ~~(53)~~;
- ~~(b)~~ progressively remove existing restrictions affecting Investors of other Contracting Parties.

~~(67)~~ (a) A Contracting Party may, as regards the Making of Investments in its Area, at any time declare voluntarily to the Charter Conference, through the Secretariat, its intention not to introduce new exceptions to the Treatment described in paragraph ~~(53)~~.

(b) A Contracting Party may, furthermore, at any time make a voluntary commitment to accord to Investors of other Contracting Parties, as regards the Making of Investments in some or all Economic Activities in the Energy Sector in its Area, the Treatment described in paragraph ~~(53)~~. Such commitments shall be notified to the Secretariat and listed in Annex VC and shall be binding under this Treaty.

~~(78)~~ Each Contracting Party shall accord to Investments in its Area of Investors of other Contracting Parties, and their related activities including management, maintenance, use, enjoyment or disposal, the most favourable treatment ~~no less favourable than that~~ which it

accords, in like situations, to Investments of its own Investors or of the Investors of any other Contracting Party or any third state and their related activities including management, maintenance, use, enjoyment or disposal, ~~whichever is the most favourable~~.

(i) For greater certainty, the “treatment” referred to in this paragraph does not include dispute settlement procedures provided for in other international agreements;

(ii) For the purpose of this Treaty, substantive provisions in other international agreements concluded by a Contracting Party with a third state do not in themselves constitute the “treatment” referred to in this Paragraph. Measures of a Contracting Party pursuant to those provisions<sup>4</sup> may constitute such treatment and thus give rise to a breach of this Paragraph.

~~[DECISION — With respect to Article 10(7)]~~

~~The Russian Federation may require that companies with foreign participation obtain legislative approval for the leasing of federally owned property, provided that the Russian Federation shall ensure without exception that this process is not applied in a manner which discriminates among Investments of Investors of other Contracting Parties.]~~

~~(8) The modalities of application of paragraph (7) in relation to programmes under which a Contracting Party provides grants or other financial assistance, or enters into contracts, for energy technology research and development, shall be reserved for the supplementary treaty described in paragraph (4). Each Contracting Party shall through the Secretariat keep the Charter Conference informed of the modalities it applies to the programmes described in this paragraph.~~

(9) Each state or Regional Economic Integration Organisation which signs or accedes to this Treaty shall, on the date it signs the Treaty or deposits its instrument of accession, submit to the Secretariat a report summarizing all laws, regulations or other measures relevant to:

~~(a) exceptions to paragraph (42); or~~

~~(b) the programmes referred to in paragraph (8).~~

A Contracting Party shall keep its report up to date by promptly submitting amendments to the Secretariat. The Charter Conference shall review these reports periodically.

In respect of subparagraph (a) the report may designate parts of the energy sector in which a Contracting Party accords to Investors of other Contracting Parties the Treatment described in paragraph (53).

In respect of subparagraph (b) the review by the Charter Conference may consider the effects of such programmes on competition and Investments.

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<sup>4</sup> For greater certainty, the mere transposition of those provisions into domestic law, to the extent that it is necessary in order to incorporate them into the domestic legal order, does not in itself qualify as a measure.

(10) Notwithstanding any other provision of this Article, the treatment described in paragraphs (53) and (87) shall not apply to the protection of Intellectual Property; instead, the treatment shall be as specified in the corresponding provisions of the applicable international agreements for the protection of Intellectual Property rights to which the respective Contracting Parties are parties.

(11) For the purposes of Article 26, the application by a Contracting Party of a trade-related investment measure as described in Article 5(1) and (2) to an Investment of an Investor of another Contracting Party existing at the time of such application shall, subject to Article 5(3) and (4), be considered a breach of an obligation of the former Contracting Party under this Part.

~~{DECLARATION ————— With respect to Articles 5 and 10(11)}~~

~~Australia notes that the provisions of Articles 5 and 10(11) do not diminish its rights and obligations under the GATT, including as elaborated in the Uruguay Round Agreement on Trade-Related Investment Measures, particularly with respect to the list of exceptions in Article 5(3), which it considers incomplete. Australia further notes that it would not be appropriate for dispute settlement bodies established under the Treaty to give interpretations of GATT articles III and XI in the context of disputes between parties to the GATT or between an Investor of a party to the GATT and another party to the GATT. It considers that with respect to the application of Article 10(11) between an Investor and a party to the GATT, the only issue that can be considered under Article 26 is the issue of the awards of arbitration in the event that a GATT panel or the WTO dispute settlement body first establishes that a trade-related investment measure maintained by the Contracting Party is inconsistent with its obligations under the GATT or the Agreement on Trade-Related Investment Measures.]~~

(12) Each Contracting Party shall ensure that its domestic law provides effective means for the assertion of claims and the enforcement of rights with respect to Investments, investment agreements, and investment authorisations.

(13) For the purpose of this Treaty, where a Contracting Party has entered into any specific written commitment with Investors of the other Contracting Parties or with their Investments in its Area, that Contracting Party shall not breach the said commitment through the exercise of governmental authority.

**ARTICLE 11: KEY PERSONNEL**

(1) A Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by Investors of another Contracting Party, and key personnel who are employed by such Investors or by Investments of such Investors, to enter and remain temporarily in its Area to engage in activities connected with the making or the development, management, maintenance, use, enjoyment or disposal of relevant Investments, including the provision of advice or key technical services.

(2) A Contracting Party shall permit Investors of another Contracting Party which have Investments in its Area, and Investments of such Investors, to employ any key person of the Investor's or the Investment's choice regardless of nationality and citizenship provided that such key person has been permitted to enter, stay and work in the Area of the former Contracting Party and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key person.

**ARTICLE 12: COMPENSATION FOR LOSSES**

(1) Except where Article 13 applies, an Investor of any Contracting Party which suffers a loss with respect to any Investment in the Area of another Contracting Party owing to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that Area, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment which is the most favourable of that which that Contracting Party accords to any other Investor, whether its own Investor, the Investor of any other Contracting Party, or the Investor of any third state.

(2) Without prejudice to paragraph (1), an Investor of a Contracting Party which, in any of the situations referred to in that paragraph, suffers a loss in the Area of another Contracting Party resulting from:

- (a) requisitioning of its Investment or part thereof by the latter's forces or authorities; or
- (b) destruction of its Investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.



### ARTICLE 13: EXPROPRIATION

(1) Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be the subject of direct or indirect expropriation (hereinafter referred to as “Expropriation”) except:

- (a) for a purpose which is in the public interest;
- (b) not discriminatory;
- (c) carried out under due process of law; and
- (d) accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation took place or the Expropriation or impending Expropriation became known in such a way as to affect the value of the Investment, whichever is the earlier (hereinafter referred to as the “Valuation Date”).

Such 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. Compensation shall also include interest at a commercial rate established on a market basis from the date of Expropriation until the date of payment.

(2) Direct expropriation occurs when an Investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure.

(3) Indirect expropriation occurs where a measure or series of measures of a Contracting Party has an effect equivalent to direct expropriation, without formal transfer of title or outright seizure, in that it substantially deprives the Investor of the value of its Investment or of the fundamental attributes of property in its Investment, including the right to use, enjoy and dispose of its Investment.

The determination of whether a measure or series of measures of a Contracting Party constitutes indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

- (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Contracting Party has an adverse effect on the economic value of an Investment does not establish that an indirect expropriation has occurred.
- (b) the character of the measure or series of measures, including its objective and context.

(4) Except in rare circumstances when the impact of a measure or series of measures is so severe in light of its purpose that it is manifestly excessive, non-discriminatory measures by a Contracting Party that are designed and applied to protect legitimate policy objectives, such

as public health, safety and the environment (including with respect to climate change mitigation and adaptation), do not constitute indirect expropriations.

(2 5) The Investor affected shall have a right to prompt review, under the law of the Contracting Party making the Expropriation, by a judicial or other competent and independent authority of that Contracting Party, of its case, of the valuation of its Investment, and of the payment of compensation, in accordance with the principles set out in paragraph (1).

(3 6) For the avoidance of doubt, Expropriation shall include situations where a Contracting Party expropriates the assets of a company or enterprise in its Area in which an Investor of any other Contracting Party has an Investment, including through the ownership of shares.

## ARTICLE 14: TRANSFERS RELATED TO INVESTMENTS

~~[DECISION — With respect to Article 14~~

~~(1) The term “freedom of transfer” in Article 14(1) does not preclude a Contracting Party (hereinafter referred to as the “Limiting Party”) from applying restrictions on movement of capital by its own Investors, provided that:~~

~~(a) such restrictions shall not impair the rights granted under Article 14(1) to Investors of other Contracting Parties with respect to their Investments;~~

~~(b) such restrictions do not affect Current Transactions; and~~

~~(c) the Contracting Party ensures that Investments in its Area of the Investors of all other Contracting Parties are accorded, with respect to transfers, treatment no less favourable than that which it accords to Investments of Investors of any other Contracting Party or of any third state, whichever is the most favourable.~~

~~(2) This Decision shall be subject to examination by the Charter Conference five years after entry into force of the Treaty, but not later than the date envisaged in Article 32(3).~~

~~(3) No Contracting Party shall be eligible to apply such restrictions unless it is a Contracting Party which is a state that was a constituent part of the former Union of Soviet Socialist Republics, which has notified the provisional Secretariat in writing no later than 1 July 1995 that it elects to be eligible to apply restrictions in accordance with this Decision.~~

~~(4) For the avoidance of doubt, nothing in this Decision shall derogate, as concerns Article 16, from the rights hereunder of a Contracting Party, its Investors or their Investments, or from the obligations of a Contracting Party.~~

~~(5) For the purposes of this Decision:~~

~~“Current Transactions” are current payments connected with the movement of goods, services or persons that are made in accordance with normal international practice, and do not include arrangements which materially constitute a combination of a current payment and a capital transaction, such as deferrals of payments and advances which is meant to circumvent respective legislation of the Limiting Party in the field.]~~

(1) Each Contracting Party shall with respect to Investments in its Area of Investors of any other Contracting Party guarantee the freedom of transfer into and out of its Area, including the transfer of:

- (a) the initial capital plus any additional capital for the maintenance and development of an Investment;
- (b) Returns;
- (c) payments under a contract, including amortisation of principal and accrued interest payments pursuant to a loan agreement;
- (d) unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment;
- (e) proceeds from the sale or liquidation of all or any part of an Investment;
- (f) payments arising out of the settlement of a dispute;
- (g) payments of compensation pursuant to Articles 12 and 13.

(2) Transfers under paragraph (1) shall be effected without delay and (except in case of a Return in kind) in a Freely Convertible Currency.

~~/DECISION ————— With respect to Article 14(2)/~~

(3) Transfers shall be made at the market rate of exchange existing on the date of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the Investor.

(4) Notwithstanding Paragraphs (1) to (3), a Contracting Party may ~~protect~~ prevent, limit or delay a transfer, as far as doing so does not constitute a disguised restriction on transfers, through the equitable, non-discriminatory and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors; ~~or ensure compliance with laws on the~~

(b) issuing, trading or dealing in futures, options, securities or other financial instruments;

(c) financial reporting or record keeping of transfers where necessary to assist law enforcement or financial regulatory authorities;

(d) criminal or penal offenses, deceptive or fraudulent practices;

(e) the satisfaction of ensuring compliance with orders or judgements in civil, administrative and criminal adjudicatory proceedings through the equitable, non-discriminatory, and good faith application of its laws and regulations;

(f) social security, public retirement or compulsory savings schemes.

~~(5) Notwithstanding paragraph (2), Contracting Parties which are states that were constituent parts of the former Union of Soviet Socialist Republics may provide in agreements concluded between them that transfers of payments shall be made in the currencies of such Contracting Parties, provided that such agreements do not treat Investments in their Areas of Investors of other Contracting Parties less favourably than either Investments of Investors of the Contracting Parties which have entered into such agreements or Investments of Investors of any third state.~~

~~*[UNDERSTANDING] With respect to Article 14(5)*~~

~~*It is intended that a Contracting Party which enters into an agreement referred to in Article 14(5) ensure that the conditions of such an agreement are not in contradiction with that Contracting Party's obligations under the Articles of Agreement of the International Monetary Fund.*~~

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
<p><del>(65)</del> Notwithstanding subparagraph (1)(b), a Contracting Party may restrict the transfer of a Return in kind in circumstances where the Contracting Party is permitted under Article 29(2)(a) or the GATT and Related Instruments to restrict or prohibit the exportation or the sale for export of the product constituting the Return in kind; provided that a Contracting Party shall permit transfers of Returns in kind to be effected as authorized or specified in an investment agreement, investment authorization, or other written agreement between the Contracting Party and either an Investor of another Contracting Party or its Investment.</p>	<p><del>(65)</del> Notwithstanding subparagraph (1)(b), a Contracting Party may restrict the transfer of a Return in kind in circumstances where the Contracting Party is permitted under Article 29(2)(a) or the WTO Agreement to restrict or prohibit the exportation or the sale for export of the product constituting the Return in kind; provided that a Contracting Party shall permit transfers of Returns in kind to be effected as authorised or specified in an investment agreement, investment authorisation, or other written agreement between the Contracting Party and either an Investor of another Contracting Party or its Investment.</p>

(6) Notwithstanding paragraphs (1) to (3), where a Contracting Party experiences serious balance-of-payments or external financial difficulties, or threat thereof, it may adopt or maintain restrictive measures.<sup>5</sup> Such measures shall:

- (a) be consistent with the Articles of the Agreement of the International Monetary Fund, as applicable;
- (b) not exceed those necessary to deal with the circumstances described in this Paragraph;
- (c) be temporary and phased out progressively as the situation specified in this Paragraph improves;
- (d) avoid unnecessary damage to the commercial, economic and financial interests of the other Contracting Parties;
- (e) be non-discriminatory compared to third states in like situations.
- (f) be promptly notified to the other Contracting Parties through the Energy Charter Secretariat.

For greater certainty, serious balance of payments or external financial difficulties, or threat thereof, may be caused among other factors by serious difficulties related to monetary or exchange rate policies, or threat thereof.

(7) Notwithstanding paragraphs (1) to (3), in exceptional circumstances of serious difficulties, or threat thereof, for the operation of the economic and monetary union in the case of the EU or for the operation of monetary and exchange rate policy in the case of other Contracting Parties, safeguard measures may be adopted or maintained for a period not exceeding six months. Such measures shall be limited to the extent that is strictly necessary.

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<sup>5</sup> In the case of the EU, such measures may be taken by a Member State of the EU in situations other than those referred to in Article 14(7), which affect the economy of that Member State.

**ARTICLE 15: SUBROGATION**

(1) If a Contracting Party or its designated agency (hereinafter referred to as the “Indemnifying Party”) makes a payment under an indemnity or guarantee given in respect of an Investment of an Investor (hereinafter referred to as the “Party Indemnified”) in the Area of another Contracting Party (hereinafter referred to as the “Host Party”), the Host Party shall recognise:

(a) the assignment to the Indemnifying Party of all the rights and claims in respect of such Investment; and

(b) the right of the Indemnifying Party to exercise all such rights and enforce such claims by virtue of subrogation.

(2) The Indemnifying Party shall be entitled in all circumstances to:

(a) the same treatment in respect of the rights and claims acquired by it by virtue of the assignment referred to in paragraph (1); and

(b) the same payments due pursuant to those rights and claims,

as the Party Indemnified was entitled to receive by virtue of this Treaty in respect of the Investment concerned.

(3) In any proceeding under Article 26, a Contracting Party shall not assert as a defence, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to an insurance or guarantee contract.

~~ARTICLE 16: RELATION TO OTHER AGREEMENTS~~

~~Where two or more Contracting Parties have entered into a prior international agreement, or enter into a subsequent international agreement, whose terms in either case concern the subject matter of Part III or V of this Treaty,~~

~~(1) nothing in Part III or V of this Treaty shall be construed to derogate from any provision of such terms of the other agreement or from any right to dispute resolution with respect thereto under that agreement; and~~

~~(2) nothing in such terms of the other agreement shall be construed to derogate from any provision of Part III or V of this Treaty or from any right to dispute resolution with respect thereto under this Treaty,~~

~~where any such provision is more favourable to the Investor or Investment.~~



**ARTICLE 17: NON-APPLICATION OF PART III AND ARTICLE 26 IN CERTAIN CIRCUMSTANCES**

(1) Each Contracting Party ~~reserves the right to~~ may, no later than the date a tribunal or court determines for the submission of arguments on preliminary questions, deny the application advantages of this Part and of Article 26 of this Treaty to an Investor

~~(1) a legal entity if citizens or nationals of a third state own or control such entity and if that entity has no substantial business activities in the Area of the Contracting Party in which it is organised; or~~

~~(2) to an Investment of an Investor of another Contracting Party, if the denying Contracting Party establishes that such Investment or Investor is owned or controlled by a natural or juridical person an Investment of an Investor of a third state with or as to which the denying Contracting Party:~~

~~(a) does not maintain a diplomatic relationship; or~~

~~(b) adopts or maintains measures related to the maintenance of international peace and security, including the protection of human rights, in line with the UN Charter and its international commitments, that:~~

~~(iA) prohibits transactions with respect to that Investor or Investment Investors of that state; or~~

~~(iB) would be violated or circumvented if the benefits of this Part and Article 26 were accorded to that Investor or Investment Investors of that state or to their Investments, including where the measures prohibit transactions with a natural or juridical person who owns or controls such Investor or Investment.~~

(2) A Contracting Party may deny such benefits pursuant to this Article without any prior publicity or other additional formality related to its intention to exercise the right conferred by this Article.

**ARTICLE 17 BIS: SUBSIDIES**

For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced by a Contracting Party or has been ordered to be reimbursed by a competent court, administrative tribunal or other competent authority of that Contracting Party, shall not constitute a breach of the provisions of Part III of the Treaty, even if there is loss or damage to the Investment as a result.

UNDERSTANDING with respect to Article 17 bis:

In the case of the EU:

(i) “subsidy” includes “state aid” as defined in EU law;

(ii) the competent authorities entitled to order the actions mentioned in Article 17 bis are the European Commission or a court or tribunal of a Member State when applying EU law on state aid.

**PART IV: MISCELLANEOUS PROVISIONS**

## ARTICLE 18: SOVEREIGNTY OVER NATIONAL RESOURCES

(1) The Contracting Parties recognise state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law.

(2) Without affecting the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, the Treaty shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources.

*[DECLARATION      The representatives declared that Article 18(2) shall not be construed to allow the circumvention of the application of the other provisions of the Treaty.]*

*[CHAIRMAN'S STATEMENT      In particular in the context of Article 18(2) they recalled that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. The Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of treaty in their context and in the light of its object and purpose.]*

(3) Each state continues to hold in particular the rights to decide the geographical areas within its Area to be made available for exploration and development of its energy resources, the optimisation of their recovery and the rate at which they may be depleted or otherwise exploited, to specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and exploitation, and to regulate the environmental and safety aspects of such exploration, development and reclamation within its Area, and to participate in such exploration and exploitation, inter alia, through direct participation by the government or through state enterprises.

(4) The Contracting Parties undertake to facilitate access to energy resources, inter alia, by allocating in a non-discriminatory manner on the basis of published criteria authorisations, licences, concessions and contracts to prospect and explore for or to exploit or extract energy resources.

**ARTICLE 19: ~~ENVIRONMENTAL ASPECTS~~ SUSTAINABLE DEVELOPMENT**

(1) The Contracting Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. The Contracting Parties reaffirm their commitment to promote the development of international trade and investment in energy-related sectors in such a way as to contribute to the objective of sustainable development.

(2) Each Contracting Party reaffirms its respective rights and obligations under the multilateral environmental and labour agreements to which it is a party,<sup>6</sup> such as the UNFCCC, the Paris Agreement and the ILO fundamental conventions, and reaffirms its respective commitments<sup>7</sup> with regard to the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up<sup>8</sup>. Recognising the right of each Contracting Party to determine its sustainable development policies and priorities, to establish its own levels of domestic environmental and labour protection and to adopt or modify accordingly its relevant laws and regulations, consistently with its commitments to the internationally recognised agreements to which it is a party, each Contracting Party shall strive to ensure that its relevant laws and regulations provide for and encourage high levels of labour and environmental protection, including with respect to climate change mitigation and adaptation.

(3) The Contracting Parties shall not encourage trade or investment in energy by relaxing or lowering the levels of protection afforded in their respective environmental or labour laws. To this effect, a Contracting Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws or, through a sustained or recurring course of action or inaction, fail to effectively enforce such laws in order to encourage trade or investment in energy between the Contracting Parties.

(4) The Contracting Parties shall not implement their respective environmental and labour laws in a manner that would constitute a disguised restriction on trade or investment in energy between the Contracting Parties or an unjustifiable or arbitrary discrimination against other Contracting Parties.

(5)-(4)- In pursuit of sustainable development and taking into account its obligations under those international agreements concerning the environment to which it is party, each Contracting Party shall strive to minimise in an economically efficient manner harmful Environmental Impacts occurring either within or outside its Area from all operations within the Energy Cycle in its Area, taking proper account of safety. In doing so each Contracting Party shall strive to act in a Cost-Effective manner. In its policies and actions each Contracting Party shall strive to take precautionary measures to prevent or minimise environmental degradation. The Contracting Parties agree that the polluter in the Areas of

<sup>6</sup> For greater certainty, the reaffirmation of the rights and obligations under multilateral environmental and labour agreements apply as they relate to the energy sector.

<sup>7</sup> For greater certainty, the reaffirmation of the commitments under the ILO Declaration applies as it relates to the energy sector.

<sup>8</sup> ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at Geneva on 18 June 1998 by the International Labour Conference at its 86<sup>th</sup> Session.

Contracting Parties, should, in principle, bear the cost of pollution, including transboundary pollution, with due regard to the public interest and without distorting Investment in the Energy Cycle or international trade. Each Contracting Parties shall accordingly:

- (a) take account of environmental considerations throughout the formulation and implementation of ~~their~~ its energy policies;
- (b) promote market-oriented price formation and a fuller reflection of environmental costs and benefits throughout the Energy Cycle;
- (c) having regard to Article 34(4), encourage cooperation in the attainment of the environmental objectives of the Charter and cooperation in the field of international environmental standards for the Energy Cycle, taking into account differences in adverse effects and abatement costs between Contracting Parties;
- (d) have particular regard to Improving Energy Efficiency, to developing and using renewable energy sources, to promoting the use of cleaner fuels and to employing technologies and technological means that reduce pollution;
- (e) promote the collection and sharing among Contracting Parties of information on environmentally sound and economically efficient energy policies and Cost-Effective practices and technologies;
- (f) promote public awareness of the Environmental Impacts of energy systems, of the scope for the prevention or abatement of their adverse Environmental Impacts, and of the costs associated with various prevention or abatement measures;
- (g) promote and cooperate in the research, development and application of energy efficient and environmentally sound technologies, practices and processes which will minimise harmful Environmental Impacts of all aspects of the Energy Cycle in an economically efficient manner;
- (h) encourage favourable conditions for the transfer and dissemination of such technologies consistent with the adequate and effective protection of Intellectual Property rights;

[UNDERSTANDING

With respect to Article 19(~~4~~5)(i)

*It is for each Contracting Party to decide the extent to which the assessment and monitoring of Environmental Impacts should be subject to legal requirements, the authorities competent to take decisions in relation to such requirements, and the appropriate procedures to be followed.]*

~~(i) promote the transparent assessment at an early stage and prior to decision, and subsequent monitoring, of Environmental Impacts of environmentally significant energy investment projects;~~

require that an impact assessment is carried out, to the extent consistent with its laws or regulations, prior to granting authorisation for energy investment projects.

The impact assessment shall identify and assess, to the extent consistent with the laws or regulations of the Contracting Party, the significant effects of the project [on matters which may include

(a) population and human health;

(b) biodiversity;

(c) land, soil, water, air and climate; and

(d) cultural heritage and landscape, including the expected effects deriving from the vulnerability of the project to risks of major accidents and/or disasters that are relevant to the project concerned.

Each Contracting Party shall ensure that an early and effective opportunity and an appropriate time period is given to the public concerned, including relevant non-governmental organisations, to participate in the environmental impact assessment and to provide comments to it. Each Contracting Party shall ensure that the findings of the environmental impact assessment are taken into account and that the results of the public consultation are made available to the public prior to granting authorisation for the project. The outcome findings of the environmental impact assessment and of the authorisation granted shall be made available to the public in an appropriate manner.

(j) promote international awareness and information exchange on Contracting Parties' relevant environmental programmes and standards and on the implementation of those programmes and standards;

(k) participate, upon request, and within their available resources, in the development and implementation of appropriate environmental programmes in the Contracting Parties.

(6) The Contracting Parties recognise the importance of responsible business conduct in contributing to the sustainable development goals. Each Contracting Party shall encourage Investors operating within its Area or subject to its jurisdiction, to adopt and implement voluntarily, into its policies and practices, principles of responsible business conduct consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Contracting Party, such as the United Nations Guiding Principles on Business and Human Rights, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and the OECD Guidelines for Multilateral Enterprises.

~~(2) At the request of one or more Contracting Parties, disputes concerning the application or interpretation of provisions of this Article shall, to the extent that arrangements for the consideration of such disputes do not exist in other appropriate international fora, be reviewed by the Charter Conference aiming at a solution.~~

(73) For the purposes of this Article:

(a) “Energy Cycle” means the entire energy chain, including activities related to prospecting for, exploration, production, conversion, storage, transport, distribution and consumption of the various forms of energy, and the treatment and disposal of wastes, as well as the decommissioning, cessation or closure of these activities, minimising harmful Environmental Impacts;

(b) “Environmental Impact” means any effect caused by a given activity on the environment, including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interactions among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors;

(c) “Improving Energy Efficiency” means acting to maintain the same unit of output (of a good or service) without reducing the quality or performance of the output, while reducing the amount of energy required to produce that output;

(d) “Cost-Effective” means to achieve a defined objective at the lowest cost or to achieve the greatest benefit at a given cost.

(8) To the extent consistent with its laws and regulations, each Contracting Party shall ensure that it

- (i) develops, enacts and implements any measures aimed at protecting the environment and labour conditions that may affect trade or investment in energy-related sectors, or trade or investment measures that may affect the protection of the environment or labour conditions in energy-related sectors, in a transparent manner.
- (ii) raises awareness and provides reasonable opportunities for interested persons and stakeholders to submit views on such measures as appropriate.

### **NEW ARTICLE: CLIMATE CHANGE AND CLEAN ENERGY TRANSITION**

Recognising the urgent need of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) the purpose and goals of the Paris Agreement in order to effectively combat climate change and its adverse impacts, and committed to enhancing the contribution of trade and investment in energy-related sectors to climate change mitigation and adaptation, each Contracting Party reaffirms its commitments to

- (a) effectively implement its commitments and obligations under the UNFCCC and the Paris Agreement;



- (b) promote and enhance the mutual supportiveness of investment and climate policies and measures, thereby accelerating the transition towards a low emission, clean energy and resource efficient economy, as well as to climate-resilient development;
- (c) promote and facilitate trade and investment of relevance for climate change mitigation and adaptation, including, inter alia, by removing obstacles to trade and investment concerning low carbon energy technologies and services such as renewable energy production capacity, and by adopting policy frameworks conducive to this objective;
- (d) cooperate, as appropriate, with the other Contracting Parties on investment-related aspects of climate change policies and measures bilaterally and in international fora, as appropriate.

**ARTICLE 20: TRANSPARENCY**

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
(1) Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the GATT and relevant Related Instruments.	(1) Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products or Energy Related Equipment are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the WTO Agreement.

(2) Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Treaty shall also be published promptly in such a manner as to enable Contracting Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

(3) Each Contracting Party shall designate one or more enquiry points to which requests for information about the above mentioned laws, regulations, judicial decisions and administrative rulings may be addressed and shall communicate promptly such designation to the Secretariat which shall make it available on request.

**ARTICLE 21: TAXATION**

(1) Except as otherwise provided in this Article, nothing in this Treaty shall create rights or impose obligations with respect to Taxation Measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of the Treaty, this Article shall prevail to the extent of the inconsistency.

(2) Article 7(~~63~~) shall apply to Taxation Measures other than those on income or on capital, except that such provision shall not apply to:

(a) an advantage accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii); or

(b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure of a Contracting Party arbitrarily discriminates against Energy Materials and Products originating in, or destined for the Area of another Contracting Party or arbitrarily restricts benefits accorded under Article 7(~~63~~).

(3) Article 10(~~42~~) and (~~87~~) shall apply to Taxation Measures of the Contracting Parties other than those on income or on capital, except that such provisions shall not apply to:

(a) impose most favoured nation obligations with respect to advantages accorded by a Contracting Party pursuant to the tax provisions of any convention, agreement or arrangement described in subparagraph (7)(a)(ii) or resulting from membership of any Regional Economic Integration Organisation; or

(b) any Taxation Measure aimed at ensuring the effective collection of taxes, except where the measure arbitrarily discriminates against an Investor of another Contracting Party or arbitrarily restricts benefits accorded under the Investment provisions of this Treaty.

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
(4) Article 29(2) to (6) shall apply to Taxation Measures other than those on income or on capital.	(4) Article 29(2) to (8) shall apply to Taxation Measures other than those on income or on capital.

(5) (a) Article 13 shall apply to taxes.

(b) Whenever an issue arises under Article 13, to the extent it pertains to whether a tax constitutes an expropriation or whether a tax alleged to constitute an expropriation is discriminatory, the following provisions shall apply:

(i) The Investor or the Contracting Party alleging expropriation shall refer the issue of whether the tax is an expropriation or whether the tax is discriminatory to the relevant Competent Tax Authority. Failing such referral by the Investor or the Contracting Party, bodies called upon to settle disputes pursuant to Article 26(2)(c) or 27(2) shall make a referral to the relevant Competent Tax Authorities;

(ii) The Competent Tax Authorities shall, within a period of six months of such referral, strive to resolve the issues so referred. Where non-discrimination issues are concerned, the Competent Tax Authorities shall apply the non-discrimination provisions of the relevant tax convention or, if there is no non-discrimination provision in the relevant tax convention applicable to the tax or no such tax convention is in force between the Contracting Parties concerned, they shall apply the non-discrimination principles under the Model Tax Convention on Income and Capital of the Organisation for Economic Cooperation and Development;

(iii) Bodies called upon to settle disputes pursuant to Article 26(2)(c) or 27(2) may take into account any conclusions arrived at by the Competent Tax Authorities regarding whether the tax is an expropriation. Such bodies shall take into account any conclusions arrived at within the six-month period prescribed in subparagraph (b)(ii) by the Competent Tax Authorities regarding whether the tax is discriminatory. Such bodies may also take into account any conclusions arrived at by the Competent Tax Authorities after the expiry of the six-month period;

(iv) Under no circumstances shall involvement of the Competent Tax Authorities, beyond the end of the six-month period referred to in subparagraph (b)(ii), lead to a delay of proceedings under Articles 26 and 27.

(6) For the avoidance of doubt, Article 14 shall not limit the right of a Contracting Party to impose or collect a tax by withholding or other means.

(7) For the purposes of this Article:

(a) The term “Taxation Measure” includes:

(i) any provision relating to taxes of the domestic law of the Contracting Party or of a political subdivision thereof or a local authority therein; and

(ii) any provision relating to taxes of any convention for the avoidance of double taxation or of any other international agreement or arrangement by which the Contracting Party is bound.

(b) There shall be regarded as taxes on income or on capital all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, or substantially similar taxes, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(c) A “Competent Tax Authority” means the competent authority pursuant to a double taxation agreement in force between the Contracting Parties or, when no such agreement is in force, the minister or ministry responsible for taxes or their authorised representatives.

(d) For the avoidance of doubt, the terms “tax provisions” and “taxes” do not include customs duties.

**ARTICLE 22: STATE AND PRIVILEGED ENTERPRISES**

*[UNDERSTANDING With respect to Articles 22 and 23*

*With regard to trade in Energy Materials and Products governed by Article 29, that Article specifies the provisions relevant to the subjects covered by Articles 22 and 23.]*

(1) Each Contracting Party shall ensure that any state enterprise which it maintains or establishes shall conduct its activities in relation to the sale or provision of goods and services in its Area in a manner consistent with the Contracting Party's obligations under Part III of this Treaty.

(2) No Contracting Party shall encourage or require such a state enterprise to conduct its activities in its Area in a manner inconsistent with the Contracting Party's obligations under other provisions of this Treaty.

(3) Each Contracting Party shall ensure that if it establishes or maintains an entity and entrusts the entity with regulatory, administrative or other governmental authority, such entity shall exercise that authority in a manner consistent with the Contracting Party's obligations under this Treaty.

(4) No Contracting Party shall encourage or require any entity to which it grants exclusive or special privileges to conduct its activities in its Area in a manner inconsistent with the Contracting Party's obligations under this Treaty.

(5) For the purposes of this Article, "entity" includes any enterprise, agency or other organisation or individual.

**ARTICLE 23: OBSERVANCE BY SUB-NATIONAL AUTHORITIES**

*[UNDERSTANDING*

*With respect to Articles 22 and 23*

*With regard to trade in Energy Materials and Products governed by Article 29 that Article specifies the provisions relevant to the subjects covered by Articles 22 and 23.]*

(1) Each Contracting Party is fully responsible under this Treaty for the observance of all provisions of the Treaty, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its Area.

(2) The dispute settlement provisions in Parts II, IV and V of this Treaty may be invoked in respect of measures affecting the observance of the Treaty by a Contracting Party which have been taken by regional or local governments or authorities within the Area of the Contracting Party.

**ARTICLE 24: GENERAL EXCEPTIONS***[UNDERSTANDING**With respect to Articles 24 and 24 bis*

*Exceptions contained in the GATT, GATS and Related Instruments apply between particular Contracting Parties which are parties to the GATT, as recognised by Article 4. With respect to trade in Energy Materials and Products governed by Article 29, that Article specifies the provisions relevant to the subjects covered by Articles 24 and 24 bis.]*

~~(1) This Article shall not apply to Articles 12, 13 and 29.~~

~~(21)~~ The provisions of this Treaty other than

~~(a) those referred to in paragraph (1); and~~

~~(b) Articles 12, 13 and 29 with respect to subparagraph (i), Part III of the Treaty~~

shall not preclude any Contracting Party from adopting or enforcing any measure

(a) necessary to protect public morals or to maintain public order<sup>9</sup>;

~~(b)~~ necessary to protect human, animal or plant life or health;<sup>10</sup>

(c) necessary to ensure the safety and integrity of critical energy facilities and infrastructure;

(d) necessary to secure compliance with laws which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts; or

~~(iie)~~ essential to the acquisition or distribution of Energy Materials and Products in conditions of short supply arising from causes outside the control of that Contracting Party, provided that any such measure shall be consistent with the principles that

~~(iA)~~ all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products; and

~~(iiB)~~ any such measure that is inconsistent with this Treaty shall be discontinued as soon as the conditions giving rise to it have ceased to exist; or

<sup>9</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

<sup>10</sup> Paragraph (i)(b) includes environmental measures (including climate change mitigation and adaptation measures) necessary to protect human, animal or plant life or health.



(iii~~f~~) designed to benefit Investors who are aboriginal people or socially or economically disadvantaged individuals or groups or their Investments and notified to the Secretariat as such, provided that such measure

(i~~A~~) has no significant impact on that Contracting Party's economy; and

(ii~~B~~) does not discriminate between Investors of any other Contracting Party and Investors of that Contracting Party not included among those for whom the measure is intended, ~~provided that no such measure shall constitute a disguised restriction on Economic Activity in the Energy Sector, or arbitrary or unjustifiable discrimination between Contracting Parties or between Investors or other interested persons of Contracting Parties.~~ Such measures shall be duly motivated and shall not nullify or impair any benefit one or more other Contracting Parties may reasonably expect under this Treaty to an extent greater than is strictly necessary to the stated end;

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;<sup>11</sup>

provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on commerce or investment promotion or protection covered by the Treaty.

(24) The provisions of this Treaty which accord most favoured nation treatment shall not oblige any Contracting Party to extend to the Investors of any other Contracting Party any preferential treatment:

~~(a) resulting from its membership of a free-trade area or customs union; or~~

*[DECISION With respect to Articles 24(4~~2~~)(a) and 25*

*An Investment of an Investor referred to in Article 1(7)(a)(ii), of a Contracting Party which is not party to an EIA or a member of a free-trade area or a customs union, shall be entitled to treatment accorded under such EIA, free-trade area or customs union, provided that the Investment:*

*(a) has its registered office, central administration or principal place of business in the Area of a party to that EIA or member of that free-trade area or customs union; or*

*(b) in case it only has its registered office in that Area, has an effective and Continuous link with the economy of one of the parties to that EIA or member of that free-trade area or customs union.]*

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<sup>11</sup> Paragraph (i)(g) applies also to measures adopted for the conservation of living and non-living exhaustible natural resources.

~~(b) which is accorded by a bilateral or multilateral agreement concerning economic cooperation between states that were constituent parts of the former Union of Soviet Socialist Republics pending the establishment of their mutual economic relations on a definitive basis.~~

(3) For greater certainty, Articles 7, 26, 27, 29 shall not apply among Contracting Parties that are members of the same Regional Economic Integration Organisation in their mutual relations.

A Regional Economic Integration Organization shall provide information on the legal framework related to the movement of its Energy Materials and Products within the REIO, as well as trade provisions and provisions for the resolution of investment disputes at least once a year to other Contracting Parties at their request and the Secretariat for information to other Contracting Parties.

#### **ARTICLE 24 BIS: SECURITY EXCEPTIONS**

(1) Nothing in this Treaty shall be construed to prevent any Contracting Party from taking any measure in pursuance of maintenance of international peace and security, or to require a Contracting Party to furnish any information, the disclosure of which it considers contrary to its essential security interests.

~~(3)~~ (2) Without prejudice to paragraph 1 of this Article, the provisions of this Treaty other than those referred to in paragraph (1) Art. 12 (compensation for losses), Art. 13 (expropriation) and Art. 29 (interim trade-related matters) shall not be construed to prevent any Contracting Party from taking any measure which it considers necessary

(a) for the protection of its essential security interests including those:

(i) relating to the supply of Energy Materials and Products and energy-related services, for the purpose of provisioning to a military establishment; ~~or~~

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) taken in time of war, armed conflict or other emergency in international relations; or

(b) relating to the implementation of national policies respecting the non-proliferation of nuclear weapons or other nuclear explosive devices or needed to fulfil its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons, the Nuclear Suppliers Guidelines, and other international nuclear non-proliferation obligations or understandings.

~~(c) for the maintenance of public order.~~

(3) Such measures or actions under this Article shall not constitute a disguised restriction on Transit.

**ARTICLE 25: ECONOMIC INTEGRATION AGREEMENTS***[DECLARATION**With respect to Article 25*

*The ~~European Communities~~ European Union and ~~its~~ their Member States recall that, in accordance with article 58 of the Treaty establishing the European Community:*

*a) companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the right of establishment pursuant to Part Three, Title III, Chapter 2 of the Treaty establishing the European Community, be treated in the same way as natural persons who are nationals of Member States; companies or firms which only have their registered office within the Community must, for this purpose, have an effective and continuous link with the economy of one of the Member States;*

*(b) “companies and firms” means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profitmaking.*

*The ~~European Communities~~ European Union and ~~its~~ their Member States further recall that:*

*Community law provides for the possibility to extend the treatment described above to branches and agencies of companies or firms not established in one of the Member States; and that, the application of Article 25 of the Energy Charter Treaty will allow only those derogations necessary to safeguard the preferential treatment resulting from the wider process of economic integration resulting from the Treaties establishing the European Communities.]<sup>12</sup>*

*[DECISION**With respect to Articles 24(~~4~~2)(a) and 25*

*An Investment of an Investor referred to in Article 1(7)(a)(ii), of a Contracting Party which is not party to an EIA or a member of a free-trade area or a customs union, shall be entitled to treatment accorded under such EIA, free-trade area or customs union, provided that the Investment:*

*(a) has its registered office, central administration or principal place of business in the Area of a party to that EIA or member of that free-trade area or customs union; or*

*(b) in case it only has its registered office in that Area, has an effective and continuous link with the economy of one of the parties to that EIA or member of that free-trade area or customs union.]*

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<sup>12</sup> Editor’s note: it is suggested that the EU proposes a different wording for updating the highlighted text.

(1) The provisions of this Treaty shall not be so construed as to oblige a Contracting Party which is party to an Economic Integration Agreement (hereinafter referred to as “EIA”) to extend, by means of most favoured nation treatment, to another Contracting Party which is not a party to that EIA, any preferential treatment applicable between the parties to that EIA as a result of their being parties thereto.

(2) For the purposes of paragraph (1), “EIA” means an agreement substantially liberalising, inter alia, trade and investment, by providing for the absence or elimination of substantially all discrimination between or among parties thereto through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time frame.

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
(3) This Article shall not affect the application of the GATT and Related Instruments according to Article 29.	(3) This Article shall not affect the application of the WTO Agreement according to Article 29.

## **PART V: DISPUTE SETTLEMENT**

*[UNDERSTANDING*

*With respect to Articles 9, 10 and Part V*

*As a Contracting Party's programmes which provide for public loans, grants, guarantees or insurance for facilitating trade or Investment abroad are not connected with Investment or related activities of Investors from other Contracting Parties in its Area, such programmes may be subject to constraints with respect to participation in them.]*

*[DECISION*

*With respect to the Treaty as a whole*

*In the event of a conflict between the treaty concerning Spitsbergen of 9 February 1920 (the Svalbard Treaty) and the Energy Charter Treaty, the treaty concerning Spitsbergen shall prevail to the extent of the conflict, without prejudice to the positions of the Contracting Parties in respect of the Svalbard Treaty. In the event of such conflict or a dispute as to whether there is such conflict or as to its extent, ~~Article 16 and~~ Part V of the Energy Charter Treaty shall not apply.]*

**ARTICLE 26: SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A  
CONTRACTING PARTY**

~~[UNDERSTANDING] With respect to Articles 26 and 27~~

~~The reference to treaty obligations in the penultimate sentence of Article 10(1) does not include decisions taken by international organisations, even if they are legally binding, or treaties which entered into force before 1 January 1970.]~~

(1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.

(2) If such disputes cannot be settled according to the provisions of paragraph (1) within a period of three months from the date on which either party to the dispute requested amicable settlement, the Investor party to the dispute may choose to submit it for resolution:

(a) to the courts or administrative tribunals of the Contracting Party party to the dispute;

~~[UNDERSTANDING] With respect to Article 26(2)(a)~~

~~Article 26(2)(a) should not be interpreted to require a Contracting Party to enact Part III of the Treaty into its domestic law.]~~

(b) in accordance with any applicable, previously agreed dispute settlement procedure; or

(c) in accordance with the following paragraphs of this Article.

(3) (a) Subject only to subparagraphs (b), ~~and (c)~~ and (d), each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration or conciliation in accordance with the provisions of this Article.

(b) (i) The Contracting Parties listed in Annex ID do not give such unconditional consent where the Investor has previously submitted the dispute under subparagraph (2)(a) or (b).

(ii) For the sake of transparency, each Contracting Party that is listed in Annex ID shall provide a written statement of its policies, practices and conditions in this regard to the Secretariat no later than the date of the deposit of its instrument of ratification, acceptance or approval in accordance with Article 39 or the deposit of its instrument of accession in accordance with Article 41.

(c) A Contracting Party listed in Annex IA does not give such unconditional consent with respect to a dispute arising under ~~the last sentence of Article 10(13)~~.

(d) A Contracting Party listed in Annex IA-NI does not give such an unconditional consent to Investments of an Investor of another Contracting Party related to Energy Material and Products, or activities excluded by that other the latter Contracting Party in Annex NI.

(4) In the event that an Investor chooses to submit the dispute for resolution under subparagraph (2)(c), the Investor shall further provide its consent in writing for the dispute to be submitted, in accordance with the provisions set forth in this treaty, to:

(a) (i) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington, 18 March 1965 (hereinafter referred to as the “ICSID Convention”), if the Contracting Party of the Investor and the Contracting Party party to the dispute are both parties to the ICSID Convention; or

(ii) The International Centre for Settlement of Investment Disputes, established pursuant to the Convention referred to in subparagraph (a)(i), under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre (hereinafter referred to as the “Additional Facility Rules”), if the Contracting Party of the Investor or the Contracting Party party to the dispute, but not both, is a party to the ICSID Convention;

(b) a sole arbitrator or ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (hereinafter referred to as “UNCITRAL”); or

(c) an arbitral proceeding under the Arbitration Institute of the Stockholm Chamber of Commerce.

(5) (a) The consent given in paragraph (3) together with the written consent of the Investor given pursuant to paragraph (4) shall be considered to satisfy the requirement for:

(i) written consent of the parties to a dispute for purposes of Chapter II of the ICSID Convention and for purposes of the Additional Facility Rules;

(ii) an “agreement in writing” for purposes of article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958 (hereinafter referred to as the “New York Convention”); and

(iii) “the parties to a contract [to] have agreed in writing” for the purposes of article 1 of the UNCITRAL Arbitration Rules.

(b) Any arbitration under this Article shall at the request of any party to the dispute be held in a state that is a party to the New York Convention. Claims submitted to arbitration hereunder shall be considered to arise out of a commercial relationship or transaction for the purposes of article I of that Convention.

(6) A tribunal established under paragraph (4) shall decide the issues in dispute in accordance with this Treaty and applicable rules and principles of international law.<sup>13</sup>

The tribunal shall apply the UNCITRAL Rules on Transparency in Treaty-based Investor-State arbitration of 1 April 2014 (UNCITRAL Transparency Rules) with the following additions:

Nothing in this paragraph requires a Contracting Party to make available to the public or otherwise disclose during or after the proceedings, including the hearing, confidential or protected information within the meaning of Article 7(2) of the UNCITRAL Transparency Rules, or information the disclosure of which is protected under its domestic law or which it considers to be contrary to its essential security interests.

Without prejudice to Article 3 of the UNCITRAL Transparency Rules, a disputing party may also make available to the public a request for amicable settlement, an agreement to mediate, a notice of challenge or a decision on challenge of a member of the tribunal, as well, as a request for consolidation, subject to Article 7 of the UNCITRAL Transparency Rules and after redaction of confidential or protected information done in consultation with the other disputing party.

(7) An Investor other than a natural person which has the nationality of a Contracting Party party to the dispute on the date of the consent in writing referred to in paragraph (4) and which, before a dispute between it and that Contracting Party arises, is controlled by Investors of another Contracting Party, shall for the purpose of article 25(2)(b) of the ICSID Convention be treated as a “national of another Contracting State” and shall for the purpose of article 1(6) of the Additional Facility Rules be treated as a “national of another State”.

(8) The awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute. An award of arbitration concerning a measure of a sub-national government or authority of the disputing Contracting Party shall provide that the Contracting Party may pay monetary damages in lieu of any other remedy granted. Each Contracting Party shall carry out without delay any such award and shall make provision for the effective enforcement in its Area of such awards.

(9) An arbitral tribunal may award:

(a) monetary damages and any applicable interest; and

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<sup>13</sup> For greater certainty, the domestic law of a Contracting Party shall not be part of the applicable law. Where a tribunal is required to ascertain the meaning of a provision of the domestic law of a Contracting Party as a matter of fact, it shall follow the prevailing interpretation of that provision given by the courts or authorities of that Contracting Party, where such interpretation exists and in accordance with the legal procedures of that Contracting Party, and any meaning given to the relevant domestic law of a Contracting Party by the tribunal shall not be binding upon the courts or authorities of that Contracting Party. A tribunal shall not have jurisdiction to determine the legality of a measure, alleged to constitute a breach of the obligations under Part III of this Treaty, under the domestic law of a Contracting Party.



(b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages determined in accordance with article 13(1) and any applicable interest in lieu of restitution.

(10) Monetary damages shall not be greater than the loss suffered by the Investor, as a result of the breach of the provisions referred to in Part III, reduced by any prior damages or compensation already provided by the Contracting Party concerned. The tribunal shall not award punitive damages.

(11) The tribunal shall order that the costs of the proceedings and other reasonable costs be borne by the unsuccessful party to the dispute, unless the tribunal determines that such apportionment is unreasonable in the circumstances of the case. Where only some parts of the claims have been successful, the costs shall be adjusted, proportionately, to the number or extent of the successful parts of the claims.

(12) A claim with respect to the restructuring of debt issued by a Contracting Party may only be submitted under Article 26(4) in accordance with Annex PD.

(13) A copy of the award shall be deposited with the Secretariat which shall publish it.

**NEW ARTICLE: FRIVOLOUS CLAIMS**

- (1) (a) A disputing Contracting Party may, no later than 45 days after the constitution of a tribunal established under Article 26(4) or before the first meeting, whichever is the earlier, file an objection that the claim or any part thereof, is manifestly without legal merit. The objection may relate to the substance of the claim, the jurisdiction or the competence of the tribunal. A disputing Contracting Party may also file such an objection no later than 30 days after it became aware of facts on which the objection is based where, owing to exceptional circumstances, it was not aware of those facts earlier.
- (b) The party shall specify as precisely as possible the basis for the objection. The tribunal, after giving the parties to the dispute an opportunity to present their observations on the objection, shall, at its first meeting or promptly thereafter, issue a decision or award on the objection, stating the grounds therefor. If the objection is received later than 45 days after the constitution of the tribunal, the tribunal shall issue such decision or award as soon as possible, and no later than 120 days after the objection was filed. The tribunal shall assume the facts alleged by the claimant to be true and may also consider any relevant facts not in dispute.
- (c) On receipt of an objection under this paragraph, and unless it considers the objection manifestly unfounded, the tribunal shall suspend any proceedings on the merits and fix any time limit necessary for considering the objection and the further conduct of the proceeding. If the tribunal decides that all claims are manifestly without legal merit, it shall render an award to that effect. Otherwise, the tribunal shall issue a decision on the objection. Such a decision shall be without prejudice to the right of a disputing Contracting party to object, in the course of the proceeding, to the legal merits of a claim and without prejudice to the tribunal's authority to address other objections as a preliminary question.
- (2) (a) Without prejudice to the authority of a tribunal established under Article 26(4) to address other objections as a preliminary question or to the right of the disputing Contracting Party to raise any such objections at any appropriate time, the tribunal shall address and decide as a preliminary question any objection by the disputing Contracting Party that, as a matter of law, the claim or any part thereof, is not a claim in respect of which an award in favour of the Investor may be made, even if the facts alleged by the Investor were assumed to be true. The tribunal may also consider any relevant facts not in dispute.
- (b) Such an objection shall be submitted as soon as possible and no later than the date fixed for the filing of the disputing Contracting Party's reply to the claim. A disputing Contracting Party may also file such an objection no later than 30 days after it became aware of facts on which the objection is based where, owing to exceptional circumstances, it was not aware of those facts earlier.
- (c) On receipt of an objection under this paragraph, and unless it considers the objection manifestly unfounded, the tribunal shall suspend any proceedings on the merits, and shall set a timetable for considering the objection consistent with any timetable it has

set for considering any other preliminary question, and issue a decision or award on the objection stating the grounds therefor.

- (3) An objection shall not be submitted under paragraph (1) if the disputing Contracting Party has filed an objection under paragraph (2). If an objection has been submitted pursuant to paragraph (1), the tribunal may, taking into account the circumstances of that objection, decline to address an objection submitted under paragraph (2).
- (4) For greater certainty, the tribunal shall issue an award declining jurisdiction if the dispute had arisen, or was foreseeable on the basis of a high degree of probability, at the time when the claimant acquired ownership or control of the Investment subject to the dispute and the tribunal determines, on the basis of the facts of the case, that the acquisition of such ownership or control of the Investment was for the main purpose of submitting a claim under Article 26(4). The possibility to decline jurisdiction in such circumstances is without prejudice to other jurisdictional objections which could be entertained by the tribunal.

**NEW ARTICLE: SECURITY FOR COSTS**

(1) At the request of the respondent, and following consultation in writing with the disputing parties, a tribunal established under Article 26(4) may order a claimant to post security for all or part of the costs of the proceedings.

The following procedure shall apply:

(a) the request shall specify the circumstances that require security for costs;

(b) the tribunal shall fix time limits for submissions on the request;

(c) the tribunal shall issue its decision on the request within 30 days after the later of the constitution of the Tribunal or the last submission on the request.

(2) In determining whether to order the claimant to provide security for costs, the tribunal shall consider all relevant circumstances, including:

a) whether the claimant risks not being able or willing to honour a possible decision on costs issued against it.

b) the effect that providing security for costs may have on the claimant's ability to pursue its claim; and

c) conduct of the parties.

(3) If the security for costs is not posted in full within 30 days after the issuance of an order pursuant to paragraph 1 or within any other time period set by the tribunal, the tribunal shall so inform the parties to the dispute. The tribunal, after consulting with the parties, may order the suspension or termination of the proceedings.

(4) The Investor shall promptly disclose any material change in the circumstances upon which the tribunal ordered security for costs. The tribunal may at any time modify or revoke its order on security for costs, on its own initiative or upon a party's request, after hearing the disputing parties.

**NEW ARTICLE: THIRD PARTY FUNDING**

- (1) Each disputing party shall disclose in writing to the other disputing party and a tribunal established under Article 26(4) the name and address, the ultimate beneficial owner and corporate structure as applicable, of any natural or legal person who provides the Third-Party Funding.
- (2) Such disclosure shall be made at the time of the submission of the dispute or without delay as soon as the funding agreement is concluded or the donation or grant is made after the submission of the dispute. Any changes in the information disclosed shall be immediately notified to the other disputing party and the arbitral tribunal.
- (3) The information disclosed may be considered, in addition to any other relevant information, for assessing an arbitrator's impartiality and independence.
- (4) The tribunal may order disclosure of further information regarding the funding agreement and the non-party providing funding, if it deems it necessary at any stage of the proceeding.

## ARTICLE 27: SETTLEMENT OF DISPUTES BETWEEN CONTRACTING PARTIES

~~UNDERSTANDING~~ ~~With respect to Articles 26 and 27~~

~~The reference to treaty obligations in the penultimate sentence of Article 10(1) does not include decisions taken by international organisations, even if they are legally binding, or treaties which entered into force before 1 January 1970.~~

(1) Contracting Parties shall endeavour to settle disputes concerning the application or interpretation of this Treaty through diplomatic channels.

(2) If a dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party thereto may, except as otherwise provided in this Treaty or agreed in writing by the Contracting Parties, and except as concerns the application or interpretation of Article 6 ~~or~~, Article 19, or Article X [Climate change and clean energy transition] or, for Contracting Parties listed in Annex IA, ~~the last sentence of~~ Article 10(13), upon written notice to the other party to the dispute submit the matter to an ad hoc tribunal under this Article.

(3) Such an ad hoc arbitral tribunal shall be constituted as follows:

(a) The Contracting Party instituting the proceedings shall appoint one member of the tribunal and inform the other Contracting Party to the dispute of its appointment within 30 days of receipt of the notice referred to in paragraph (2) by the other Contracting Party;

(b) Within 60 days of the receipt of the written notice referred to in paragraph (2), the other Contracting Party party to the dispute shall appoint one member. If the appointment is not made within the time limit prescribed, the Contracting Party having instituted the proceedings may, within 90 days of the receipt of the written notice referred to in paragraph (2), request that the appointment be made in accordance with subparagraph (d);

(c) A third member, who may not be a national or citizen of a Contracting Party party to the dispute, shall be appointed by the Contracting Parties parties to the dispute. That member shall be the President of the tribunal. If, within 150 days of the receipt of the notice referred to in paragraph (2), the Contracting Parties are unable to agree on the appointment of a third member, that appointment shall be made, in accordance with subparagraph (d), at the request of either Contracting Party submitted within 180 days of the receipt of that notice;

(d) Appointments requested to be made in accordance with this paragraph shall be made by the Secretary General of the Permanent Court of International Arbitration within 30 days of the receipt of a request to do so. If the Secretary General is prevented from discharging this task, the appointments shall be made by the First Secretary of the Bureau. If the latter, in turn, is prevented from discharging this task, the appointments shall be made by the most senior Deputy;

(e) Appointments made in accordance with subparagraphs (a) to (d) shall be made with regard to the qualifications and experience, particularly in matters covered by this Treaty, of the members to be appointed;

(f) In the absence of an agreement to the contrary between the Contracting Parties, the Arbitration Rules of UNCITRAL shall govern, except to the extent modified by the Contracting Parties parties to the dispute or by the arbitrators. The tribunal shall take its decisions by a majority vote of its members;

(g) The tribunal shall decide the dispute in accordance with this Treaty and applicable rules and principles of international law;

(h) The arbitral award shall be final and binding upon the Contracting Parties parties to the dispute;

(i) Where, in making an award, a tribunal finds that a measure of a regional or local government or authority within the Area of a Contracting Party listed in Part I of Annex P is not in conformity with this Treaty, either party to the dispute may invoke the provisions of Part II of Annex P;

(j) The expenses of the tribunal, including the remuneration of its members, shall be borne in equal shares by the Contracting Parties parties to the dispute. The tribunal may, however, at its discretion direct that a higher proportion of the costs be paid by one of the Contracting Parties parties to the dispute;

(k) Unless the Contracting Parties parties to the dispute agree otherwise, the tribunal shall sit in The Hague, and use the premises and facilities of the Permanent Court of Arbitration;

(l) A copy of the award shall be deposited with the Secretariat which shall make it generally available.

(4) Contracting Parties shall make the following documents or information publicly available not later than 20 days after their issuance or, at the request of a Contracting Party party to the dispute, in accordance with the time determined by the tribunal, unless they decide, in order to protect confidential information, to publish these documents only in parts:

(a) the written notice submitting the matter to an ad hoc tribunal pursuant paragraph (2);

(b) the date of establishment of the tribunal in accordance with paragraph (3), the time-limit for *amicus curiae* submissions determined by the tribunal pursuant to paragraph (5), and the working language for the tribunal procedure;

A Contracting Party to the dispute may make publicly available its written submissions and oral statements in the tribunal procedure, subject to the protection of confidential information.

Any hearing of the tribunal shall be open to the public unless the Contracting Parties to the dispute agree otherwise. The tribunal shall meet in closed session if the submission or

arguments of a Party contain information designated by that Party as confidential. Natural persons of a Contracting Party or legal persons established in a Contracting Party may make *amicus curiae* submissions to the tribunal in accordance with paragraph (5).

Nothing in this paragraph requires a Contracting Party to make available to the public or otherwise disclose during or after the tribunal proceedings, including the hearing, confidential information the disclosure of which is protected under its domestic law, or which would prejudice legitimate commercial interests of particular enterprises, public or private, or information the disclosure of which it considers to be contrary to its essential security interests.

(5) Unless the parties to the dispute agree otherwise within ten days after the date of establishment of the tribunal, the tribunal may receive unsolicited written submissions from natural persons of a Contracting Party or legal persons established in the territory of a Contracting Party who are independent from the governments of the parties to the dispute (*amicus curiae* submissions), provided that they:

- (a) are received by the tribunal by a date determined by the tribunal;
- (b) are concise and in no case longer than 15 pages, including any annexes, typed at double space;
- (c) are directly relevant to a factual or a legal issue under consideration by the tribunal;
- (d) contain a description of the person making the submission, including, if applicable, the nationality or place of establishment of a person, the nature of its activities, its legal status, its general objectives, the source of its financing and any controlling entity;
- (e) specify the nature of the interest that the person has in the tribunal procedure;
- (f) are drafted in the working language of the tribunal and;
- (g) contain a statement disclosing whether the applicant has any relationship, direct or indirect, with any party or any third party to this dispute, as well as whether it has, or will, receive any assistance, financial or otherwise, from a party or a third party to this dispute in the preparation of its application for leave or its written brief.

Any person shall specify in its submissions the interest that it has in the proceedings. The *amicus curiae* submissions shall be provided to the parties to the dispute for comments. The parties to the dispute may submit comments. The tribunal shall list in its award all the *amicus curiae* submissions it has received pursuant to paragraph (5). The tribunal shall not be obliged to address in its award the arguments made in those submissions. If the tribunal addresses arguments made therein, it shall also take into account any relevant comments made by the parties to the dispute.



**ARTICLE 28: NON-APPLICATION OF ARTICLE 27 TO CERTAIN DISPUTES**

A dispute between Contracting Parties with respect to the application or interpretation of Article 5 or 29 shall not be settled under Article 27 unless the Contracting Parties parties to the dispute so agree.

**ARTICLE 28 BIS: RESOLUTION OF DISPUTES ON SUSTAINABLE  
DEVELOPMENT PROVISIONS BETWEEN CONTRACTING  
PARTIES**

(1) In the event of a dispute between Contracting Parties on any matter regarding the interpretation or application of Article 19 and Article X and Article 20(4) the Contracting Parties shall endeavour to resolve amicably that dispute through diplomatic channels.

(2) If that dispute has not been resolved in accordance with paragraph (1) within six months, either Contracting Party party to the dispute shall endeavour to make recourse to arrangements for the consideration of such disputes in other appropriate international fora. If arrangements to give consideration to the dispute, other than diplomatic channels, have not been initiated within twelve months, either Contracting Party party to the dispute may refer the matter to the Secretary General by a notification summarising it.

(3) Within 30 days of receipt of such a notification, the Secretary General, in consultation with the Contracting Parties party to the dispute, shall appoint a conciliator. Such a conciliator shall have substantial relevant expertise in the matters subject to the dispute and shall not be a national or citizen of or permanently resident in one of the Contracting Parties party to the dispute. The Conference shall adopt standard provisions concerning the conduct of conciliation and the compensation of conciliators.

(4) The conciliator shall seek information and advice from the International Labour Organisation or relevant bodies or organisations established under the Multilateral Environmental Agreements. The conciliator, upon the agreement of the Contracting Parties party to the dispute, may also seek additional information from any source he or she deems appropriate. The conciliator shall forward any such information or advice to the Contracting Parties party to the dispute, allowing them to submit their comments within 60 days of its receipt.

(5) The conciliator seeks agreement between the Contracting Parties party to the dispute. If the Contracting Parties party to the dispute cannot reach an agreement, the conciliator suggests a potential compromise or a process to achieve it that Contracting Parties party to the dispute have to consider in good faith.

(6) If the Contracting Parties party to the dispute cannot agree with the compromise referred to in paragraph (5), the conciliator shall issue a report to the subsidiary body of the Conference determined by the provisions referred to in paragraph 3 no later than 180 days after the date of his or her appointment. The non-legally binding report shall set out the relevant facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations.

(7) The subsidiary body of the Conference determined by the provisions referred to in paragraph 3 shall discuss actions and measures to be implemented by the Contracting Parties

party to the dispute, taking into account the conciliator's report and the recommendations therein. Each Contracting Party party to the dispute shall inform the Secretariat of its implementation of actions or measures no later than three months after the date of issuance of the report. The report shall be made public. The Contracting Parties party to the dispute shall ensure the protection of confidential information. The subsidiary body of the Conference determined by the provisions referred to in paragraph 3 shall monitor the implementation of any such measures and shall keep the matter under review and report to the Charter Conference for a period determined by the standard provisions referred to in paragraph 3.

## **PART VI: TRANSITIONAL PROVISIONS**

**ARTICLE 29: INTERIM PROVISIONS ON TRADE-RELATED MATTERS**

Original text of the Energy Charter Treaty	Modification by Article 1 of the Amendment to the Trade-Related Provisions
<p>(1) The provisions of this Article shall apply to trade in Energy Materials and Products while any Contracting Party is not a party to the GATT and Related Instruments.</p> <p>(2) (a) Trade in Energy Materials and Products between Contracting Parties at least one of which is not a party to the GATT or a relevant Related Instrument shall be governed, subject to subparagraphs (b) and</p>	<p><i>[CHAIRMAN'S CONCLUSION ON THE IMPLEMENTATION OF TRADE-RELATED RULES:</i></p> <p><i>The Chairman concluded with respect to the future implementation of trade-related rules that there was a consensus among delegations that the Secretariat was to be invited to develop the elements for one implementation system based on the regime in the Trade Amendment. In particular, where the Trade Amendment foresees notification requirements and procedures, including with regard to Understanding 2 to the Amendment, they would follow WTO practice, provided that duplication of notifications with the WTO did not occur. ...</i></p> <p><i>Finally, whenever necessary to maintain the principle of harmonious implementation of trade-related rules based on WTO practice, appropriate rules of procedure should include the elements necessary to achieve that aim.]</i></p> <p>(1) The provisions of this Article shall apply to trade in Energy Materials and Products and Energy-Related Equipment while any Contracting Party is not a member of the WTO.</p> <p>(2) (a) Trade in Energy Materials and Products and Energy-Related Equipment between Contracting Parties at least one of which is not a member of the WTO shall be governed, subject to subparagraph (b) and to</p>

(c) and to the exceptions and rules provided for in Annex G, by the provisions of GATT 1947 and Related Instruments, as applied on 1 March 1994 and practised with regard to Energy Materials and Products by parties to GATT 1947 among themselves, as if all Contracting Parties were parties to GATT 1947 and Related Instruments.

*[UNDERSTANDING*

*With respect to Article 29(2)(a)*

*(a) Where a provision of GATT 1947 or a Related Instrument referred to in this paragraph provides for joint action by parties to the GATT, it is intended that the Charter Conference take such action.*

*(b) The notion “applied on 1 March 1994 and practised with regard to Energy Materials and Products by parties to GATT 1947 among themselves” is not intended to refer to cases where a party to the GATT has invoked article XXXV of the GATT, thereby disapplying the GATT vis-à-vis another party to the GATT, but nevertheless applies unilaterally on a de facto basis some provisions of the GATT vis-à-vis that other party to the GATT.]*

~~(b) Such trade of a Contracting Party which is a state that was a constituent part of the former Union of Soviet Socialist Republics may instead be governed, subject to the provisions of Annex TFCU, by an agreement between two or more such states, until 1 December 1999 or the admission of that Contracting Party to the GATT, whichever is the earlier.~~

the exceptions and rules provided for in Annex W, by the provisions of the WTO Agreement, as applied and practiced with regard to Energy Materials and Products and Energy-Related Equipment by members of the WTO among themselves, as if all Contracting Parties were members of the WTO.

*[UNDERSTANDING*

*With respect to Article 29(2)(a) and Annex W:*

*Notwithstanding the listing of paragraph 6 of article XXIV of the GATT 1994 in Annex W (A)(1)(a)(i), any signatory affected by an increase in customs duties or other charges of any kind imposed on or in connection with importation or exportation referred to in the first sentence of that paragraph, is entitled to seek consultations in the Charter Conference.]*

~~(b) Such trade of a Contracting Party which is a state that was a constituent part of the former Union of Soviet Socialist Republics may instead be governed, subject to the provisions of Annex TFCU, by an agreement between two or more such states, until 1 December 1999 or the admission of that Contracting Party to the WTO, whichever is the earlier.~~

<p>(c) As concerns trade between any two parties to the GATT, subparagraph (a) shall not apply if either of those parties is not a party to GATT 1947.</p> <p>(3) Each signatory to this Treaty, and each state or Regional Economic Integration Organization acceding to this Treaty, shall on the date of its signature or of its deposit of its instrument of accession provide to the Secretariat a list of all tariff rates and other charges levied on Energy Materials and Products at the time of importation or exportation, notifying the level of such rates and charges applied on such date of signature or deposit. Any changes to such rates or other charges shall be notified to the Secretariat, which shall inform the Contracting Parties of such changes.</p>	<p>(3) (a) Each signatory to this Treaty, and each state or Regional Economic Integration Organisation acceding to this Treaty before 24 April 1998, shall on the date of its signature or of its deposit of its instrument of accession provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of Energy Materials and Products, notifying the level of such customs duties and charges applied on such date of signature or deposit. Each signatory to this Treaty, and each state or Regional Economic Integration Organisation acceding to this Treaty before 24 April 1998, shall on that date provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of Energy-Related Equipment, notifying the level of such customs duties and charges applied on that date.</p> <p>(b) Each state or Regional Economic Integration Organisation acceding to this Treaty on or after 24 April 1998, shall, on the date of its deposit of its instrument of accession, provide to the Secretariat a list of all customs duties and charges of any kind imposed on or in connection with importation or exportation of Energy Materials and Products and Energy-Related Equipment, notifying the level of such customs duties and charges applied on such date of deposit. Any changes to such customs duties or charges of any kind imposed on or in connection with importation or exportation shall be notified to the Secretariat, which shall inform the</p>
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<p>(4) Each Contracting Party shall endeavour not to increase any tariff rate or other charge levied at the time of importation or exportation:</p> <p>(a) in the case of the importation of Energy Materials and Products described in Part I of the Schedule relating to the Contracting Party referred to in article II of the GATT, above the level set forth in that Schedule, if the Contracting Party is a party to the GATT;</p> <p>(b) in the case of the exportation of Energy Materials and Products, and that of their importation if the Contracting Party is not a party to the GATT, above the level most recently notified to the Secretariat, except as permitted by the provisions made applicable by subparagraph (2)(a).</p> <p>(5) A Contracting Party may increase such tariff rate or other charge above the level referred to in paragraph (4) only if:</p> <p>(a) in the case of a rate or other charge levied at the time of importation, such action is not inconsistent with the applicable provisions of the GATT other than those provisions of GATT 1947 and Related Instruments listed in Annex G and the corresponding provisions of GATT 1994 and Related Instruments; or</p> <p>(b) it has, to the fullest extent practicable under its legislative procedures, notified the Secretariat of its proposal for such an increase, given other interested Contracting Parties reasonable opportunity for</p>	<p>Contracting Parties of such changes.</p> <p>(4) Each Contracting Party shall endeavour not to increase any customs duty or charge of any kind imposed on or in connection with importation or exportation:</p> <p>(a) in the case of the importation of Energy Materials and Products listed in Annex EM I or Energy-Related Equipment listed in Annex EQ I and described in Part I of the Schedule relating to the Contracting Party referred to in article II of the GATT 1994, above the level set forth in that Schedule, if the Contracting Party is a member of the WTO;</p> <p>(b) in the case of the exportation of Energy Materials and Products listed in Annex EM I or Energy-Related Equipment listed in Annex EQ I, and that of their importation if the Contracting Party is not a member of the WTO, above the level most recently notified to the Secretariat, except as permitted by the provisions made applicable by subparagraph (2)(a).</p> <p>(5) A Contracting Party may increase such customs duty or other charge above the level referred to in paragraph (4) only if:</p> <p>(a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex W; or</p> <p>(b) it has, to the fullest extent practicable under its legislative procedures, notified the Secretariat of its proposal for such an increase, given other interested Contracting Parties reasonable opportunity for</p>
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<p>consultation with respect to its proposal, and accorded consideration to any representations from such Contracting Parties.</p> <p>(6) Signatories undertake to commence negotiations not later than 1 January 1995 with a view to concluding by 1 January 1998, as appropriate in the light of any developments in the world trading system, a text of an amendment to this Treaty which shall, subject to conditions to be laid down therein, commit each Contracting Party not to increase such tariffs or charges beyond the level prescribed under that amendment.</p>	<p>consultation with respect to its proposal, and accorded consideration to any representations from such Contracting Parties.</p> <p>(6) In respect of trade between Contracting Parties at least one of which is not a member of the WTO, no such Contracting Party shall increase any customs duty or charge of any kind imposed on or in connection with importation or exportation of Energy Materials and Products listed in Annex EM II or Energy-Related Equipment listed in Annex EQ II above the lowest of the levels applied on the date of the decision by the Charter Conference to list the particular item in the relevant Annex .</p> <p><i>[UNDERSTANDING</i>  <i>With respect to Articles 29(6) and (7) and 34(3)(o):</i></p> <p><i>The Charter Conference shall conduct an annual review with respect to any possibility of moving items of Energy Materials and Products or Energy-Related Equipment from Annexes EM I or EQ I to Annexes EM II or EQ II]</i></p> <p><i>[CHAIRMAN'S STATEMENT</i></p> <p><i>In particular, where the Trade Amendment foresees notification requirements and procedures, including with regard to Understanding 2 to the Amendment, they would follow WTO practice, provided that duplication of notifications with the WTO did not occur.]</i></p> <p>A Contracting Party may increase such customs duty or other charge above that level</p>
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	<p>only if:</p> <p>(a) in case of a customs duty or other charge imposed on or in connection with importation, such action is not inconsistent with the applicable provisions of the WTO Agreement, other than those provisions of the WTO Agreement listed in Annex W; or</p> <p>(b) in exceptional circumstances not elsewhere provided for in this Treaty, the Charter Conference decides to waive the obligation otherwise imposed on a Contracting Party by this paragraph, consenting to an increase in a customs duty, subject to any conditions the Charter Conference may impose.</p> <p>(7) Notwithstanding paragraph (6), in the case of trade referred to in that paragraph, Contracting Parties listed in Annex BR in respect of Energy Materials and Products listed in Annex EM II, or in Annex BRQ in respect of Energy-Related Equipment listed in Annex EQ II, shall not increase any customs duty or other charge above the level resulting from their commitments or any provisions applicable to them under the WTO Agreement.</p> <p><i>[UNDERSTANDING</i> <i>With respect to Articles 29(6) and (7) and 34(3)(o):</i></p> <p><i>The Charter Conference shall conduct an annual review with respect to any possibility of moving items of Energy Materials and Products or Energy-Related Equipment from Annexes EM I or EQ I to Annexes EM II or EQ II]</i></p>
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<p>(7) Annex D shall apply to disputes regarding compliance with provisions applicable to trade under this Article and, unless both Contracting Parties agree otherwise, to disputes regarding compliance with Article 5 between Contracting Parties at least one of which is not a party to the GATT, except that Annex D shall not apply to any dispute between Contracting Parties, the substance of which arises under an agreement that:</p>	<p><i>[UNDERSTANDING with respect to Article 29(7):</i></p> <p><i>In the case of a signatory, not a member of the WTO, which is listed in Annexes BR or BRQ or both, any concession offered formally in the process of its accession to the WTO with respect to Energy Materials or Products listed in Annex EM II or Energy-Related Equipment listed in Annex EQ II shall, for the purpose of this Article, be regarded as a commitment under the WTO.]</i></p> <p>(8) Other duties and charges imposed on or in connection with importation or exportation of Energy Materials and Products or Energy-Related Equipment shall be subject to the provisions of the Understanding on the Interpretation of Article II: 1(b) of the GATT 1994 as modified according to Annex W.</p> <p>(9) Annex D shall apply:</p> <p>(a) to disputes regarding compliance with provisions applicable to trade under this Article;</p> <p>(b) to disputes regarding the application by a Contracting Party of any measure, whether or not it conflicts with the provisions of this Article, which is considered by another Contracting Party to nullify or impair any benefit accruing to it directly or indirectly under this Article; and</p> <p>(c) unless the Contracting Parties parties to the dispute agree otherwise, to disputes regarding compliance with Article 5 between Contracting Parties at least one of which is not a member of the WTO, Except that Annex D shall not apply to any dispute between Contracting Parties, the substance of</p>
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<del>(a) has been notified in accordance with and meets the other requirements of subparagraph (2)(b) and Annex TFU; or</del>  <del>(b) establishes a free-trade area or a customs union as described in article XXIV of the GATT.</del>	which arises under an agreement that:-  <del>(i) has been notified in accordance with and meets the other requirements of subparagraph (2)(b) and Annex TFU; or</del>  <del>(ii) establishes a free-trade area or a customs union as described in article XXIV of the GATT 1994.</del>
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### ~~ARTICLE 30: DEVELOPMENTS ON INTERNATIONAL TRADE DEVELOPMENT~~

~~Contracting Parties undertake that in the light of the results of the Uruguay Round of Multilateral Trade Negotiations embodied principally in the Final Act thereof done at Marrakesh, 15 April 1994, they will commence consideration not later than 1 July 1995 or the entry into force of this Treaty, whichever is the later, of appropriate amendments to this Treaty with a view to the adoption of any such amendments by the Charter Conference.~~

### ~~ARTICLE 31: ENERGY RELATED EQUIPMENT~~

~~The provisional Charter Conference shall at its first meeting commence examination of the inclusion of energy related equipment in the trade provisions of this Treaty.~~

### ~~ARTICLE 32: TRANSITIONNAL ARRANGEMENTS~~

~~(1) In recognition of the need for time to adapt to the requirements of a market economy, a Contracting Party listed in Annex T may temporarily suspend full compliance with its obligations under one or more of the following provisions of this Treaty, subject to the conditions in paragraphs (3) to (6):~~

~~Article 6(2) and (5)~~

~~Article 7(4)~~

~~Article 9(1)~~

~~Article 10(7) specific measures~~

~~Article 14(1)(d) related only to transfer of unspent earnings~~

~~Article 20(3)~~

Article 22(1) and (3)

~~(2) Other Contracting Parties shall assist any Contracting Party which has suspended full compliance under paragraph (1) to achieve the conditions under which such suspension can be terminated. This assistance may be given in whatever form the other Contracting Parties consider most effective to respond to the needs notified under subparagraph (4)(c) including, where appropriate, through bilateral or multilateral arrangements.~~

~~(3) The applicable provisions, the stages towards full implementation of each, the measures to be taken and the date or, exceptionally, contingent event, by which each stage shall be completed and measure taken are listed in Annex T for each Contracting Party claiming transitional arrangements. Each such Contracting Party shall take the measure listed by the date indicated for the relevant provision and stage as set out in Annex T. Contracting Parties which have temporarily suspended full compliance under paragraph (1) undertake to comply fully with the relevant obligations by 1 July 2001. Should a Contracting Party find it necessary, due to exceptional circumstances, to request that the period of such temporary suspension be extended or that any further temporary suspension not previously listed in Annex T be introduced, the decision on a request to amend Annex T shall be made by the Charter Conference.~~

~~(4) A Contracting Party which has invoked transitional arrangements shall notify the Secretariat no less often than once every 12 months:~~

~~(a) of the implementation of any measures listed in its Annex T and of its general progress to full compliance;~~

~~(b) of the progress it expects to make during the next 12 months towards full compliance with its obligations, of any problem it foresees and of its proposals for dealing with that problem;~~

~~(c) of the need for technical assistance to facilitate completion of the stages set out in Annex T as necessary for the full implementation of this Treaty, or to deal with any problem notified pursuant to subparagraph (b) as well as to promote other necessary market-oriented reforms and modernisation of its energy sector;~~

~~(d) of any possible need to make a request of the kind referred to in paragraph (3).~~

~~(5) The Secretariat shall:~~

~~(a) circulate to all Contracting Parties the notifications referred to in paragraph (4);~~

~~(b) circulate and actively promote, relying where appropriate on arrangements existing within other international organisations, the matching of needs for and offers of technical assistance referred to in paragraph (2) and subparagraph (4)(c);~~

~~(e) circulate to all Contracting Parties at the end of each six month period a summary of any notifications made under subparagraph (4)(a) or (d).~~

~~(6) The Charter Conference shall annually review the progress by Contracting Parties towards implementation of the provisions of this Article and the matching of needs and offers of technical assistance referred to in paragraph (2) and subparagraph (4)(e). In the course of that review it may decide to take appropriate action.~~

## **PART VII: STRUCTURE AND INSTITUTIONS**

### ARTICLE 33: ENERGY CHARTER PROTOCOLS AND DECLARATIONS

~~[UNDERSTANDING ——— With respect to Article 33~~

~~The provisional Charter Conference should at the earliest possible date decide how best to give effect to the goal of Title III of the European Energy Charter that Protocols be negotiated in areas of cooperation such as those listed in Title III of the Charter.]~~

(1) The Charter Conference may authorise the negotiation of a number of Energy Charter Protocols or Declarations in order to pursue the objectives and principles of the Charter.

(2) Any signatory to the Charter may participate in such negotiation.

(3) A state or Regional Economic Integration Organisation shall not become a party to a Protocol or Declaration unless it is, or becomes at the same time, a signatory to the Charter and a Contracting Party to this Treaty.

(4) Subject to paragraph (3) and subparagraph (6)(a), final provisions applying to a Protocol shall be defined in that Protocol.

(5) A Protocol shall apply only to the Contracting Parties which consent to be bound by it, and shall not derogate from the rights and obligations of those Contracting Parties not party to the Protocol.

(6) (a) A Protocol may assign duties to the Charter Conference and functions to the Secretariat, provided that no such assignment may be made by an amendment to a Protocol unless that amendment is approved by the Charter Conference, whose approval shall not be subject to any provisions of the Protocol which are authorised by subparagraph (b).

(b) A Protocol which provides for decisions thereunder to be taken by the Charter Conference may, subject to subparagraph (a), provide with respect to such decisions:

(i) for voting rules other than those contained in Article 36;

(ii) that only parties to the Protocol shall be considered to be Contracting Parties for the purposes of Article 36 or eligible to vote under the rules provided for in the Protocol.



## ARTICLE 34: ENERGY CHARTER CONFERENCE

[UNDERSTANDING

*With respect to Article 34*

~~(a) The provisional Secretary General should make immediate contact with other international bodies in order to discover the terms on which they might be willing to undertake tasks arising from the Treaty and the Charter. The provisional Secretary General might report back to the provisional Charter Conference at the meeting which Article 45(4) requires to be convened not later than 180 days after the opening date for signature of the Treaty.~~

~~(b) The Charter Conference should adopt the annual budget before the beginning of the financial year.]~~

(1) The Contracting Parties shall meet periodically in the Energy Charter Conference (referred to herein as the “Charter Conference”) at which each Contracting Party shall be entitled to have one representative. Ordinary meetings shall be held at intervals determined by the Charter Conference.

(2) Extraordinary meetings of the Charter Conference may be held at such times as may be determined by the Charter Conference, or at the written request of any Contracting Party, provided that, within six weeks of the request being communicated to the Contracting Parties by the Secretariat, it is supported by at least one-third of the Contracting Parties.

(3) The functions of the Charter Conference shall be to:

(a) carry out the duties assigned to it by this Treaty and any Protocols;

(b) keep under review and facilitate the implementation of the principles of the Charter and of the provisions of this Treaty and the Protocols;

(c) facilitate in accordance with this Treaty and the Protocols the coordination of appropriate general measures to carry out the principles of the Charter;

(d) consider and adopt programmes of work to be carried out by the Secretariat;

(e) consider and approve the annual accounts and budget of the Secretariat;

(f) consider and approve or adopt the terms of any headquarters or other agreement, including privileges and immunities considered necessary for the Charter Conference and the Secretariat;

(g) encourage cooperative efforts aimed at facilitating and promoting market-oriented reforms and modernisation of energy sectors in those Contracting Parties ~~countries of Central~~

(j) decide on accessions to this Treaty;

(m) consider and approve modifications of and technical changes to the Annexes to this Treaty;

*With respect to Article 34(3)(m)*

*The technical changes to Annexes might for instance include, the listing of non-signatories or of signatories that have evinced their intention not to ratify, or additions to Annexes N and VC. It is intended that the Secretariat would propose such changes to the Charter Conference when appropriate.]*

Original text of the Energy Charter Treaty	Modification due to the Amendment to the Trade-Related Provisions
	<p>(n) consider and approve the listing of signatories in Annexes BR or BRQ or in both these Annexes;</p> <p><i>[DECISION                                  A        signatory which does not apply the Amendment adopted on 24 April 1998 provisionally may at the time that it takes action to apply that Amendment, whether on a definitive or a provisional basis, notify the Secretariat in writing that until it is listed in Annexes BR</i></p>

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<p>(n) appoint the Secretary-General and take all decisions necessary for the establishment and functioning of the Secretariat including the structure, staff levels and standard terms of employment of officials and employees.</p>	<p><i>at the time that it takes action to apply that Amendment, whether on a definitive or a provisional basis, notify the Secretariat in writing that until it is listed in Annexes BR and BRQ, it will apply the Amendment as if all items of Energy Materials and Products and of Energy-Related Equipment continued to be listed in Annexes EM I and EQ I.</i></p> <p><i>The Amendment shall apply accordingly to such a signatory.</i></p> <p><i>Any signatory may at any time withdraw the notification referred to above in writing to the Secretariat.]</i></p> <p><i>[UNDERSTANDING</i> <i>With respect to Article 29(7):</i></p> <p><i>In the case of a signatory, not a member of the WTO, which is listed in Annexes BR or BRQ or both, any concession offered formally in the process of its accession to the WTO with respect to Energy Materials or Products listed in Annex EM II or Energy-Related Equipment listed in Annex EQ II shall, for the purpose of this Article, be regarded as a commitment under the WTO.]</i></p> <p>(p) appoint the Secretary General and take all decisions necessary for the establishment and functioning of the Secretariat including the structure, staff levels and standard terms of employment of officials and employees.</p>
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(4) In the performance of its duties, the Charter Conference, through the Secretariat, shall cooperate with and make as full a use as possible, consistently with economy and efficiency, of the services and programmes of other institutions and organisations with established competence in matters related to the objectives of this Treaty.

(5) The Charter Conference may establish such subsidiary bodies as it considers appropriate for the performance of its duties.

(6) The Charter Conference shall consider and adopt rules of procedure and financial rules.

(7) In 1999 and thereafter at intervals (of not more than five years) to be determined by the Charter Conference, the Charter Conference shall thoroughly review the functions provided for in this Treaty in the light of the extent to which the provisions of the Treaty and Protocols have been implemented. At the conclusion of each review the Charter Conference may amend or abolish the functions specified in paragraph (3) and may discharge the Secretariat.

(8) Five years after the entry into force of the amendment introducing this paragraph and thereafter at intervals of five years, or on such a date as may be determined by the Charter Conference, the Charter Conference shall periodically review the content of Annexes EM [I]<sup>14</sup> and NI. In the course of that review, it may decide to modify any or both Annexes.

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<sup>14</sup> Ed. note : Annex EM in the case of the original version of the ECT.

**ARTICLE 35: SECRETARIAT**

- (1) In carrying out its duties, the Charter Conference shall have a Secretariat which shall be composed of a Secretary General and such staff as are the minimum consistent with efficient performance.
- (2) The Secretary General shall be appointed by the Charter Conference. The first such appointment shall be for a maximum period of five years.
- (3) In the performance of its duties the Secretariat shall be responsible to and report to the Charter Conference.
- (4) The Secretariat shall provide the Charter Conference with all necessary assistance for the performance of its duties and shall carry out the functions assigned to it in this Treaty or in any Protocol and any other functions assigned to it by the Charter Conference.
- (5) The Secretariat may enter into such administrative and contractual arrangements as may be required for the effective discharge of its functions.

**ARTICLE 36: VOTING**

(1) Unanimity of the Contracting Parties Present and Voting at the meeting of the Charter Conference where such matters fall to be decided shall be required for decisions by the Charter Conference to:

- (a) adopt amendments to this Treaty other than amendments to Articles 34 and 35 and Annex T;
- (b) approve accessions to this Treaty under Article 41 by states or Regional Economic Integration Organisations which were not signatories to the Charter as of 16 June 1995;
- (c) authorise the negotiation of and approve or adopt the text of association agreements;

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
(d) approve modifications to Annexes EM, NI, G and B;	(d) approve modifications to Annexes EM, NI, W and B;

(e) approve technical changes to the Annexes to this Treaty; and

(f) approve the Secretary General's nominations of panelists under Annex D, paragraph (7).

Modification by Article 2 of the Amendment to the Trade-Related Provisions
(g) approve the addition of items to Annex EM II from Annex EM I with the corresponding deletion of those items from Annex EM I and approve the addition of items to Annex EQ II from Annex EQ I with the corresponding deletion of those items from Annex EQ I.

The Contracting Parties shall make every effort to reach agreement by consensus on any other matter requiring their decision under this Treaty. If agreement cannot be reached by consensus, paragraphs (2) to (5) shall apply.

(2) Decisions on budgetary matters referred to in Article 34(3)(e) shall be taken by a qualified majority of Contracting Parties whose assessed contributions as specified in Annex B represent, in combination, at least three-fourths of the total assessed contributions specified therein.

(3) Decisions on matters referred to in Article 34(7) shall be taken by a threefourths majority of the Contracting Parties.

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
(4) Except in cases specified in subparagraphs (1)(a) to (f), paragraphs (2) and (3), and subject to paragraph (6), decisions provided for in this Treaty shall be taken by a three-fourths majority of the Contracting Parties Present and Voting at the meeting of the Charter Conference at which such matters fall to be decided.	(4) Except in cases specified in subparagraphs (1)(a) to (g), paragraphs (2) and (3), and subject to paragraph (6), decisions provided for in this Treaty shall be taken by a three-fourths majority of the Contracting Parties Present and Voting at the meeting of the Charter Conference at which such matters fall to be decided.

(5) For purposes of this Article, “Contracting Parties Present and Voting” means Contracting Parties present and casting affirmative or negative votes, provided that the Charter Conference may decide upon rules of procedure to enable such decisions to be taken by Contracting Parties by correspondence.

(6) Except as provided in paragraph (2), no decision referred to in this Article shall be valid unless it has the support of a simple majority of the Contracting Parties.

(7) A Regional Economic Integration Organisation shall, when voting, have a number of votes equal to the number of its member states which are Contracting Parties to this Treaty; provided that such an Organisation shall not exercise its right to vote if its member states exercise theirs, and vice versa.

(8) In the event of persistent arrears in a Contracting Party’s discharge of financial obligations under this Treaty, the Charter Conference may suspend that Contracting Party’s voting rights in whole or in part.



**ARTICLE 37: FUNDING PRINCIPLE**

- (1) Each Contracting Party shall bear its own costs of representation at meetings of the Charter Conference and any subsidiary bodies.
- (2) The cost of meetings of the Charter Conference and any subsidiary bodies shall be regarded as a cost of the Secretariat.
- (3) The costs of the Secretariat shall be met by the Contracting Parties assessed according to their capacity to pay, determined as specified in Annex B, the provisions of which may be modified in accordance with Article 36(1)(d).
- (4) A Protocol shall contain provisions to assure that any costs of the Secretariat arising from that Protocol are borne by the parties thereto.
- (5) The Charter Conference may in addition accept voluntary contributions from one or more Contracting Parties or from other sources. Costs met from such contributions shall not be considered costs of the Secretariat for the purposes of paragraph (3).

## **PART VIII: FINAL PROVISIONS**

**ARTICLE 38: SIGNATURE**

This Treaty shall be open for signature at Lisbon from 17 December 1994 to 16 June 1995 by the states and Regional Economic Integration Organisations which have signed the Charter.

**ARTICLE 39: RATIFICATION, ACCEPTANCE OR APPROVAL**

This Treaty shall be subject to ratification, acceptance or approval by signatories. Instruments of ratification, acceptance or approval shall be deposited with the Depositary.

**ARTICLE 40: APPLICATION TO TERRITORIES**

*[DECLARATION*

*With respect to Article 40*

*Denmark recalls that the European Energy Charter does not apply to Greenland and the Faroe Islands until notice to this effect has been received from the local governments of Greenland and the Faroe Islands.*

*In this respect Denmark affirms that Article 40 of the Treaty applies to Greenland and the Faroe Islands.]*

(1) Any state or Regional Economic Integration Organisation may at the time of signature, ratification, acceptance, approval or accession, by a declaration deposited with the Depositary, declare that the Treaty shall be binding upon it with respect to all the territories for the international relations of which it is responsible, or to one or more of them. Such declaration shall take effect at the time the Treaty enters into force for that Contracting Party.

(2) Any Contracting Party may at a later date, by a declaration deposited with the Depositary, bind itself under this Treaty with respect to other territory specified in the declaration. In respect of such territory the Treaty shall enter into force on the ninetieth day following the receipt by the Depositary of such declaration.

(3) Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification to the Depositary. The withdrawal shall, subject to the applicability of Article 47(3), become effective upon the expiry of one year after the date of receipt of such notification by the Depositary.

(4) The definition of “Area” in Article 1(10) shall be construed having regard to any declaration deposited under this Article.

**ARTICLE 41: ACCESSION**

This Treaty shall be open for accession, from the date on which the Treaty is closed for signature, by states and Regional Economic Integration Organisations which have signed the Charter, on terms to be approved by the Charter Conference. The instruments of accession shall be deposited with the Depositary.

**ARTICLE 42: AMENDMENTS**

- (1) Any Contracting Party may propose amendments to this Treaty.
- (2) The text of any proposed amendment to this Treaty shall be communicated to the Contracting Parties by the Secretariat at least three months before the date on which it is proposed for adoption by the Charter Conference.
- (3) Amendments to this Treaty, texts of which have been adopted by the Charter Conference, shall be communicated by the Secretariat to the Depositary which shall submit them to all Contracting Parties for ratification, acceptance or approval.
- (4) Instruments of ratification, acceptance or approval of amendments to this Treaty shall be deposited with the Depositary. Amendments shall enter into force between Contracting Parties having ratified, accepted or approved them on the ninetieth day after deposit with the Depositary of instruments of ratification, acceptance or approval by at least three fourths of the Contracting Parties. Thereafter the amendments shall enter into force for any other Contracting Party on the ninetieth day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendments.

**ARTICLE 43: ASSOCIATION AGREEMENTS**

(1) The Charter Conference may authorise the negotiation of association agreements with states or Regional Economic Integration Organisations, or with international organisations, in order to pursue the objectives and principles of the Charter and the provisions of this Treaty or one or more Protocols.

(2) The relationship established with and the rights enjoyed and obligations incurred by an associating state, Regional Economic Integration Organisation, or international organisation shall be appropriate to the particular circumstances of the association, and in each case shall be set out in the association agreement.



**ARTICLE 44: ENTRY INTO FORCE**

(1) This Treaty shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance or approval thereof, or of accession thereto, by a state or Regional Economic Integration Organisation which is a signatory to the Charter as of 16 June 1995.

(2) For each state or Regional Economic Integration Organisation which ratifies, accepts or approves this Treaty or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance or approval, it shall enter into force on the ninetieth day after the date of deposit by such state or Regional Economic Integration Organisation of its instrument of ratification, acceptance, approval or accession.

(3) For the purposes of paragraph (1), any instrument deposited by a Regional Economic Integration Organisation shall not be counted as additional to those deposited by member states of such Organisation.

## ARTICLE 45: PROVISIONAL APPLICATION

(1) Each signatory agrees to apply this Treaty provisionally pending its entry into force for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

(2) (a) Notwithstanding paragraph (1) any signatory may, when signing, deliver to the Depository a declaration that it is not able to accept provisional application. The obligation contained in paragraph (1) shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notification to the Depository.

(b) Neither a signatory which makes a declaration in accordance with subparagraph (a) nor Investors of that signatory may claim the benefits of provisional application under paragraph (1).

(c) Notwithstanding subparagraph (a), any signatory making a declaration referred to in subparagraph (a) shall apply Part VII provisionally pending the entry into force of the Treaty for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its laws or regulations.

(3) (a) Any signatory may terminate its provisional application of this Treaty by written notification to the Depository of its intention not to become a Contracting Party to the Treaty. Termination of provisional application for any signatory shall take effect upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depository.

(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).

~~(c) Subparagraph (b) shall not apply to any signatory listed in Annex PA. A signatory shall be removed from the list in Annex PA effective upon delivery to the Depository of its request therefor.~~

~~(4) Pending the entry into force of this Treaty the signatories shall meet periodically in the provisional Charter Conference, the first meeting of which shall be convened by the provisional Secretariat referred to in paragraph (5) not later than 180 days after the opening date for signature of the Treaty as specified in Article 38.~~

~~(5) The functions of the Secretariat shall be carried out on an interim basis by a provisional Secretariat until the entry into force of this Treaty pursuant to Article 44 and the establishment of a Secretariat.~~

(46) The signatories shall, in accordance with and subject to the provisions of paragraph (1) or subparagraph (2)(c) as appropriate, contribute to the costs of the provisional Secretariat as if the signatories were Contracting Parties under Article 37(3). Any modifications made to Annex B by the signatories shall terminate upon the entry into force of this Treaty.

~~(7) A state or Regional Economic Integration Organisation which, prior to this Treaty's entry into force, accedes to the Treaty in accordance with Article 41 shall, pending the Treaty's entry into force, have the rights and assume the obligations of a signatory under this Article.~~

*[Provisional Application of the Trade Amendment: Article 6 "Provisional Application" of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty:*

*(1) Each signatory which applies the Energy Charter Treaty provisionally in accordance with Article 45(1) and each Contracting Party agrees to apply this Amendment provisionally pending its entry into force for such signatory or Contracting Party to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.*

*(2) (a) Notwithstanding paragraph (1):*

*(i) any signatory which applies the Energy Charter Treaty provisionally or Contracting Party may deliver to the Depositary within 90 days from the date of the adoption of this Amendment by the Charter Conference a declaration that it is not able to accept the provisional application of this Amendment.*

*(ii) Any signatory which does not apply the Energy Charter Treaty provisionally in accordance with Article 45(2) may deliver to the Depositary not later than the date on which it becomes a Contracting Party or begins to apply the Treaty provisionally a declaration that it is not able to accept the provisional application of this Amendment.*

*The obligation contained in paragraph (1) shall not apply to a signatory or Contracting Party making such a declaration. Any such signatory or Contracting Party may at any time withdraw that declaration by written notification to the Depositary.*

*(b) Neither a signatory which makes a declaration in accordance with subparagraph (a) nor Investors of that signatory may claim the benefits of provisional application under paragraph (1).*

*(3) Any signatory or Contracting Party may terminate its provisional application of this Amendment by written notification to the Depositary of its intention not to ratify, accept or approve this Amendment. Termination of provisional application for any signatory or Contracting Party shall take effect upon the expiration of 60 days from the date on which*

*such signatory's or Contracting Party's written notification is received by the Depositary. Any signatory which terminates its provisional application of the Energy Charter Treaty in accordance with Article 45(3)(a) shall be considered as also having terminated its provisional application of this Amendment with the same date of effect.]*

**ARTICLE 46: RESERVATIONS**

No reservations may be made to this Treaty.

**ARTICLE 47: WITHDRAWAL**

(1) At any time after five years from the date on which this Treaty has entered into force for a Contracting Party, that Contracting Party may give written notification to the Depositary of its withdrawal from the Treaty.

(2) Any such withdrawal shall take effect upon the expiry of one year after the date of the receipt of the notification by the Depositary, or on such later date as may be specified in the notification of withdrawal.

(3) The provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party by Investors of other Contracting Parties or in the Area of other Contracting Parties by Investors of that Contracting Party as of the date when that Contracting Party's withdrawal from the Treaty takes effect for a period of 20 years from such date.

(4) All Protocols to which a Contracting Party is party shall cease to be in force for that Contracting Party on the effective date of its withdrawal from this Treaty.

**ARTICLE 48: STATUS OF ANNEXES AND DECISIONS**

Original text of the Energy Charter Treaty	Modification by Article 7 of the Amendment to the Trade-Related Provisions
<p>(1) The Annexes to this Treaty and the Decisions set out in Annex 2 to the Final Act of the European Energy Charter Conference signed at Lisbon on 17 December 1994 are integral parts of the Treaty.</p>	<p>(1) The Annexes to this Treaty and the Decisions set out in Annex 2 to the Final Act of the European Energy Charter Conference signed at Lisbon on 17 December 1994, as well as the Decisions adopted in connection with the adoption of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty are an integral part of the Energy Charter Treaty.</p>

(2) Modifications to Annexes shall enter into force one year after the date of their approval by the Conference unless otherwise specified in the Annex. Modifications to Annexes shall not apply to an ongoing dispute submitted under Article 26 before the date of the entry into force of such modification. Unless expressly mentioned otherwise in the modified Annex, modifications to Annexes shall only apply to Investments made after the date of the entry into force of such modification.

**ARTICLE 49: DEPOSITARY**

The Government of the Portuguese Republic shall be the Depositary of this Treaty.



**ARTICLE 50: AUTHENTIC TEXTS**

In witness whereof the undersigned, being duly authorised to that effect, have signed this Treaty in English, French, German, ~~Italian~~, Russian and Spanish, of which every text is equally authentic, in one original, which will be deposited with the Government of the Portuguese Republic.

Done at Lisbon on the seventeenth day of December in the year one thousand nine hundred and ninety-four.

## ANNEXES TO THE ENERGY CHARTER TREATY

List of annexes in the original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
<p>Annex EM “Energy Materials and Products”;</p> <p>Annex NI: <del>Non-Applicable</del> Energy Materials and Products <u>under the subheadings 27.01-27.15, 2804.10 and 44.01-44.02 in Annex EM and electrical energy produced from them, as well as synthetic fuels for and activities excluded from the Definitions of “Economic Activity in the Energy Sector”;</u></p> <p>Annex TRM “Notification and Phase-Out (TRIMs)”;</p> <p>Annex N “List of Contracting Parties requiring at least 3 separate Areas to be involved in a Transit”;</p> <p>Annex VC: List of Contracting Parties which have made Voluntary Binding Commitments in Respect of Article 10(<del>35</del>);</p> <p>Annex ID “List of Contracting Parties not allowing an Investor to resubmit the same dispute to International Arbitration at a later stage under Article 26”;</p> <p>Annex IA: List of Contracting Parties Not Allowing an Investor or Contracting Party to Submit a Dispute Concerning <del>the last Sentence of</del> Article 10(<del>13</del>) to International Arbitration;</p> <p>Annex P “Special Sub-National Dispute Procedure”;</p> <p>Annex G “Exceptions and Rules governing the Application of the Provisions of the</p>	<p>Annex EM I “Energy Materials and Products”;</p> <p>Annex EM II “Energy Materials and Products”;</p> <p>Annex EQ I “List of Energy-Related Equipment”;</p> <p>Annex EQ II “List of Energy-Related Equipment</p> <p>Annex NI: <del>Non-Applicable</del> Energy Materials and Products <u>under the subheadings 27.01-27.15, 2804.10 and 44.01-44.02 in Annex EM I and electrical energy produced from them, as well as synthetic fuels for and activities excluded from the Definitions of “Economic Activity in the Energy Sector”;</u></p> <p>Annex TRM “Notification and Phase-Out (TRIMs)”;</p> <p>Annex N “List of Contracting Parties requiring at least 3 separate Areas to be involved in a Transit”;</p> <p>Annex VC: List of Contracting Parties which have made Voluntary Binding Commitments in Respect of Article 10(<del>35</del>);</p> <p>Annex ID “List of Contracting Parties not allowing an Investor to resubmit the same dispute to International Arbitration at a later stage under Article 26”;</p> <p>Annex IA: List of Contracting Parties Not Allowing an Investor or Contracting Party to Submit a Dispute Concerning <del>the last Sentence of</del> Article 10(<del>13</del>) to International Arbitration;</p> <p>Annex P “Special Sub-National Dispute Procedure”;</p> <p>Annex W “Exceptions and Rules Governing the Application of the Provisions of the WTO</p>

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## ANNEX

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
<b>EM</b>	<b>EM I</b>

## ENERGY MATERIALS AND PRODUCTS

### (In accordance with article 1(4))

For the purpose of this Annex, “Ex” has been included to indicate that the product description referred to does not exhaust the entire range of products within the World Customs Organization Nomenclature headings or the Harmonized System codes listed below.

#### Nuclear energy

- 26.12      Uranium or thorium ores and concentrates.
- 2612.10            -   Uranium ores and concentrates
- 2612.20            -   Thorium ores and concentrates
- Ex 28.44    Radioactive chemical elements and radioactive isotopes (including the fissile or fertile chemical elements and isotopes) and their compounds; mixtures and residues containing these products.
- Ex 2844.10        -   Natural uranium and its compounds
- Ex 2844.20        -   Uranium enriched in U 235 and its compounds; plutonium and its compounds
- Ex 2844.30        -   Uranium depleted in U 235 and its compounds; thorium and its compounds
- Ex 2844.40        -   Radioactive elements and isotopes and compounds other than those of subheading 2844.10, 2844.20 or 2844.30
- 2844.50            -   Spent (irradiated) fuel elements (cartridges) of nuclear reactors
- Ex 28.45    Isotopes other than those of heading 28.44; compounds, inorganic or organic, of such isotopes, whether or not chemically defined.
- 2845.10            -   Heavy water (deuterium oxide)

#### Coal, Natural Gas, Petroleum and Petroleum Products, Electrical Energy

- 27.01      Coal: briquettes, ovoids and similar solid fuels manufactured from coal.
- 27.02      Lignite, whether or not agglomerated excluding jet.
- 27.03      Peat (including peat litter), whether or not agglomerated.

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- 27.04 Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon.
- 27.05 Coal gas, water gas, producer gas and similar gases, other than petroleum gases and other gaseous hydrocarbons.
- 27.06 Tar distilled from coal, from lignite or from peat, and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars.
- 27.07 Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents.
- 27.08 Pitch and pitch coke, obtained from coal tar or from other mineral tars.
- 27.09 Petroleum oils and oils obtained from bituminous minerals, crude.
- Ex 27.10 Petroleum oils and oils obtained from bituminous minerals, other than crude.
- 27.11 Petroleum gases and other gaseous hydrocarbons.
- 27.13 Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals.
- 27.14 Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks.
- 27.15 Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut-backs).
- 27.16 Electrical energy.

**Other Energy**

- Ex 44.01 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms.
- 4401.10 - Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms
- 44.02 Wood charcoal (including shell or nut charcoal), whether or not agglomerated.
- 2207.10 Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol or higher
- 2804.10 Hydrogen

2814.10 Anhydrous Ammonia

2905.11 Methanol

2915.11 Formic acid

“Biomass” - means the biodegradable fraction of products, waste and residues from biological origin from agriculture, including vegetal and animal substances, from forestry and related industries, including fisheries and aquaculture, as well as the biodegradable fraction of waste, including industrial and municipal waste of biological origin.

“Biogas” - means gaseous fuels produced from biomass.

“Synthetic fuels” – means fuels, which are synthesized from hydrogen and carbon streams.

ANNEX EQ I<sup>15</sup>

## LIST OF ENERGY-RELATED EQUIPMENT

(In accordance with article 1(4 bis))

For the purpose of this Annex, 'Ex' has been included to indicate that the product description referred to does not exhaust the entire range of products within the World Customs Organization Nomenclature headings or the Harmonized System codes listed below.

- |             |  |
|-------------|--|
| Ex 39.19    | Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.   |
| Ex 3919.10  | - In rolls of a width not exceeding 20 cm  |
|             | -- To be used for oil and gas pipelines and sea lines protection   |
| <u>6806</u> | <u>Wool, rock-wool and similar mineral wools; exfoliated vermiculite, expanded clays, foamed slag and similar expanded mineral materials; mixtures and articles of heat insulating, sound-insulating or sound-absorbing mineral materials.</u> |
| <u>7008</u> | <u>Multiple-walled insulating units of glass.</u>  |
| Ex 73.04*   | Tubes, pipes and hollow profiles, seamless, of iron (other than cast iron) or steel.   |
|             | - Line pipe of a kind used for oil or gas pipelines:   |
| 7304.11     | -- Of stainless steel  |
| 7304.19     | -- Other   |
|             | - Casing, tubing and drill pipe, of a kind used in drilling for oil or gas:  |
| 7304.22     | -- Drill pipe of stainless steel   |
| 7304.23     | -- Other drill pipe  |
| 7304.24     | -- Other, of stainless steel   |
| 7304.29     | -- Other   |
| Ex 73.05    | Other tubes and pipes (for example, welded, riveted or similarly closed), having circular cross-sections, the external diameter of which exceeds 406.4 mm, of iron or steel.   |
|             | - Line pipe of a kind used for oil or gas pipelines:   |

<sup>15</sup> Editor's Note: modification based on Article 5 of the Amendment to the Trade-Related Provisions of the Energy Charter Treaty.

\* Except products for use in civil aircraft

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	7305.11	--	Longitudinally submerged arc welded
	7305.12	--	Other, longitudinally welded
	7305.19	--	Other
	7305.20	-	Casing of a kind used in drilling for oil or gas
Ex 73.06*	Other tubes, pipes and hollow profiles (for example, open seam or welded, riveted or similarly closed), of iron or steel.		
		-	Line pipe of a kind used for oil or gas pipelines:
	7306.11	--	Welded, of stainless steel
	7306.19	--	Other
		-	Casing and tubing of a kind used in drilling for oil or gas:
	7306.21	--	Welded, of stainless steel
	7306.29	--	Other
73.07	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel.		
Ex 73.08	Structures (excluding prefabricated buildings of heading 94.06) and parts of structures (for example, bridges, and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel.		
	7308.20	-	Towers and lattice masts
	7308.40	-	Equipment for scaffolding, shuttering, propping or pitpropping
	Ex 7308.90	-	Other
		--	Parts for oil and gas drilling platforms
Ex 73.09	Reservoirs, tanks, vats and similar containers for any material (other than compressed or liquefied gas), of iron or steel, of a capacity exceeding 300 l, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment.		
	Ex 7309.00	--	For liquids

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\* Except products for use in civil aircraft



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- Of a capacity exceeding 1,000,000 l, where specially designed for strategic oil reserves
  - Heat insulated
- Ex 73.11 Containers for compressed or liquefied gas, of iron or steel.
- Of more than 1,000 l
- Ex 73.12\* Stranded wire, ropes, cables, plaited bands, slings and the like, of iron or steel, not electrically insulated.
- Ex 7312.10 - Stranded wires, ropes and cables
- Ropes and cables coated, non-coated or zinc coated of a kind used in the energy sector
- Ex 73.26 *(deleted, item now under 8536.70)*
- Ex 7326.90 - *(deleted, item now under 8536.70)*
- Ex 76.13 Aluminium containers for compressed or liquefied gas.
- Of more than 1,000 l
- Ex 76.14 Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated.
- Ex 7614.10 - With steel core
- Of a kind used in electricity generation, transmission and distribution
- Ex 7614.90 - Other
- Of a kind used in electricity generation, transmission and distribution
- Ex 78.06 Other articles of lead.
- Containers with an anti-radiation lead covering for the transport or storage of highly radioactive materials

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\* Except products for use in civil aircraft

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- Ex 81.09      Zirconium and articles thereof, including waste and scrap.
- Ex 8109.90      - Other
- Cartridges or tubes for nuclear fuel elements
- Ex 82.07      Interchangeable tools for hand tools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screw driving), including dies for drawing or extruding metal, and rock drilling or earth boring tools.
- Rock drilling or earth boring tools:
- 8207.13           -- With working part of cermets
- 8207.19           -- Other, including parts
- Ex 83.07\*      Flexible tubing of base metal, with or without fittings.
- For exclusive use in oil and gas wells
- 84.01           Nuclear reactors; fuel elements (cartridges), non-irradiated, for nuclear reactors; machinery and apparatus for isotopic separation.
- 84.02           Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); super-heated water boilers.
- 84.03           Central heating boilers other than those of heading 84.02.
- 84.04           Auxiliary plant for use with boilers of heading 84.02 or 84.03 (for example, economisers, super-heaters, soot removers, gas recoverers); condensers for steam or other vapour power units.
- 84.05           Producer gas or water gas generators, with or without their purifiers; acetylene gas generators and similar water process gas generators, with or without their purifiers.
- Ex 84.06      Steam turbines and other vapour turbines.

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\* Except products for use in civil aircraft

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	- Other turbines:
8406.81	-- Of an output exceeding 40 MW
8406.82	-- Of an output not exceeding 40 MW
8406.90	- Parts
Ex 84.08*	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines).
Ex 8408.90	- Other engines
	-- New, of a power exceeding 50 kW
Ex 84.09	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08.
8409.99	-- Other
84.10	Hydraulic turbines, water wheels, and regulators therefor.
84.11*	Turbo-jets, turbo-propellers and other gas turbines.
84.13*	Pumps for liquids, whether or not fitted with a measuring device; liquid elevators.
Ex 84.14*	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters.
	- Fans:
Ex 8414.59	-- Other
	-- For use in mining and power plants
8414.80	- Other
8414.90	- Parts

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\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

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- 84.16      Furnace burners for liquid fuel, for pulverised solid fuel or for gas; mechanical stokers, including their mechanical grates, mechanical ash dischargers and similar appliances.
- Ex 84.17    Industrial or laboratory furnaces and ovens, including incinerators, non-electric.
- Ex 8417.80    - Other
- Exclusively waste incinerators, laboratory furnaces and ovens and uranium sintering ovens
- Ex 8417.90    - Parts
- Exclusively for waste incinerators, laboratory furnaces and ovens and uranium sintering ovens
- Ex 84.18\*    Refrigerators, freezers, and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines of heading 84.15.
- Other refrigerating or freezing equipment; heat pumps:
- 8418.61      -- Heat pumps other than air conditioning machines of heading 84.15
- 8418.69      -- Other
- Ex 84.19\*    Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 85.14), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilising, pasteurising, steaming, drying, evaporating, vaporising, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric.
- 8419.50      - Heat exchange units
- 8419.60      - Machinery for liquefying air or other gases
- Other machinery, plant and equipment:
- 8419.89      -- Other
- Ex 84.21\*    Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases.
- Filtering or purifying machinery and apparatus for liquids:

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\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

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- |            |  |
|------------|--|
| 8421.21    | -- For filtering or purifying water  |
|            | - Filtering or purifying machinery and apparatus for gases:  |
| 8421.39    | -- Other   |
|            |  |
| Ex 84.25*  | Pulley tackle and hoists other than skip hoists; winches and capstans; jacks.  |
|            | - Winches; capstans:   |
| Ex 8425.31 | -- Pit-head winding gear powered by electric motor; winches specially designed for use underground powered by electric motor   |
| Ex 8425.39 | -- Other pit-head winding gear; other winches specially designed for use underground   |
|            |  |
| Ex 84.26*  | Ships' derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane.  |
| Ex 8426.20 | - Tower cranes   |
|            | -- For offshore platforms and onshore rigs   |
|            | - Other machinery:   |
| Ex 8426.91 | -- Designed for mounting on road vehicles  |
|            | -- Lifting equipment for repairing and completion of wells   |
|            |  |
| Ex 84.29   | Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.   |
|            | - Mechanical shovels, excavators and shovel loaders:   |
| Ex 8429.51 | -- Front-end shovel loaders  |
|            | -- Loaders specially designed for underground use  |
|            |  |
| Ex 84.30   | Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snow-ploughs and snow-blowers. |

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\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

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	- Coal or rock cutters and tunnelling machinery:
8430.31	-- Self-propelled
8430.39	-- Other
	- Other boring or sinking machinery:
Ex 8430.41	-- Self-propelled
	-- For the discovery or exploitation of deposits of oil and gas
Ex 8430.49	-- Other
	-- For the discovery or exploitation of deposits of oil and gas
Ex 84.31	Parts suitable for use solely or principally with the machinery of heading 84.25 to 84.30.
	-- Only for machinery covered
Ex 84.43*	Printing machinery used for printing by means of plates, cylinders and other printing components of heading 84.42; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof.
	- Other printers, copying machines and facsimile machines, whether or not combined:
Ex 8443.31	-- Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network
Ex 8443.32	-- Other, capable of connecting to an automatic data processing machine or to a network
84.71*	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.
Ex 84.74	Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand.

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\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

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- |            |    |   |
|------------|----|---|
| 8474.10    | -  | Sorting, screening, separating or washing machines  |
| 8474.20    | -  | Crushing or grinding machines   |
| Ex 8474.90 | -  | Parts   |
|            | -- | Of cast iron or cast steel  |
|            |    |   |
| Ex 84.79*  |    | Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter <sup>16</sup> .   |
|            | -  | Other machines and mechanical appliances:   |
| Ex 8479.89 | -- | Other   |
|            | -- | Mobile hydraulic powered mine roof support  |
|            |    |   |
| Ex 84.81   |    | Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.  |
| 8481.10    | -  | Pressure-reducing valves  |
| 8481.20    | -  | Valves for oleohydraulic or pneumatic transmissions   |
| 8481.40    | -  | Safety or relief valves   |
| 8481.80    | -  | Other appliances  |
| 8481.90    | -  | Parts   |
|            |    |   |
| Ex 84.83   |    | Transmission shafts (including cam shafts and crank shafts) and cranks; bearing housings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints). |
| Ex 8483.40 | -  | Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters   |
|            | -- | Transmission elements exclusively for use in sucker rod pumping units in the oil and gas industry   |

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\* Except products for use in civil aircraft

<sup>16</sup> Chapter 84.

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Ex 84.84*	Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal; sets or assortments of gaskets and similar joints, dissimilar in composition, put up in pouches, envelopes or similar packings; mechanical seals.
8484.10	- Gaskets and similar joints of metal sheeting combined with other material or of two or more layers of metal
8484.20	- Mechanical seals
85.01*	Electric motors and generators (excluding generating sets).
85.02*	Electric generating sets and rotary converters.
85.03*	Parts suitable for use solely or principally with the machines of heading 85.01 or 85.02.
Ex 85.04*	Electrical transformers, static converters (for example, rectifiers) and inductors.
	- Liquid dielectric transformers:
8504.21	-- Having a power handling capacity not exceeding 650 kVA
8504.22	-- Having a power handling capacity exceeding 650 kVA but not exceeding 10,000 kVA
8504.23	-- Having a power handling capacity exceeding 10,000 kVA
	- Other transformers:
8504.33	-- Having a power handling capacity exceeding 16 kVA but not exceeding 500 kVA
8504.34	-- Having a power handling capacity exceeding 500 kVA
8504.40	- Static converters
8504.50	- Other inductors
8504.90	- Parts

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\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft



- Ex 85.07\* Electric accumulators, including separators therefor, whether or not rectangular (including square).
- Excluding the use for non-energy sectors
- 85.14 Industrial or laboratory electric furnaces and ovens (including those functioning by induction or dielectric loss); other industrial or laboratory equipment for the heat treatment of materials by induction or dielectric loss.
- Ex 85.17\* Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28.
- Ex 8517.62 -- Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus
- Ex 85.26\* Radar apparatus, radio navigational aid apparatus and radio remote control apparatus.
- 8526.10 - Radar apparatus
- Other:
- 8526.91 -- Radio navigational aid apparatus
- Ex 85.28\* Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.
- Cathode-ray tube monitors:
- 8528.41 -- Of a kind solely or principally used in an automatic data processing system of heading 84.71
- Other monitors:
- 8528.51 -- Of a kind solely or principally used in an automatic data processing system of heading 84.71
- Projectors:
- 8528.61 -- Of a kind solely or principally used in an automatic data processing system of heading 84.71

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\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

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- 85.31\* Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 85.12 or 85.30.
- Ex 85.32 Electrical capacitors, fixed, variable or adjustable (pre-set).
- 8532.10 Fixed capacitors designed for use in 50/60 Hz circuits and having a reactive power handling capacity of not less than 0.5 kvar (power capacitors)
- 85.35 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, fuses, lightning arresters, voltage limiters, surge suppressors, plugs and other connectors, junction boxes), for a voltage exceeding 1,000 volts.
- Ex 85.36 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts; connectors for optical fibres, optical fibre bundles or cables.
- Ex 8536.10 - Fuses
- Exceeding 63 ampere
- Ex 8536.20 - Automatic circuit breakers
- Exceeding 63 ampere
- Ex 8536.30 - Other apparatus for protecting electrical circuits
- Exceeding 16 ampere
- Relays:
- 8536.41 -- For a voltage not exceeding 60 V
- 8536.49 -- Other
- Ex 8536.50 - Other switches
- For a voltage exceeding 60 V
- Ex 8536.70 - Connectors for optical fibre cables

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\* Except products for use in civil aircraft

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- 85.37 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 85.35 or 85.36, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of Chapter 90, and numerical control apparatus, other than switching apparatus of heading 85.17.
- 85.38 Parts suitable for use solely or principally with the apparatus of heading 85.35, 85.36 or 85.37.
- Ex 85.41 Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes; mounted piezo-electric crystals.
- Ex 8541.40 - Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light emitting diodes
- Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels
- Ex 85.44 Insulated (including enamelled or anodised) wire, cable (including co-axial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors.
- 8544.60 - Other electric conductors, for a voltage exceeding 1,000 V
- 8544.70 - Optical fibre cables
- Ex 85.45 Carbon electrodes, carbon brushes, lamp carbons, battery carbons and other articles of graphite or other carbon, with or without metal, of a kind used for electrical purposes.
- 8545.20 - Brushes
- 85.46 Electrical insulators of any material.

- 85.47 Insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during moulding solely for purposes of assembly, other than insulators of heading 85.46; electrical conduit tubing and joints therefor, of base metal lined with insulating material.
- Ex 87.04 Motor vehicles for the transport of goods.
- Other, with compression-ignition internal combustion piston engine (diesel or semi-diesel):
    - Ex 8704.21 -- g.v.w. not exceeding 5 tonnes
      - Specially designed for the transport of highly radioactive materials
    - Ex 8704.22 -- g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes
      - Specially designed for the transport of highly radioactive materials
    - Ex 8704.23 -- g.v.w. exceeding 20 tonnes
      - Specially designed for the transport of highly radioactive materials
  - Other, with spark-ignition internal combustion piston engine:
    - Ex 8704.31 -- g.v.w. not exceeding 5 tonnes
      - Specially designed for the transport of highly radioactive materials
    - Ex 8704.32 -- g.v.w. exceeding 5 tonnes
      - Specially designed for the transport of highly radioactive materials
- Ex 87.05 Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example, breakdown lorries, crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units).
- 8705.20 - Mobile drilling derricks
- Ex 87.09 Works trucks, self-propelled, not fitted with lifting or handling equipment, of the type used in factories, warehouses, dock areas or airports for short distance transport of goods; tractors of the type used on railway station platforms; parts of the foregoing vehicles.
- Vehicles:

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Ex 8709.11	-- Electrical
	-- Specially designed for the transport of highly radioactive materials
Ex 8709.19	-- Other
	-- Specially designed for the transport of highly radioactive materials
Ex 89.05	Light-vessels, fire-floats, dredgers, floating cranes, and other vessels the navigability of which is subsidiary to their main function; floating docks; floating or submersible drilling or production platforms.
8905.20	- Floating or submersible drilling or production platforms
Ex 90.15	Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders.
Ex 9015.80	- Other instruments and appliances
	-- Geophysical instruments only
9015.90	- Parts and accessories
Ex 90.26*	Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases (for example, flow meters, level gauges, manometers, heat meters), excluding instruments and apparatus of heading 90.14, 90.15, 90.28 or 90.32.
	-- Except for use in the water distribution industry
90.27	Instruments and apparatus for physical or chemical analysis (for example polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes.
90.28	Gas, liquid or electricity supply or production meters, including calibrating meters therefor.

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\* Except products for use in civil aircraft

- Ex 90.29\* Revolution counters, production counters, taximeters, mileometers, pedometers and the like; speed indicators and tachometers, other than those of heading 90.14 or 90.15; stroboscopes.
- Ex 9029.10 - Revolution counters, production counters, taximeters, mileometers, pedometers and the like
- Production counters
- Ex 9029.90 - Parts and accessories
- For production counters
- Ex 90.30\* Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations.
- Ex 9030.10 - Instruments and apparatus for measuring or detecting ionising radiations
- For use in the energy sector
- Other instruments and apparatus, for measuring or checking voltage, current, resistance or power:
- 9030.31 -- Multimeters without a recording device
- 9030.33 -- Other, without a recording device
- Other instruments and apparatus:
- Ex 9030.84 -- Other, with a recording device
- For use in the energy sector
- Ex 9030.89 -- Other
- For use in the energy sector
- Ex 9030.90 - Parts and accessories
- For use in the energy sector
- 90.32\* Automatic regulating or controlling instruments and apparatus.

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\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

\* Except products for use in civil aircraft

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**ANNEX NI: ~~NON-APPLICABLE~~ ENERGY MATERIALS AND PRODUCTS UNDER THE SUBHEADINGS 27.01-27.15, 2804.10 AND 44.01-44.02 IN ANNEX [EM I/ EM] AND ELECTRICAL ENERGY PRODUCED FROM THEM, AS WELL AS SYNTHETIC FUELS ~~FOR~~ AND ACTIVITIES EXCLUDED FROM THE DEFINITIONS OF “ECONOMIC ACTIVITY IN THE ENERGY SECTOR” (IN ACCORDANCE WITH ARTICLE 1.5)**

**Section A**

27.07 Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents.

Ex 44.01 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms.

4401.10 - Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms.

44.02 Wood charcoal (including shell or nut charcoal), whether or not agglomerated.

**Section B**

In addition, the Energy Materials and Products and activities listed below are excluded from the definition of Economic Activity in the Energy Sector only in relation to provisions contained in Part III of the ECT.

Until the entry into force of the amendments to the Energy Charter Treaty approved on 22 November 2022:

(i) Part III of the ECT does not apply to a Contracting Party listed in Annex NPT in respect of an Investment in their Area by an Investor of another Contracting Party regarding Energy Materials and Products, or activities excluded by the latter Contracting Party in Section B of Annex NI

(ii) A Contracting Party listed in Annex IA-NI does not give the unconditional consent of Article 26(3)(a) to Investments of an Investor of another Contracting Party related to Energy Material and Products, or activities excluded by that other the latter Contracting Party in Section B of Annex NI

1. In relation to investments made after 15 August 2023 in the European Union and its Member States which are Contracting Parties to this Treaty regarding:

- (a) 27.01 Coal; briquettes, ovoids and similar solid fuels manufactured from coal.
- 27.02 Lignite, whether or not agglomerated, excluding jet.
- 27.03 Peat (including peat litter), whether or not agglomerated.
- 27.04 Coke and semi-coke of coal, of lignite or of peat, whether or not agglomerated; retort carbon.
- 27.05 Coal gas, water gas, producer gas and similar gases, other than petroleum gases and other gaseous hydrocarbons.
- 27.06 Tar distilled from coal, from lignite or from peat, and other mineral tars, whether or not dehydrated or partially distilled, including reconstituted tars.
- 27.07 Oils and other products of the distillation of high temperature coal tar; similar products in which the weight of the aromatic constituents exceeds that of the non-aromatic constituents.
- 27.08 Pitch and pitch coke, obtained from coal tar or from other mineral tars.
- 27.09 Petroleum oils and oils obtained from bituminous minerals, crude.
- Ex 27.10 Petroleum oils and oils obtained from bituminous minerals, other than crude.
- 27.11 Petroleum gases and other gaseous hydrocarbons.
- 27.13 Petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous minerals.
- 27.14 Bitumen and asphalt, natural; bituminous or oil shale and tar sands; asphaltites and asphaltic rocks.
- 27.15 Bituminous mixtures based on natural asphalt, on natural bitumen, on petroleum bitumen, on mineral tar or on mineral tar pitch (for example, bituminous mastics, cut-backs).
- Electrical energy (27.16) produced from Energy Materials and Products under the subheadings 27.01 to 27.15;
- 2804.10 Hydrogen, with the exception of low carbon hydrogen and renewable hydrogen, which remain within the scope of the definition of economic activity in the energy sector.
- Low carbon hydrogen means hydrogen produced from non-renewable sources, with significantly reduced full life-cycle emissions resulting in less than 3tCO<sub>2</sub>eq/tH<sub>2</sub>.
- Renewable hydrogen means hydrogen produced from renewable sources, with the exception of biomass, resulting in full life-cycle emissions of less than 3tCO<sub>2</sub>eq/tH<sub>2</sub>.



Synthetic fuels other than low carbon fuels. Low-carbon fuels mean recycled carbon fuels, low-carbon hydrogen and synthetic gaseous and liquid fuels produced from low-carbon hydrogen, which meet a 70% reduction in full life-cycle emissions. Recycled carbon-fuels mean liquid and gaseous fuels that are produced from liquid or solid waste of non-renewable origin or from waste processing gas and exhaust gas of non-renewable origin.

And Economic activities concerning the capture, utilisation and storage of carbon dioxide.

(b) Notwithstanding subparagraph (a)

Electrical energy (27.16) produced from petroleum gases and other gaseous hydrocarbons (27.11), through power plants and infrastructure enabling the use of renewable and low-carbon gases, and emitting less than 380 g of CO<sub>2</sub> of fossil fuel origin per kWh of electricity, after 31 December 2030.

Electrical energy (27.16) produced from petroleum gases and other gaseous hydrocarbons (27.11), through power plants and infrastructure enabling the use of renewable and low-carbon gases, and emitting less than 380 g of CO<sub>2</sub> of fossil fuel origin per kWh of electricity related to investments that replace existing investments producing Electrical energy (27.16) from Energy Materials and Products under the subheadings 27.01 to 27.10, ten years after the date of entry into force of the changes in Section B of this annex approved on 22 November 2022 but no later than 31 December 2040.

Transport, transmission, distribution of petroleum gases and other gaseous hydrocarbons (27.11) through pipelines made after the date of entry into force of the changes to this annex approved on 22 November 2022, provided that the pipelines are able to transport safe and sustainable renewable and low-carbon gases, including hydrogen shall be excluded from the definition of “Economic Activity in the Energy Sector” [ten] years after the date of entry into force of the changes in Section B of this annex approved on 22 November 2022 but no later than 31 December 2040.

2. In relation to investments made after 15 August 2023 in Switzerland regarding:

2804.10 Hydrogen, with the exception of low carbon hydrogen and renewable hydrogen, which remain within the scope of the definition of economic activity in the energy sector.

Low carbon hydrogen means fossil-based hydrogen and electricity based hydrogen, with significantly reduced full life-cycle of greenhouse gas emissions resulting in less than 3 t CO<sub>2</sub> eq / t H<sub>2</sub>.

Renewable hydrogen means hydrogen produced from renewable sources resulting in life-cycle greenhouse gas emissions of less than 3 t CO<sub>2</sub> eq / t H<sub>2</sub>

And

Synthetic fuels without significantly reduced life cycle greenhouse gas emissions compared to synthetic fuels produced from fossil fuels with no emissions abatement. Significantly is to be understood as achieving a threshold of 70% or higher.

3. In relation to investments made after 15 August 2023 in the United Kingdom regarding:

(i) Energy Materials and Products in Annex EM I under subheadings 27.01 to 27.15, and electrical energy (subheading 27.16) produced from those Energy Materials and Products.

(ii) 2804.10 Hydrogen with the exception of low-carbon hydrogen which remains in scope of the definition of Economic Activity in the Energy Sector.

Low-carbon hydrogen means:

1. fossil-based hydrogen with carbon capture and storage;
2. electricity-based hydrogen; or
3. hydrogen produced from other production methods;

which meets the United Kingdom's Low Carbon Hydrogen Standard as published when the investment is made.

The previous subparagraphs (i) and (ii) do not apply to the following Energy Materials and Products which remain included in scope of the definition of Economic Activity in the Energy Sector:

(i) Electrical energy (subheading 27.16 of Annex EM I) produced from petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I) through power plants and infrastructure using carbon capture and storage, where life-cycle greenhouse gas emissions are significantly reduced.

(ii) Transport, transmission, and distribution of petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I) through pipelines provided the pipelines are capable of transporting renewable and low carbon gases.

## Section C

In addition, the following Energy Materials and Products and activities are excluded from the definition of Economic Activity in the Energy Sector only in relation to provisions contained in Part III of the ECT:

1. In relation to Investments made before 15 August 2023 in the European Union and its Member States which are Contracting Parties to this Treaty regarding Energy Materials and Products as well as activities listed in paragraph 1(a) of Section B to this Annex: [ten] years after the date of entry into force of the changes in Section C of this annex approved on 22 November 2022 but no later than 31 December 2040.
2. In relation to Investments made before 15 August 2023 in the United Kingdom regarding:
  - (i) Energy Materials and Products in Annex EM I under subheadings 27.01 to 27.04, and electrical energy (subheading 27.16) produced from those Energy Materials and Products: After 01 October 2024 or the date of entry into force of the changes in this Section if later.
  - (ii) Energy Materials and Products in Annex EM I under subheadings 27.05 to 27.15, and electrical energy (subheading 27.16) produced from those Energy Materials and Products: 10 years after the date of entry into force of the changes in Section C of this annex approved on 22 November 2022.

The previous subparagraphs (i) and (ii) do not apply to the following Energy Materials and Products which remain included in scope of the definition of Economic Activity in the Energy Sector:

- (iii) Electrical energy (subheading 27.16 of Annex EM I) produced from petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I) through power plants and infrastructure using carbon capture and storage, where life-cycle greenhouse gas emissions are significantly reduced.
- (iv) Transport, transmission, and distribution of petroleum gases and other gaseous hydrocarbons (subheading 27.11 of Annex EM I) through pipelines provided the pipelines are capable of transporting renewable and low carbon gases.

## ANNEX

Original text of the Energy Charter Treaty	Modification by Article 2 of the Amendment to the Trade-Related Provisions
<b>G: EXCEPTIONS AND RULES GOVERNING THE APPLICATION OF THE PROVISIONS OF THE GATT AND RELATED INSTRUMENTS (IN ACCORDANCE WITH ARTICLE 29 (2)(A))</b>	<b>W: EXCEPTIONS AND RULES GOVERNING THE APPLICATION OF THE PROVISIONS OF THE WTO AGREEMENT (IN ACCORDANCE WITH ARTICLE 29 (2)(A))</b>

[...]

[Declaration                      With respect to Annex G(4)]<sup>17</sup>

~~(a) The European Communities and the Russian Federation declare that trade in nuclear materials between them shall be governed, until they reach another agreement, by the provisions of article 22 of the Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, signed at Corfu on 24 June 1994, the exchange of letters attached thereto and the related joint declaration, and disputes regarding such trade will be subject to the procedures of the said Agreement.~~

~~(b) The European Communities~~ European Atomic Energy Community (EURATOM) and Ukraine declare that, in accordance with the Agreement on Partnership and Cooperation signed at Luxembourg on 14 June 1994 and the Interim Agreement thereto, initialled there the same day, trade in nuclear materials between them shall be exclusively governed by the provisions of the Agreement between the EURATOM and the Cabinet of Ministers of Ukraine for Co-operation in the Peaceful Uses of Nuclear Energy ~~a specific agreement to be concluded between the European Atomic Energy Community and Ukraine.~~

~~Until entry into force of this specific agreement, the provisions of the Agreement on Trade and Economic and Commercial Cooperation between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics signed at Brussels on 18 December 1989 shall exclusively continue to apply for trade in nuclear materials between them.~~

~~(c) The European Communities~~ European Atomic Energy Community (EURATOM) and Kazakhstan declare that, in accordance with the Agreement on Partnership and Cooperation initialled at Brussels on 20 May 1994, trade in nuclear materials between them shall be exclusively governed by the provisions of the Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the EURATOM and the Government of the Republic of

<sup>17</sup> Editor's note: Annex G was Replaced with Annex W by the Amendment to the Trade-Related Provisions.

~~Kazakhstan a specific agreement to be concluded between the European Atomic Energy Community and Kazakhstan.~~

~~Until entry into force of this specific agreement, the provisions of the Agreement on Trade and Economic and Commercial Cooperation between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics signed at Brussels on 18 December 1989 shall exclusively continue to apply for trade in nuclear materials between them.~~

(d) ~~The European Communities~~ European Atomic Energy Community (EURATOM) and Kyrgyzstan declare that, in accordance with the Agreement on Partnership and Cooperation initialled at Brussels on 31 May 1994, trade in nuclear materials between them shall be exclusively governed by the provisions of a specific agreement to be concluded between the European Atomic Energy Community and Kyrgyzstan.

Until entry into force of this specific agreement, the provisions of the Agreement on Trade and Economic and Commercial Cooperation between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics signed at Brussels on 18 December 1989 shall exclusively continue to apply for trade in nuclear materials between them.

(e) ~~The European Communities~~ European Atomic Energy Community (EURATOM) and Tajikistan declare that trade in nuclear materials between them shall be exclusively governed by the provisions of a specific agreement to be concluded between the European Atomic Energy Community and Tajikistan.

Until entry into force of this specific agreement, the provisions of the Agreement on Trade and Economic and Commercial Cooperation between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics signed at Brussels on 18 December 1989 shall exclusively continue to apply for trade in nuclear materials between them.

(f) ~~The European Communities~~ European Atomic Energy Community (EURATOM) and Uzbekistan declare that trade in nuclear materials between them shall be exclusively governed by the provisions of the Agreement for Co-operation in the Peaceful Uses of Nuclear Energy between the EURATOM and the Government of the Republic of Uzbekistan ~~a specific agreement to be concluded between the European Atomic Energy Community and Uzbekistan.~~

~~Until entry into force of this specific agreement, the provisions of the Agreement on Trade and Economic and Commercial Cooperation between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics signed at Brussels on 18 December 1989 shall exclusively continue to apply for trade in nuclear materials between them.~~

~~ANNEX TFU: PROVISIONS REGARDING TRADE AGREEMENTS BETWEEN  
STATES WHICH WERE CONSTITUENT PARTS OF THE FORMER UNION OF  
SOVIET SOCIALIST REPUBLICS~~

~~[UNDERSTANDING ——— With respect to Annex TFU(1)~~

~~(a) If some of the parties to an agreement referred to in paragraph (1) have not signed or acceded to the Treaty at the time required for notification, those parties to the agreement which have signed or acceded to the Treaty may notify on their behalf.~~

~~(b) The need in general for notification of agreements of a purely commercial nature is not foreseen because such agreements should not raise a question of compliance with Article 29(2)(a), even when they are entered into by state agencies. The Charter Conference could, however, clarify for purposes of Annex TFU which types of agreements referred to in Article 29(2)(b) require notification under the Annex and which types do not.]~~

~~ANNEX PA: LIST OF SIGNATORIES WHICH DO NOT ACCEPT THE  
PROVISIONAL APPLICATION OBLIGATION OF ARTICLE 45(3)(B)~~

~~ANNEX T: CONTRACTING PARTIES' TRANSITIONAL MEASURES~~

**ANNEX PD**  
**Public Debt**

(in accordance with Article 26(12))

No claim that a restructuring of debt of a Contracting Party breaches an obligation under Part III (Investment Protection) may be submitted to, or if already submitted, be pursued under Article 26(4) if the restructuring is a negotiated restructuring at the time of submission, or becomes a negotiated restructuring after such submission, except for a claim that the restructuring violates Article 10(7) (National Treatment and Most Favoured Nation Treatment).

Notwithstanding Article 26(2), and subject to paragraph (1) of this Annex, an investor may not submit a claim under Article 26(4) that a restructuring of debt of a Contracting Party breaches an obligation under Part III (Investment Protection) other than Article 10(7) (National Treatment and Most Favoured Nation Treatment),<sup>18</sup> unless 270 days have elapsed from the date of submission by the Investor of the written request for amicable settlement pursuant to Article 26(1).

For the purposes of this Annex:

(a) “negotiated restructuring” means the restructuring or rescheduling of debt of a Contracting Party that has been effected through (i) a modification or amendment of debt instruments, as provided for under their terms, including their governing law, or (ii) a debt exchange or other similar process in which the holders of no less than 75% of the aggregate principal amount of the outstanding debt subject to restructuring, excluding debt held by that Contracting Party or by entities owned or controlled by it, have consented to such debt exchange or other process.

(b) “governing law” of a debt instrument means a jurisdiction’s legal and regulatory framework applicable to that debt instrument.

For greater certainty, “debt of a Contracting Party” includes the debt of regional and local governments and authorities within its Area.

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<sup>18</sup> For greater certainty, a breach of Article 10(8) (National Treatment and Most Favoured Nation Treatment) does not occur merely by virtue of a different treatment provided by a Contracting Party to certain categories of investors or investments on grounds of a different macroeconomic impact, for instance to avoid systemic risks or spill over effects, or on grounds of eligibility for debt restructuring.

**ANNEX NPT: LIST OF CONTRACTING PARTIES NOT APPLYING PART III IN  
RESPECT OF AN INVESTMENT IN THEIR AREA BY AN INVESTOR OF ANOTHER  
CONTRACTING PARTY REGARDING ENERGY MATERIALS AND PRODUCTS  
EXCLUDED BY THE LATTER IN ANNEX NI**

(in accordance with Article xxx)

1. Japan



**ANNEX IA-NI: LIST OF CONTRACTING PARTIES NOT ALLOWING TO  
SUBMIT TO INTERNATIONAL ARBITRATION A DISPUTE RELATED TO AN  
INVESTMENT IN THEIR AREA BY AN INVESTOR OF ANOTHER CONTRACTING  
PARTY REGARDING ENERGY MATERIALS AND PRODUCTS EXCLUDED BY THE  
LATTER IN ANNEX NI**

(in accordance with Article 26(3)(d))

1. Switzerland
2. Türkiye